

## HOUSE REPORT NO. 95-595

Section 765(a) indicates that a customer must file a proof of claim, including any claim to specifically identifiable property, within such time as the court fixes.

Subsection (c) [of section 765 (enacted as section 766(e))] sets forth the general rule requiring the trustee to liquidate contractual commitments that are either not specifically identifiable or with respect to which a customer has not instructed the trustee during the time fixed by the court. Subsection (d) [enacted as section 766(b)] indicates an exception to the time limits in the rule by requiring the trustee to liquidate any open contractual commitment before the last day of trading or the first day during which delivery may be demanded, whichever first occurs, if transfer cannot be effectuated.

Section 766(a) [enacted as section 766(g)] indicates that the trustee may distribute securities or other property only under section 768. This does not preclude a distribution of cash under section 767(a) or distribution of any excess customer property under section 767(c) to the general estate.

Subsection (b) [enacted as section 766(f)] indicates that the trustee shall liquidate all securities and other property that is not specifically identifiable property as soon as practicable after the commencement of the case and in accordance with good market practice. If securities are restricted or trading has been suspended, the trustee will have to make an exempt sale or file a registration statement. In the event of a private placement, a customer is not entitled to "bid in" his net equity claim. To do so would enable him to receive a greater percentage recovery than other customers.

Section 767(a) [enacted as section 766(h)] provides for the trustee to distribute customer property pro rata according to customers' net equity claims. The court will determine an equitable portion of customer property to pay administrative expenses. Paragraphs (2) and (3) indicate that the return of specifically identifiable property constitutes a distribution of net equity.

Subsection (b) [enacted as section 766(i)] indicates that if the debtor is a clearing organization, customer property is to be segregated into customers' accounts and proprietary accounts and distributed accordingly without offset. This protects a member's customers from having their claims offset against the member's proprietary account. Subsection (c)(1) [enacted as section 766(j)(1)] indicates that any excess customer property will pour over into the general estate. This unlikely event would occur only if customers fail to file proofs of claim. Subsection (c)(2) [enacted as section 766(j)(2)] indicates that to the extent customers are not paid in full, they are entitled to share in the general estate as unsecured creditors, unless subordinated by the court under proposed 11 U.S.C. 510.

Section 768(a) [enacted as section 766(c)] requires the trustee to return specifically identifiable property to the extent that such distribution will not exceed a customer's net equity claim. Thus, if the customer owes money to a commodity broker, this will be offset under section 761(15)(A)(ii). If the value of the specifically identifiable property exceeds the net equity claim, then the customer may deposit cash with the trustee to make up the difference after which the trustee may return or transfer the customer's property.

Subsection (c) [enacted as section 766(a)] permits the trustee to answer all margin calls, to the extent of the customer's net equity claim, with respect to any specifically identifiable open contractual commitment. It should be noted that any payment under subsections (a) or (c) will be considered a reduction of the net equity claim under section 767(a). Thus the customer's net equity claim is a dynamic amount that varies with distributions of specifically identifiable property or margin payments on such property. This approach differs from the priority given to specifically identifiable property under subchapter III of chapter 7 by limiting the priority effect to a right to receive specific property as part of, rather than in addition to, a ratable

share of customer property. This policy is designed to protect the small customer who is unlikely to have property in specifically identifiable form as compared with the professional trader. The CFTC is authorized to make rules defining specifically identifiable property under section 302 of the bill, in title III.

## AMENDMENTS

1984—Subsec. (j)(2). Pub. L. 98-353 substituted "section 726" for "section 726(a)".

1982—Subsec. (a). Pub. L. 97-222, §19(a), inserted "to such customer" after "distribution".

Subsec. (b). Pub. L. 97-222, §19(b), struck out "that is being actively traded as of the date of the filing of the petition" after "any open commodity contract" and inserted "the" after "rules of".

Subsec. (d). Pub. L. 97-222, §19(c), substituted "the amount to which the customer of the debtor is entitled under subsection (h) or (i) of this section, then such" for "such amount, then the" and "the trustee then shall" for "the trustee shall".

Subsec. (h). Pub. L. 97-222, §19(d), inserted provision that notwithstanding any other provision of this subsection, a customer net equity claim based on a proprietary account, as defined by Commission rule, regulation, or order, may not be paid either in whole or in part, directly or indirectly, out of customer property unless all other customer net equity claims have been paid in full.

## 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.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 365, 702, 761, 765 of this title; title 7 section 24.

**CHAPTER 9—ADJUSTMENT OF DEBTS OF A MUNICIPALITY**

## SUBCHAPTER I—GENERAL PROVISIONS

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| 903. | Reservation of State power to control municipalities. |
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## SUBCHAPTER II—ADMINISTRATION

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## SUBCHAPTER III—THE PLAN

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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.