

§ 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 ap-