

avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).

(Added Pub. L. 109–8, title IX, §907(k)(1), Apr. 20, 2005, 119 Stat. 179.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsecs. (b)(2) and (c), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. Section 5c(c) of the Act is classified to section 7a-2(c) of Title 7. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsec. (c), is Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2236, as amended. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

EFFECTIVE DATE

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§ 562. Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements

(a) If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as defined in section 761), repurchase agreement, or master netting agreement pursuant to section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

- (1) the date of such rejection; or
- (2) the date or dates of such liquidation, termination, or acceleration.

(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (1) or (2) of subsection (a), damages shall be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages—

- (1) the trustee, in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

- (2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee,

has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates.

(Added Pub. L. 109–8, title IX, §910(a)(1), Apr. 20, 2005, 119 Stat. 184.)

EFFECTIVE DATE

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

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AMENDMENTS

2005—Pub. L. 109-8, title I, §102(k), title VII, § 719(b)(2), title IX, §907(p)(2), Apr. 20, 2005, 119 Stat. 35, 133, 182, added items 753 and 767, substituted “Dismissal of a case or conversion to a case under chapter 11 or 13” for “Dismissal” in item 707, and struck out item 728 “Special tax provisions”.

2000—Pub. L. 106-554, §1(a)(5) [title I, §112(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-396, added subchapter V heading and items 781 to 784.

1984—Pub. L. 98-353, title III, §471, July 10, 1984, 98 Stat. 380, substituted “Successor” for “Successor” in item 703.

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

§ 701. Interim trustee

(a)(1) Promptly after the order for relief under this chapter, the United States trustee shall appoint one disinterested person that is a member of the panel of private trustees established under section 586(a)(1) of title 28 or that is serving as trustee in the case immediately before the order for relief under this chapter to serve as interim trustee in the case.

(2) If none of the members of such panel is willing to serve as interim trustee in the case, then the United States trustee may serve as interim trustee in the case.

(b) The service of an interim trustee under this section terminates when a trustee elected or designated under section 702 of this title to serve as trustee in the case qualifies under section 322 of this title.

(c) An interim trustee serving under this section is a trustee in a case under this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2604; Pub. L. 99-554, title II, §215, Oct. 27, 1986, 100 Stat. 3100.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

The House amendment deletes section 701(d) of the Senate amendment. It is anticipated that the Rules of Bankruptcy Procedure will require the appointment of an interim trustee at the earliest practical moment in commodity broker bankruptcies, but no later than noon of the day after the date of the filing of the petition, due to the volatility of such cases.

SENATE REPORT NO. 95-989

This section requires the court to appoint an interim trustee. The appointment must be made from the panel of private trustees established and maintained by the Director of the Administrative Office under proposed 28 U.S.C. 604(e).

Subsection (a) requires the appointment of an interim trustee to be made promptly after the order for relief, unless a trustee is already serving in the case, such as before a conversion from a reorganization to a liquidation case.

Subsection (b) specifies that the appointment of an interim trustee expires when the permanent trustee is elected or designated under section 702.

Subsection (c) makes clear that an interim trustee is a trustee in a case under the bankruptcy code.

Subsection (d) provides that in a commodity broker case where speed is essential the interim trustee must be appointed by noon of the business day immediately following the order for relief.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-554 designated existing provisions as par. (1), substituted “the United States trustee shall appoint” for “the court shall appoint”, “586(a)(1)” for “604(f)”, “that is serving” for “that was serving”, and added par. (2).

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

§ 702. Election of trustee

(a) A creditor may vote for a candidate for trustee only if such creditor—

(1) holds an allowable, undisputed, fixed, liquidated, unsecured claim of a kind entitled to distribution under section 726(a)(2), 726(a)(3), 726(a)(4), 752(a), 766(h), or 766(i) of this title;

(2) does not have an interest materially adverse, other than an equity interest that is not substantial in relation to such creditor’s interest as a creditor, to the interest of creditors entitled to such distribution; and

(3) is not an insider.

(b) At the meeting of creditors held under section 341 of this title, creditors may elect one person to serve as trustee in the case if election of a trustee is requested by creditors that may vote under subsection (a) of this section, and that hold at least 20 percent in amount of the claims specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section.

(c) A candidate for trustee is elected trustee if—

(1) creditors holding at least 20 percent in amount of the claims of a kind specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section vote; and

(2) such candidate receives the votes of creditors holding a majority in amount of claims specified in subsection (a)(1) of this section that are held by creditors that vote for a trustee.

(d) If a trustee is not elected under this section, then the interim trustee shall serve as trustee in the case.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2604; Pub. L. 97-222, §7, July 27, 1982, 96 Stat. 237; Pub. L. 98-353, title III, §472, July 10, 1984, 98 Stat. 380.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

The House amendment adopts section 702(a)(2) of the Senate amendment. An insubstantial equity interest does not disqualify a creditor from voting for a candidate for trustee.