within'' for ''section, within'' and ''discharge is granted'' for ''discharge was granted'' in par. (1), ''section before'' for ''section, before'' in provisions of par. (2) preceding subpar. (A), and ''discharge; and'' for ''discharge; or'' in par. (2)(A).

1984—Subsec. (a)(6)(C). Pub. L. 98–353, § 480(a)(1), substituted ''properly'' for ''property''.

Subsec. (a)(7). Pub. L. 98–353, § 480(a)(2), inserted '', under this title or under the Bankruptcy Act,'' after ''another case''.

Subsec. (a)(8). Pub. L. 98–353, § 480(a)(3), substituted ''371,'' for ''371''.

Subsec. (c)(1). Pub. L. 98–353, § 480(b), substituted ''to the granting of a discharge'' for ''to discharge''.

Subsec. (e)(2)(A). Pub. L. 98–353, § 480(c), substituted ''or'' for ''and''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 603(d) of Pub. L. 109–8 effective 18 months after Apr. 20, 2005, see section 603(e) of Pub. L. 109–8, set out as a note under section 521 of this title.

Amendments by sections 106(b), 312(1), and 330(a) of Pub. L. 109–8 effective 180 days after Apr. 20, 2005, with amendments by sections 106(b) and 312(1) of Pub. L. 109–8 not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, and amendment by section 330(a) of Pub. L. 109–8 applicable with respect to cases commenced under this title on or after Apr. 20, 2005, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 257 of Pub. L. 99–554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Effective date and applicability of amendment by section 220 of Pub. L. 99–554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99–554.

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.

[§ 728. Repealed. Pub. L. 109–8, title VII, § 719(b)(1), Apr. 20, 2005, 119 Stat. 133]

Section, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2611; Pub. L. 98–353, title III, § 481, July 10, 1984, 98 Stat. 382; Pub. L. 99–554, title II, § 257(t), Oct. 27, 1986, 100 Stat. 3116, related to special tax provisions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal 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.

SUBCHAPTER III—STOCKBROKER LIQUIDATION

§ 741. Definitions for this subchapter

In this subchapter—

(1) ''Commission'' means Securities and Exchange Commission;

(2) ''customer'' includes—

(A) entity with whom a person deals as principal or agent and that has a claim against such person on account of a security received, acquired, or held by such person in the ordinary course of such person's business as a stockbroker, from or for the securities account or accounts of such entity—

(i) for safekeeping;

(ii) with a view to sale;

(iii) to cover a consummated sale;

(iv) pursuant to a purchase;

(v) as collateral under a security agreement; or

(vi) for the purpose of effecting registration of transfer; and

(B) entity that has a claim against a person arising out of—

(i) a sale or conversion of a security received, acquired, or held as specified in subparagraph (A) of this paragraph; or

(ii) a deposit of cash, a security, or other property with such person for the purpose of purchasing or selling a security;

(3) ''customer name security'' means security—

(A) held for the account of a customer on the date of the filing of the petition by or on behalf of the debtor;

(B) registered in such customer's name on such date or in the process of being so registered under instructions from the debtor; and

(C) not in a form transferable by delivery on such date;

(4) ''customer property'' means cash, security, or other property, and proceeds of such cash, security, or property, received, acquired, or held by or for the account of the debtor, from or for the securities account of a customer—

(A) including—

(i) property that was unlawfully converted from and that is the lawful property of the estate;

(ii) a security held as property of the debtor to the extent such security is necessary to meet a net equity claim of a customer based on a security of the same class and series of an issuer;

(iii) resources provided through the use or realization of a customer's debit cash balance or a debit item includible in the Formula for Determination of Reserve Requirement for Brokers and Dealers as promulgated by the Commission under the Securities Exchange Act of 1934; and

(iv) other property of the debtor that any applicable law, rule, or regulation requires to be set aside or held for the benefit of a customer, unless including such property as customer property would not significantly increase customer property; but

(B) not including—

(i) a customer name security delivered to or reclaimed by a customer under section 751 of this title; or

(ii) property to the extent that a customer does not have a claim against the debtor based on such property;

(5) "margin payment" means payment or deposit of cash, a security, or other property, that is commonly known to the securities trade as original margin, initial margin, maintenance margin, or variation margin, or as a mark-to-market payment, or that secures an obligation of a participant in a securities clearing agency;

(6) "net equity" means, with respect to all accounts of a customer that such customer has in the same capacity—

(A)(i) aggregate dollar balance that would remain in such accounts after the liquidation, by sale or purchase, at the time of the filing of the petition, of all securities positions in all such accounts, except any customer name securities of such customer; minus

(ii) any claim of the debtor against such customer in such capacity that would have been owing immediately after such liquidation; plus

(B) any payment by such customer to the trustee, within 60 days after notice under section 342 of this title, of any business related claim of the debtor against such customer in such capacity;

(7) "securities contract"—

(A) means—

(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in section 101);

(ii) any option entered into on a national securities exchange relating to foreign currencies;

(iii) the guarantee (including by novation) by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in clauses (i) through (xi));

(iv) any margin loan;

(v) any extension of credit for the clearance or settlement of securities transactions;

(vi) any loan transaction coupled with a securities collar transaction, any prepaid forward securities transaction, or any total return swap transaction coupled with a securities sale transaction;

(vii) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

(viii) any combination of the agreements or transactions referred to in this subparagraph;

(ix) any option to enter into any agreement or transaction referred to in this subparagraph;

(x) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), or (ix), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), or (ix); or

(xi) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subparagraph, including any guarantee or reimbursement obligation by or to a stockbroker, securities clearing agency, financial institution, or financial participant in connection with any agreement or transaction referred to in this subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan;

(8) "settlement payment" means a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, or any other similar payment commonly used in the securities trade; and

(9) "SIPC" means Securities Investor Protection Corporation.

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 741(6) of the House bill and Senate amendment is deleted by the House amendment since the defined term is used only in section 741(4)(A)(iii). A corresponding change is made in that section.

SENATE REPORT NO. 95–989

Section 741 sets forth definitions for subchapter III of chapter 7.

Paragraph (1) defines "Commission" to mean the Securities and Exchange Commission.

Paragraph (2) defines "customer" to include anybody that interacts with the debtor in a capacity that concerns securities transactions. The term embraces cash or margin customers of a broker or dealer in the broadest sense.

Paragraph (3) defines "customer name security" in a restrictive fashion to include only non-transferable securities that are registered, or in the process of being registered in a customer's own name. The securities must not be endorsed by the customer and the stockbroker must not be able to legally transfer the securities by delivery, by a power of attorney, or otherwise.

Paragraph (4) defines "customer property" to include all property of the debtor that has been segregated for customers or property that should have been segregated but was unlawfully converted. Clause (i) refers to customer property not properly segregated by the debtor or customer property converted and then recovered so as to become property of the estate. Unlawfully converted property that has been transferred to a third party is excluded until it is recovered as property of the estate by virtue of the avoiding powers. The concept excludes customer name securities that have been delivered to or reclaimed by a customer and any property properly belonging to the stockholder, such as money deposited by a customer to pay for securities that the stockholder has distributed to such customer.

Paragraph (5) [enacted as (6)] defines "net equity" to establish the extent to which a customer will be entitled to share in the single and separate fund. Accounts of a customer are aggregated and offset only to the extent the accounts are held by the customer in the same capacity. Thus, a personal account is separate from an account held as trustee. In a community property state an account held for the community is distinct from an account held as separate property.

The net equity is computed by liquidating all securities positions in the accounts and crediting the account with any amount due to the customer. Regardless of the actual dates, if any, of liquidation, the customer is only entitled to the liquidation value at the time of the filing of the petition. To avoid double counting, the liquidation value of customer name securities belonging to a customer is excluded from net equity. Thus, clause (ii) includes claims against a customer resulting from the liquidation of a security under clause (i). The value of a security on which trading has been suspended at the time of the filing of the petition will be estimated. Once the net liquidation value is computed, any amount that the customer owes to the stockbroker is subtracted including any amount that would be owing after the hypothetical liquidation, such as brokerage fees. Debts owed by the customer to the debtor, other than in a securities related transaction, will not reduce the net equity of the customer. Finally, net equity is increased by any payment by the customer to the debtor actually paid within 60 days after notice. The principal reason a customer would make such a payment is to reclaim customer name securities under § 751.

Paragraph (6) defines "1934 Act" to mean the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

Paragraph (7) [enacted as (9)] defines "SIPC" to mean the Securities Investor Protection Corporation.

Editorial Notes

References in Text

The Securities Exchange Act of 1934, referred to in par. (4)(A)(iii), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Amendments

2006—Par. (7)(A)(i). Pub. L. 109–390, § 5(a)(3)(A), substituted "a mortgage loan," for "a mortgage loan or" and inserted "(whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in section 101)" before semicolon at end.

Par. (7)(A)(iii). Pub. L. 109–390, § 5(a)(3)(B), inserted "(including by novation)" after "the guarantee" and "(whether or not such settlement is in connection with any agreement or transaction referred to in clauses (i) through (xi))" before semicolon at end.

Par. (7)(A)(v) to (vii). Pub. L. 109–390, § 5(a)(3)(D), (E), added cls. (v) and (vi) and redesignated former cl. (v) as (vii). Former cls. (vi) and (vii) redesignated (viii) and (ix), respectively.

Par. (7)(A)(viii). Pub. L. 109–390, § 5(a)(3)(D), redesignated cl. (vi) as (viii). Former cl. (viii) redesignated (x).

Pub. L. 109–390, § 5(a)(3)(C), substituted "(vii), (viii), or (ix)" for "or (vii)" in two places.

Par. (7)(A)(ix) to (xi). Pub. L. 109–390, § 5(a)(3)(D), redesignated cls. (vii) to (ix) as (ix) to (xi), respectively.

2005—Par. (7). Pub. L. 109–8 added par. (7) and struck out former par. (7) which read as follows: " 'securities contract' means contract for the purchase, sale, or loan of a security, including an option for the purchase or sale of a security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating to foreign currencies, or the guarantee of any settlement of cash or securities by or to a securities clearing agency;".

1994—Par. (4)(A)(iii). Pub. L. 103–394 struck out "(15 U.S.C. 78a et seq.)" after "Act of 1934".

1984—Par. (2)(A). Pub. L. 98–353, § 482(1), substituted "with whom a person deals" for "with whom the debtor deals", "that has a claim" for "that holds a claim", "against such person" for "against the debtor", "held by such person" for "held by the debtor", and "such person's business as a stockbroker," for "business as a stockbroker".

Par. (2)(B). Pub. L. 98–353, § 482(2)(A), (B), substituted "has a claim" for "holds a claim" and "against a person" for "against the debtor" in provisions preceding cl. (i).

Par. (2)(B)(ii). Pub. L. 98–353, § 482(2)(C), substituted "such person" for "the debtor".

Par. (4)(A)(i). Pub. L. 98–353, § 482(3), substituted "from and that is lawful" for "and that is".

Par. (6)(A)(i). Pub. L. 98–353, § 482(4), inserted a comma after "petition" and "any" after "except".

Par. (7). Pub. L. 98–353, § 482(5), amended par. (7) generally, inserting provisions relating to options for the purchase or sale of certificates of deposit, or a group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating to foreign currencies.

Par. (8). Pub. L. 98–353, § 482(6), inserted "a final settlement payment,".

1982—Par. (4). Pub. L. 97–222, § 8(1), struck out "at any time" after "security, or property," in provisions preceding subpar. (A), and inserted "of a customer" after "claim" in subpar. (A)(ii).

Par. (5). Pub. L. 97–222, § 8(3), added par. (5). Former par. (5) redesignated (6).

Par. (6). Pub. L. 97–222, § 8(2), (4), redesignated former par. (5) as (6), in provisions preceding subpar. (A), substituted "all accounts of a customer that such customer has" for "the aggregate of all of a customer's accounts that such customer holds", in subpar. (A)(2) inserted "in such capacity", and in subpar. (B) inserted "in such capacity". Former par. (6) redesignated (9).

Pars. (7), (8). Pub. L. 97–222, § 8(5), added pars. (7) and (8).

Par. (9). Pub. L. 97–222, § 8(2), (6), redesignated former par. (6) as (9) and substituted "Securities" for "Security".

Statutory Notes and Related Subsidiaries

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–390 not applicable to any cases commenced under this title or to appointments

made under any Federal or State law, before Dec. 12, 2006, see section 7 of Pub. L. 109–390, set out as a note under section 101 of this title.

Amendment by Pub. L. 109–8 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 a note under section 101 of this title.

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.

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.

§ 742. Effect of section 362 of this title in this subchapter

Notwithstanding section 362 of this title, SIPC may file an application for a protective decree under the Securities Investor Protection Act of 1970. The filing of such application stays all proceedings in the case under this title unless and until such application is dismissed. If SIPC completes the liquidation of the debtor, then the court shall dismiss the case.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2613; Pub. L. 97–222, §9, July 27, 1982, 96 Stat. 237; Pub. L. 103–394, title V, §501(d)(26), Oct. 22, 1994, 108 Stat. 4146.)

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.

Editorial Notes

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, 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''.

Statutory Notes and Related Subsidiaries

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.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

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

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

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.