

SUBCHAPTER V—CLEARING BANK
LIQUIDATION

§ 781. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) **BOARD.**—The term “Board” means the Board of Governors of the Federal Reserve System.

(2) **DEPOSITORY INSTITUTION.**—The term “depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(3) **CLEARING BANK.**—The term “clearing bank” means an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409¹ of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(Added Pub. L. 106-554, §1(a)(5) [title I, §112(c)(5)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763A-394.)

REFERENCES IN TEXT

Section 3 of the Federal Deposit Insurance Act, referred to in par. (2), is classified to section 1813 of Title 12, Banks and Banking.

Section 25A of the Federal Reserve Act, referred to in par. (3), popularly known as the Edge Act, is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 12 and Tables.

Section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in par. (3), which was classified to section 4422 of Title 12, Banks and Banking, was repealed by Pub. L. 111-203, title VII, §740, July 21, 2010, 124 Stat. 1729.

§ 782. Selection of trustee

(a) **IN GENERAL.**—

(1) **APPOINTMENT.**—Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Board designates an alternative trustee.

(2) **SUCCESSOR.**—The Board may designate a successor trustee if required.

(b) **AUTHORITY OF TRUSTEE.**—Whenever the Board appoints or designates a trustee, chapter 3 and sections 704 and 705 of this title shall apply to the Board in the same way and to the same extent that they apply to a United States trustee.

(Added Pub. L. 106-554, §1(a)(5) [title I, §112(c)(5)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763A-394.)

§ 783. Additional powers of trustee

(a) **DISTRIBUTION OF PROPERTY NOT OF THE ESTATE.**—The trustee under this subchapter has power to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and IV of this chapter.

(b) **DISPOSITION OF INSTITUTION.**—The trustee under this subchapter may, after notice and a hearing—

(1) sell the clearing bank to a depository institution or consortium of depository institutions (which consortium may agree on the allocation of the clearing bank among the consortium);

(2) merge the clearing bank with a depository institution;

(3) transfer contracts to the same extent as could a receiver for a depository institution under paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act;

(4) transfer assets or liabilities to a depository institution; and

(5) transfer assets and liabilities to a bridge depository institution as provided in paragraphs (1), (3)(A), (5), and (6) of section 11(n) of the Federal Deposit Insurance Act, paragraphs (9) through (13) of such section, and subparagraphs (A) through (H) and subparagraph (K) of paragraph (4) of such section 11(n), except that—

(A) the bridge depository institution to which such assets or liabilities are transferred shall be treated as a clearing bank for the purpose of this subsection; and

(B) any references in any such provision of law to the Federal Deposit Insurance Corporation shall be construed to be references to the appointing agency and that references to deposit insurance shall be omitted.

(c) **CERTAIN TRANSFERS INCLUDED.**—Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

(Added Pub. L. 106-554, §1(a)(5) [title I, §112(c)(5)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763A-395; amended Pub. L. 110-289, div. A, title VI, §1604(b)(3), July 30, 2008, 122 Stat. 2829.)

REFERENCES IN TEXT

Section 11 of the Federal Deposit Insurance Act, referred to in subsec. (b)(3), (5), is classified to section 1821 of Title 12, Banks and Banking.

AMENDMENTS

2008—Subsec. (b)(5). Pub. L. 110-289, which directed amendment of this section by substituting “bridge depository institution” for “bridge bank”, was executed by making the substitution in introductory provisions and subpar. (A) of subsec. (b)(5), to reflect the probable intent of Congress.

§ 784. Right to be heard

The Board or a Federal reserve bank (in the case of a clearing bank that is a member of that bank) may raise and may appear and be heard on any issue in a case under this subchapter.

(Added Pub. L. 106-554, §1(a)(5) [title I, §112(c)(5)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763A-395.)

**CHAPTER 9—ADJUSTMENT OF DEBTS OF A
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SUBCHAPTER I—GENERAL PROVISIONS

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¹ See References in Text note below.

Sec.

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AMENDMENTS

1988—Pub. L. 100-597, §11, Nov. 3, 1988, 102 Stat. 3030, added items 927 to 929 and redesignated former item 927 as 930.

SUBCHAPTER I—GENERAL PROVISIONS

§ 901. Applicability of other sections of this title

(a) Sections 301, 333, 344, 347(b), 349, 350(b) 351,¹ 361, 362, 364(c), 364(d), 364(e), 364(f), 365, 366, 501, 502, 503, 504, 506, 507(a)(2), 509, 510, 524(a)(1), 524(a)(2), 544, 545, 546, 547, 548, 549(a), 549(c), 549(d), 550, 551, 552, 553, 555, 556, 557, 559, 560, 561, 562, 1102, 1103, 1109, 1111(b), 1122, 1123(a)(1), 1123(a)(2), 1123(a)(3), 1123(a)(4), 1123(a)(5), 1123(b), 1123(d), 1124, 1125, 1126(a), 1126(b), 1126(c), 1126(e), 1126(f), 1126(g), 1127(d), 1128, 1129(a)(2), 1129(a)(3), 1129(a)(6), 1129(a)(8), 1129(a)(10), 1129(b)(1), 1129(b)(2)(A), 1129(b)(2)(B), 1142(b), 1143, 1144, and 1145 of this title apply in a case under this chapter.

(b) A term used in a section of this title made applicable in a case under this chapter by subsection (a) of this section or section 103(e)² of this title has the meaning defined for such term for the purpose of such applicable section, unless such term is otherwise defined in section 902 of this title.

(c) A section made applicable in a case under this chapter by subsection (a) of this section that is operative if the business of the debtor is authorized to be operated is operative in a case under this chapter.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2621; Pub. L. 98-353, title III, §§353, 490, July 10, 1984, 98 Stat. 361, 383; Pub. L. 100-597, §3, Nov. 3, 1988, 102 Stat. 3028; Pub. L. 109-8, title V, §502, title XII, §1216, title XV, §1502(a)(5), Apr. 20, 2005, 119 Stat. 118, 195, 216; Pub. L. 111-327, §2(a)(29), Dec. 22, 2010, 124 Stat. 3560.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Chapter 9 of the House amendment represents a compromise between chapter 9 of the House bill and 9 of the

Senate amendment. In most respects this chapter follows current law with respect to the adjustment of debts of a municipality. Stylistic changes and minor substantive revisions have been made in order to conform this chapter with other new chapters of the bankruptcy code. There are few major differences between the House bill and the Senate amendment on this issue. Section 901 indicates the applicability of other sections of title 11 in cases under chapter 9. Included are sections providing for creditors' committees under sections 1102 and 1103.

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Section 901 makes applicable appropriate provisions of other chapters of proposed title 11. The general rule set out in section 103(e) is that only the provisions of chapters 1 and 9 apply in a chapter 9 case. Section 901 is the exception, and specifies other provisions that do apply. They are as follows:

§ 301. *Voluntary cases.* Application of this section makes clear, as under current chapter IX [chapter 9 of former title 11], that a municipal case can be commenced only by the municipality itself. There are no involuntary chapter 9 cases.

§ 344. *Self-incrimination; immunity.* Application of this section is of no substantive effect for the administration of the case, but merely provides that the general rules in part V [§6001 et seq.] of title 18 govern immunity.

§ 347(b). *Unclaimed property.* This provision currently appears in section 96(d) of chapter IX [section 416(d) of former title 11].

§ 349. *Effect of dismissal.* This section governs the effect of a dismissal of a chapter 9 case. It provides in substance that rights that existed before the case that were disturbed by the commencement of the case are reinstated. This section does not concern grounds for dismissal, which are found in section 926.

§ 361. *Adequate protection.* Section 361 provides the general standard for the protection of secured creditors whose property is used in a case under title 11. Its importance lies in its application to sections 362 and 364.

§ 362. *Automatic stay.* The automatic stay provisions of the general portions of the title are incorporated into chapter 9. There is an automatic stay provided in current Bankruptcy Act §85(e) [section 405(e) of former title 11]. The thrust of section 362 is the same as that of section 85(e), but, of course, its application in chapter 9 is modernized and drafted to conform with the stay generally applicable under the bankruptcy code. An additional part of the automatic stay applicable only to municipal cases is included in section 922.

§§ 364(c), 364(d), 364(e). *Obtaining credit.* This section governs the borrowing of money by a municipality in reorganization. It is narrower than a comparable provision in current law, section 82(b)(2) [section 402(b)(2) of former title 11]. The difference lies mainly in the removal under the bill of the authority of the court to supervise borrowing by the municipality in instances in which none of the special bankruptcy powers are involved. That is, if a municipality could borrow money outside of the bankruptcy court, then it should have the same authority in bankruptcy court, under the doctrine of *Ashton v. Cameron Water District No. 1*, 298 U.S. 513 (1936) [Tex.1936, 56 S.Ct. 892, 80 L.Ed. 1309, 31 Am.Bankr.Rep.N.S. 96, rehearing denied 57 S.Ct. 5, 299 U.S. 619, 81 L.Ed. 457] and *National League of Cities v. Usery*, 426 U.S. 833 (1976) [Dist.Col.1976, 96 S.Ct. 2465, 49 L.Ed.2d 245, on remand 429 F. Supp. 703]. Only when the municipality needs special authority, such as subordination of existing liens, or special priority for the borrowed funds, will the court become involved in the authorization.

§ 365. *Executory contracts and unexpired leases.* The applicability of section 365 incorporates the general power of a bankruptcy court to authorize the assumption or rejection of executory contracts or unexpired leases found in other chapters of the title. This section is comparable to section 82(b)(1) of current law [section 402(b)(1) of former title 11].

¹So in original. The second comma probably should follow "350(b)".

²See References in Text note below.