

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 742 of the House amendment deletes a sentence contained in the Senate amendment requiring the trustee in an interstate stock-brokerage liquidation to comply with the provisions of subchapter IV of chapter 7 if the debtor is also a commodity broker. The House amendment expands the requirement to require the SIPC trustee to perform such duties, if the debtor is a commodity broker, under section 7(b) of the Securities Investor Protection Act [15 U.S.C. 78ggg(b)]. The requirement is deleted from section 742 since the trustee of an intrastate stockbroker will be bound by the provisions of subchapter IV of chapter 7 if the debtor is also a commodity broker by reason of section 103 of title 11.

SENATE REPORT NO. 95-989

Section 742 indicates that the automatic stay does not prevent SIPC from filing an application for a protective decree under SIPA. If SIPA does file such an application, then all bankruptcy proceedings are suspended until the SIPC action is completed. If SIPC completes liquidation of the stockbroker then the bankruptcy case is dismissed.

REFERENCES IN TEXT

The Securities Investor Protection Act of 1970, referred to in text, is Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636, as amended, which is classified generally to chapter 2B-1 (§78aaa et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

AMENDMENTS

1994—Pub. L. 103-394 struck out “(15 U.S.C. 78aaa et seq.)” after “Act of 1970”.

1982—Pub. L. 97-222 substituted “title” for “chapter” after “all proceedings in the case under this”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

§ 743. Notice

The clerk shall give the notice required by section 342 of this title to SIPC and to the Commission.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2613; Pub. L. 99-554, title II, §283(t), Oct. 27, 1986, 100 Stat. 3118; Pub. L. 103-394, title V, §501(d)(27), Oct. 22, 1994, 108 Stat. 4146.)

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Section 743 requires that notice of the order for relief be given to SIPC and to the SEC in every stockbroker case.

AMENDMENTS

1994—Pub. L. 103-394 substituted “342” for “342(a)”.

1986—Pub. L. 99-554, which directed the amendment of this section by striking “(d)”, rather than “(a)”, could not be executed because “(d)” did not appear in text. See 1994 Amendment note above.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

§ 744. Executory contracts

Notwithstanding section 365(d)(1) of this title, the trustee shall assume or reject, under section 365 of this title, any executory contract of the debtor for the purchase or sale of a security in the ordinary course of the debtor’s business, within a reasonable time after the date of the order for relief, but not to exceed 30 days. If the trustee does not assume such a contract within such time, such contract is rejected.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2613; Pub. L. 97-222, §10, July 27, 1982, 96 Stat. 238.)

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Section 744 instructs the court to give the trustee a reasonable time, not to exceed 30 days, to assume or reject any executory contract of the stockbroker to buy or sell securities. Any contract not assumed within the time fixed by the court is considered to be rejected.

AMENDMENTS

1982—Pub. L. 97-222 inserted “but” after “relief.”.

§ 745. Treatment of accounts

(a) Accounts held by the debtor for a particular customer in separate capacities shall be treated as accounts of separate customers.

(b) If a stockbroker or a bank holds a customer net equity claim against the debtor that arose out of a transaction for a customer of such stockbroker or bank, each such customer of such stockbroker or bank shall be treated as a separate customer of the debtor.

(c) Each trustee’s account specified as such on the debtor’s books, and supported by a trust deed filed with, and qualified as such by, the Internal Revenue Service, and under the Internal Revenue Code of 1986, shall be treated as a separate customer account for each beneficiary under such trustee account.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2613; Pub. L. 97-222, §11, July 27, 1982, 96 Stat. 238; Pub. L. 98-353, title III, §483, July 10, 1984, 98 Stat. 383; Pub. L. 103-394, title V, §501(d)(28), Oct. 22, 1994, 108 Stat. 4146.)

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Section 745(a) indicates that each account held by a customer in a separate capacity is to be considered a separate account. This prevents the offset of accounts held in different capacities.

Subsection (b) indicates that a bank or another stockbroker that is a customer of a debtor is considered to hold its customers accounts in separate capacities. Thus a bank or other stockbroker is not treated as a mutual fund for purposes of bulk investment. This protects unrelated customers of a bank or other stockholder from having their accounts offset.

Subsection (c) effects the same result with respect to a trust so that each beneficiary is treated as the customer of the debtor rather than the trust itself. This eliminates any doubt whether a trustee holds a personal account in a separate capacity from his trustee’s account.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (c), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-394 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)”.

1984—Subsec. (a). Pub. L. 98-353 inserted “the debtor for” after “by”.

1982—Subsec. (c). Pub. L. 97-222 substituted “Each” for “A”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 746. Extent of customer claims

(a) If, after the date of the filing of the petition, an entity enters into a transaction with the debtor, in a manner that would have made such entity a customer had such transaction occurred before the date of the filing of the petition, and such transaction was entered into by such entity in good faith and before the qualification under section 322 of this title of a trustee, such entity shall be deemed a customer, and the date of such transaction shall be deemed to be the date of the filing of the petition for the purpose of determining such entity's net equity.

(b) An entity does not have a claim as a customer to the extent that such entity transferred to the debtor cash or a security that, by contract, agreement, understanding, or operation of law, is—

- (1) part of the capital of the debtor; or
- (2) subordinated to the claims of any or all creditors.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2613; Pub. L. 97-222, § 12, July 27, 1982, 96 Stat. 238.)

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Section 746(a) protects entities who deal in good faith with the debtor after the filing of the petition and before a trustee is appointed by deeming such entities to be customers. The principal application of this section will be in an involuntary case before the order for relief, because § 701(b) requires prompt appointment of an interim trustee after the order for relief.

Subsection (b) indicates that an entity who holds securities that are either part of the capital of the debtor or that are subordinated to the claims of any creditor of the debtor is not a customer with respect to those securities. This subsection will apply when the stockbroker has sold securities in itself to the customer or when the customer has otherwise placed such securities in an account with the stockbroker.

AMENDMENTS

1982—Pub. L. 97-222, § 12(c), substituted “claims” for “claim” in section catchline.

Subsec. (a). Pub. L. 97-222, § 12(a), substituted “enters into” for “effects, with respect to cash or a security,”

struck out “with respect to such cash or security” wherever appearing, and substituted “the date of the filing of the petition” for “such date”, and “entered into” for “effected”.

Subsec. (b). Pub. L. 97-222, § 12(b), substituted “transferred to the debtor” for “has a claim for” in provisions preceding par. (1), and struck out “is” in par. (2).

§ 747. Subordination of certain customer claims

Except as provided in section 510 of this title, unless all other customer net equity claims have been paid in full, the trustee may not pay in full or pay in part, directly or indirectly, any net equity claim of a customer that was, on the date the transaction giving rise to such claim occurred—

- (1) an insider;
- (2) a beneficial owner of at least five percent of any class of equity securities of the debtor, other than—

(A) nonconvertible stock having fixed preferential dividend and liquidation rights; or

(B) interests of limited partners in a limited partnership;

(3) a limited partner with a participation of at least five percent in the net assets or net profits of the debtor; or

(4) an entity that, directly or indirectly, through agreement or otherwise, exercised or had the power to exercise control over the management or policies of the debtor.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2613; Pub. L. 97-222, § 13, July 27, 1982, 96 Stat. 238.)

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Section 747 subordinates to other customer claims, all claims of a customer who is an insider, a five percent owner of the debtor, or otherwise in control of the debtor.

AMENDMENTS

1982—Pub. L. 97-222 substituted “the transaction giving rise to such claim occurred” for “such claim arose” in provisions preceding par. (1).

§ 748. Reduction of securities to money

As soon as practicable after the date of the order for relief, the trustee shall reduce to money, consistent with good market practice, all securities held as property of the estate, except for customer name securities delivered or reclaimed under section 751 of this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2614.)

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Section 748 requires the trustee to liquidate all securities, except for customer name securities, of the estate in a manner consistent with good market practice. The trustee should refrain from flooding a thin market with a large percentage of shares in any one issue. If the trustee holds restricted securities or securities in which trading has been suspended, then the trustee must arrange to liquidate such securities in accordance with the securities laws. A private placement may be the only exemption available with the customer of the debtor the best prospect for such a placement. The subsection does not permit such a customer to bid in his net equity as part of the purchase price; a contrary result would permit a customer to receive a greater percentage on his net equity claim than other customers.