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.

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.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

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.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

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,'',