sion of this chapter, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this chapter or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(2) Procedures

The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

(b) Limitation

The Commission may not, under this section, exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from section 78*o*–5 of this title or the rules or regulations issued thereunder or (for purposes of section 78*o*–5 of this title and the rules and regulations issued thereunder) from any definition in paragraph (42), (43), (44), or (45) of section 78c(a) of this title.

(June 6, 1934, ch. 404, title I, § 36, as added Oct. 11, 1996, Pub. L. 104–290, title I, § 105(b), 110 Stat. 3424.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original ''this title''. See References in Text note set out under section 78a of this title.

CHAPTER 2B–1—SECURITIES INVESTOR PROTECTION

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 78c of this title; title 7 section 12a; title 11 sections 555, 559, 742.

§ 78aaa. Short title

This chapter may be cited as the ''Securities Investor Protection Act of 1970''.

(Pub. L. 91–598, § 1(a), Dec. 30, 1970, 84 Stat. 1636.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''This Act'', meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–283, § 1, May 21, 1978, 92 Stat. 249, provided that: ''This Act [enacting sections 78fff–1 to 78fff–4 of this title, amending sections 77c, 78c, 78k, and 78ccc to

78*lll* of this title and enacting provisions set out as a note under section 78k of this title] may be cited as the 'Securities Investor Protection Act Amendments of 1978'.''

§ 78bbb. Application of Securities Exchange Act of 1934

Except as otherwise provided in this chapter, the provisions of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] (hereinafter referred to as the ''1934 Act'') apply as if this chapter constituted an amendment to, and was included as a section of, such Act.

(Pub. L. 91–598, § 2, Dec. 30, 1970, 84 Stat. 1637.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified generally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

§ 78ccc. Securities Investor Protection Corporation

(a) Creation and membership

(1) Creation

There is hereby established a body corporate to be known as the ''Securities Investor Protection Corporation'' (hereafter in this chapter referred to as ''SIPC''). SIPC shall be a nonprofit corporation and shall have succession until dissolved by Act of the Congress. SIPC shall—

(A) not be an agency or establishment of the United States Government; and

(B) except as otherwise provided in this chapter, be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act [D.C. Code, § 29–501 et seq.].

(2) Membership

(A) Members of SIPC

SIPC shall be a membership corporation the members of which shall be all persons registered as brokers or dealers under section 78*o*(b) of this title, other than—

(i) persons whose principal business, in the determination of SIPC, taking into account business of affiliated entities, is conducted outside the United States and its territories and possessions; and

(ii) persons whose business as a broker or dealer consists exclusively of (I) the distribution of shares of registered open end investment companies or unit investment trusts, (II) the sale of variable annuities, (III) the business of insurance, or (IV) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts.

(B) Commission review

SIPC shall file with the Commission a copy of any determination made pursuant to subparagraph (A)(i). Within thirty days after the date of such filing, or within such longer period as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding, the Commission shall, consistent with the public interest and the purposes of this chapter, affirm, reverse, or amend any such determination of SIPC.

(C) Additional members

SIPC shall provide by rule that persons excluded from membership in SIPC under subparagraph (A)(i) may become members of SIPC under such conditions and upon such terms as SIPC shall require by rule, taking into account such matters as the availability of assets and the ability to conduct a liquidation if necessary.

(D) Disclosure

Any broker or dealer excluded from membership in SIPC under subparagraph (A)(i) shall, as required by the Commission by rule, make disclosures of its exclusion and other relevant information to the customers of such broker or dealer who are living in the United States or its territories and possessions.

(b) Powers

In addition to the powers granted to SIPC elsewhere in this chapter, SIPC shall have the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any State, Federal, or other court;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal, by its Board of Directors, such bylaws as may be necessary or appropriate to carry out the purposes of this chapter, including bylaws relating to—

(A) the conduct of its business; and

(B) the indemnity of its directors, officers, and employees (including any such person acting as trustee or otherwise in connection with a liquidation proceeding) for liabilities and expenses actually and reasonably incurred by any such person in connection with the defense or settlement of an action or suit if such person acted in good faith and in a manner reasonably believed to be consistent with the purposes of this chapter.

(4) to adopt, amend, and repeal, by its Board of Directors, such rules as may be necessary or appropriate to carry out the purposes of this chapter, including rules relating to—

(A) the definition of terms used in this chapter, other than those terms for which a definition is provided in section 78*lll* of this title;

(B) the procedures for the liquidation of members and direct payment procedures, including the transfer of customer accounts, the distribution of customer property, and the advance and payment of SIPC funds; and

(C) the exercise of all other rights and powers granted to it by this chapter;

(5) to conduct its business (including the carrying on of operations and the maintenance

of offices) and to exercise all other rights and powers granted to it by this chapter in any State or other jurisdiction without regard to any qualification, licensing, or other statute in such State or other jurisdiction;

(6) to lease, purchase, accept gifts or donations of or otherwise acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange or otherwise dispose of, any property, real, personal or mixed, or any interest therein, wherever situated;

(7) subject to the provisions of subsection (c) of this section, to elect or appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them and fix the penalty thereof;

(8) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to SIPC by this chapter; and

(9) by bylaw, to establish its fiscal year.

(c) Board of Directors

(1) Functions

SIPC shall have a Board of Directors which, subject to the provisions of this chapter, shall determine the policies which shall govern the operations of SIPC.

(2) Number and appointment

The Board of Directors shall consist of seven persons as follows:

(A) One director shall be appointed by the Secretary of the Treasury from among the officers and employees of the Department of the Treasury.

(B) One director shall be appointed by the Federal Reserve Board from among the officers and employees of the Federal Reserve Board.

(C) Five directors shall be appointed by the President, by and with the advice and consent of the Senate, as follows—

(i) three such directors shall be selected from among persons who are associated with, and representative of different aspects of, the securities industry, not all of whom shall be from the same geographical area of the United States, and

(ii) two such directors shall be selected from the general public from among persons who are not associated with a broker or dealer or associated with a member of a national securities exchange, within the meaning of section 78c(a)(18) or section 78c(a)(21), respectively, of this title, or similarly associated with any self-regulatory organization or other securities industry group, and who have not had any such association during the two years preceding appointment.

(3) Chairman and Vice Chairman

The President shall designate a Chairman and Vice Chairman from among those directors appointed under paragraph (2)(C)(ii) of this subsection.

(4) Terms

(A) Except as provided in subparagraphs (B) and (C), each director shall be appointed for a term of three years.

(B) Of the directors first appointed under paragraph (2)—

(i) two shall hold office for a term expiring on December 31, 1971,

(ii) two shall hold office for a term expiring on December 31, 1972, and

(iii) three shall hold office for a term expiring on December 31, 1973,

as designated by the President at the time they take office. Such designation shall be made in a manner which will assure that no two persons appointed under the authority of the same clause of paragraph (2)(C) shall have terms which expire simultaneously.

(C) A vacancy in the Board shall be filled in the same manner as the original appointment was made. Any director appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A director may serve after the expiration of his term until his successor has taken office.

(5) Compensation

All matters relating to compensation of directors shall be as provided in the bylaws of SIPC.

(d) Meetings of Board

The Board of Directors shall meet at the call of its Chairman, or as otherwise provided by the bylaws of SIPC.

(e) Bylaws and rules

(1) Proposed bylaw changes

The Board of Directors of SIPC shall file with the Commission a copy of any proposed bylaw or any proposed amendment to or repeal of any bylaw of SIPC (hereinafter in this paragraph collectively referred to as a ''proposed bylaw change''), accompanied by a concise general statement of the basis and purpose of such proposed bylaw change. Each such proposed bylaw change shall take effect thirty days after the date of the filing of a copy thereof with the Commission, or upon such later date as SIPC may designate or such earlier date as the Commission may determine, unless—

(A) the Commission, by notice to SIPC setting forth the reasons therefor, disapproves such proposed bylaw change as being contrary to the public interest or contrary to the purposes of this chapter; or

(B) the Commission finds that such proposed bylaw change involves a matter of such significant public interest that public comment should be obtained, in which case it may, after notifying SIPC in writing of such finding, require that the procedures set forth in paragraph (2) be followed with respect to such proposed bylaw change, in the same manner as if such proposed bylaw change were a proposed rule change within the meaning of such paragraph.

(2) Proposed rule changes

(A) Filing of proposed rule changes

The Board of Directors of SIPC shall file with the Commission, in accordance with such rules as the Commission may prescribe, a copy of any proposed rule or any proposed amendment to or repeal of any rule of SIPC (hereinafter in this subsection collectively referred to as a ''proposed rule change''), accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof, together with the terms of substance of such proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments with respect to such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this paragraph.

(B) Action by the Commission

Within thirty-five days after the date of publication of notice of the filing of a proposed rule change, or within such longer period as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which SIPC consents, the Commission shall—

(i) by order approve such proposed rule change; or

(ii) institute proceedings to determine whether such proposed rule change should be disapproved.

(C) Proceedings

Proceedings instituted with respect to a proposed rule change pursuant to subparagraph (B)(ii) shall include notice of the grounds for disapproval under consideration and opportunity for hearing, and shall be concluded within one hundred eighty days after the date of publication of notice of the filing of such proposed rule change. At the conclusion of such proceedings, the Commission shall, by order, approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for not more than sixty days if it finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which SIPC consents.

(D) Grounds for approval or disapproval

The Commission shall approve a proposed rule change if it finds that such proposed rule change is in the public interest and is consistent with the purposes of this chapter, and any proposed rule change so approved shall be given force and effect as if promulgated by the Commission. The Commission shall disapprove a proposed rule change if it does not make the finding referred to in the preceding sentence. The Commission shall not approve any proposed rule change prior to thirty days after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(E) Exception

Notwithstanding any other provision of this paragraph, a proposed rule change may take effect—

(i) upon the date of filing with the Commission, if such proposed rule change is designated by SIPC as relating solely to matters which the Commission, consistent with the public interest and the purposes of this subsection, determines by rule do not require the procedures set forth in this paragraph; or

(ii) upon such date as the Commission shall for good cause determine. Any proposed rule change which takes effect under this clause shall be filed promptly thereafter and reviewed in accordance with the provisions of subparagraph (A).

At any time within sixty days after the date of filing of any rule change which has taken effect pursuant to this subparagraph, the Commission may summarily abrogate such rule change and require that it be refiled and reviewed in accordance with the provisions of this paragraph, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter. Any action of the Commission pursuant to the preceding sentence shall not affect the validity or force of a rule change during the period it was in effect and shall not be reviewable under section 78y of this title or deemed to be final agency action for purposes of section 704 of title 5.

(3) Action required by Commission

The Commission may, by such rules as it determines to be necessary or appropriate in the public interest or to carry out the purposes of this chapter, require SIPC to adopt, amend, or repeal any SIPC bylaw or rule, whenever adopted.

(Pub. L. 91–598, § 3, Dec. 30, 1970, 84 Stat. 1637; Pub. L. 95–283, §§ 2–5, May 21, 1978, 92 Stat. 249–251.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c) and (e), was in the original ''this Act'', meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a)(1)(B), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which appears in chapter 5 (§ 29–501 et seq.) of Title 29, Corporations, of the District of Columbia Code.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–283, § 2(a), substituted ''Creation and membership'' for ''Creation'' in heading, redesignated introductory text and cls. (1) and (3) as par. (1), and added par. 2 which incorporated provisions formerly contained in cl. (2) as par. (2)(A).

Subsec. (b). Pub. L. 95–283, § 3, in par. (1) substituted ''State, Federal, or other court'' for ''court, State, or

Federal'', in par. (3) substituted provisions relating to adoption, etc., of bylaws by the Board of Directors, for provisions relating to adoption, etc., of bylaws and rules by the Board of Directors, added par. (4), and redesignated former pars. (4) to (8) as (5) to (9), respectively.

Subsec. (c)(2)(C)(ii). Pub. L. 95–283, § 4(a), substituted ''a broker or dealer or associated with a member of a national securities exchange, within the meaning of section 78c(a)(18) or section 78c(a)(21), respectively, of this title, or similarly associated with any self-regulatory organization or other securities industry group,'' for ''any broker or dealer, within the meaning of paragraph (18) of section 78c(a) of this title, or similarly associated with a national securities exchange or other securities industry group''.

Subsec. (c)(5). Pub. L. 95–283, § 4(b), substituted ''Compensation'' for ''Compensation, etc.'' in heading, and in text struck out provisions relating to determinations of dollar volume of trading on exchanges.

Subsec. (e). Pub. L. 95–283, § 5, inserted ''and rules'' after ''Bylaws'' in heading, and in text substituted provisions relating to procedures applicable to proposed changes in the bylaws and rules of SIPC and required action by the Commission with respect to any SIPC bylaw or rule, for provisions relating to procedures applicable to adoption of initial bylaws and rules of SIPC and any alteration, supplement, repeal, or addition, effective date of any such bylaw or rule, and required action by the Commission with respect to any SIPC bylaw or rule.

Subsec. (f). Pub. L. 95–283, § 2(b), struck out subsec. (f) which set forth qualifications for other members of SIPC.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78ggg of this title.

§ 78ddd. SIPC Fund

(a) In general

(1) Establishment of fund

SIPC shall establish a ''SIPC Fund'' (hereinafter in this chapter referred to as the ''fund''). All amounts received by SIPC (other than amounts paid directly to any lender pursuant to any pledge securing a borrowing by SIPC) shall be deposited in the fund, and all expenditures made by SIPC shall be made out of the fund.

(2) Balance of the fund

Except as otherwise provided in this section, the balance of the fund at any time shall consist of the aggregate at such time of the following items:

(A) Cash on hand or on deposit.

(B) Amounts invested in United States Government or agency securities.

(C) Such confirmed lines of credit as SIPC may from time to time maintain, other than those maintained pursuant to paragraph (4).

(3) Confirmed lines of credit

For purposes of this section, the amount of confirmed lines of credit as of any time is the aggregate amount which SIPC at such time has the right to borrow from banks and other financial institutions under confirmed lines of credit or other written agreements which provide that moneys so borrowed are to be repayable by SIPC not less than one year from the time of such borrowings (including, for purposes of determining when such moneys are repayable, all rights of extension, refunding, or renewal at the election of SIPC).

(4) Other lines

SIPC may maintain such other confirmed lines of credit as it considers necessary or appropriate, and such other confirmed lines of credit shall not be included in the balance of the fund, but amounts received from such lines of credit may be disbursed by SIPC under this chapter as though such amounts were part of the fund.

(b) Initial required balance for fund

Within one hundred and twenty days from December 30, 1970, the balance of the fund shall aggregate not less than $75,000,000, less any amounts expended from the fund within that period.

(c) Assessments

(1) Initial assessments

Each member of SIPC shall pay to SIPC, or the collection agent for SIPC specified in section 78iii(a) of this title, on or before the one hundred and twentieth day following December 30, 1970, an assessment equal to one-eighth of 1 per centum of the gross revenues from the securities business of such member during the calendar year 1969, or if the Commission shall determine that, for purposes of assessment pursuant to this paragraph, a lesser percentage of gross revenues from the securities business is appropriate for any class or classes of members (taking into account relevant factors, including but not limited to types of business done and nature of securities sold), such lesser percentages as the Commission, by rule or regulation, shall establish for such class or classes, but in no event less than one sixteenth of 1 per centum for any such class. In no event shall any assessment upon a member pursuant to this paragraph be less than $150.

(2) General assessment authority

SIPC shall, by bylaw, impose upon its members such assessments as, after consultation with self-regulatory organizations, SIPC may deem necessary and appropriate to establish and maintain the fund and to repay any borrowings by SIPC. Any assessments so made shall be in conformity with contractual obligations made by SIPC in connection with any borrowing incurred by SIPC. Subject to paragraph (3) and subsection (d)(1)(A) of this section, any such assessment upon the members, or any one or more classes thereof, may, in whole or in part, be based upon or measured by (A) the amount of their gross revenues from the securities business, or (B) all or any of the following factors: the amount or composition of their gross revenues from the securities business, the number or dollar volume of transactions effected by them, the number of customer accounts maintained by them or the amounts of cash and securities in such accounts, their net capital, the nature of their activities (whether in the securities business or otherwise) and the consequent risks, or other relevant factors.

(3) Limitations

Notwithstanding any other provision of this chapter—

(A) no assessment shall be made upon a member otherwise than pursuant to paragraph (1) or (2) of this subsection,

(B) an assessment may be made under paragraph (2) of this subsection at a rate in excess of one-half of one per centum during any twelve-month period if SIPC determines, in accordance with a bylaw, that such rate of assessment during such period will not have a material adverse effect on the financial condition of its members or their customers, except that no assessments shall be made pursuant to such paragraph upon a member which require payments during any such period which exceed in the aggregate one per centum of such member's gross revenues from the securities business for such period, and

(C) no assessment shall include any charge based upon the member's activities (i) in the distribution of shares of registered open end investment companies or unit investment trusts, (ii) in the sale of variable annuities, (iii) in the business of insurance, or (iv) in the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts.

(d) Requirements respecting assessments and lines of credit

(1) Assessments

(A) ½ of 1 percent assessment

Subject to subsection (c)(3) of this section, SIPC shall impose upon each of its members an assessment at a rate of not less than one-half of 1 per centum per annum of the gross revenues from the securities business of such member—

(i) until the balance of the fund aggregates not less than $150,000,000 (or such other amount as the Commission may determine in the public interest),

(ii) during any period when there is outstanding borrowing by SIPC pursuant to subsection (f) or subsection (g) of this section, and

(iii) whenever the balance of the fund (exclusive of confirmed lines of credit) is below $100,000,000 (or such other amount as the Commission may determine in the public interest).

(B) ¼ of 1 percent assessment

During any period during which—

(i) the balance of the fund (exclusive of confirmed lines of credit) aggregates less than $150,000,000 (or such other amount as the Commission has determined under paragraph (2)(B)), or

(ii) SIPC is required under paragraph (2)(B) to phase out of the fund all confirmed lines of credit,

SIPC shall endeavor to make assessments in such a manner that the aggregate assessments payable by its members during such period shall not be less than one-fourth of 1 per centum per annum of the aggregate gross revenues from the securities business for such members during such period.

(C) Minimum assessment

The minimum assessment imposed upon each member of SIPC shall be $25 per annum through the year ending December 31, 1979, and thereafter shall be the amount from time to time set by SIPC bylaw, but in no event shall the minimum assessment be greater than $150 per annum.

(2) Lines of credit

(A) $50,000,000 limit after 1973

After December 31, 1973, confirmed lines of credit shall not constitute more than $50,000,000 of the balance of the fund.

(B) Phaseout requirement

When the balance of the fund aggregates $150,000,000 (or such other amount as the Commission may determine in the public interest) SIPC shall phase out of the fund all confirmed lines of credit.

(e) Prior trusts; overpayments and underpayments

(1) Prior trusts

There may be contributed and transferred at any time to SIPC any funds held by any trust established by a self-regulatory organization prior to January 1, 1970, and the amounts so contributed and transferred shall be applied, as may be determined by SIPC with approval of the Commission, as a reduction in the amounts payable pursuant to assessments made or to be made by SIPC upon members of such self-regulatory organization pursuant to subsection (c)(2) of this section. No such reduction shall be made at any time when there is outstanding any borrowing by SIPC pursuant to subsection (g) of this section or any borrowings under confirmed lines of credit.

(2) Overpayments

To the extent that any payment by a member exceeds the maximum rate permitted by subsection (c) of this section, the excess shall be recoverable only against future payments by such member, except as otherwise provided by SIPC bylaw.

(3) Underpayments

If a member fails to pay when due all or any part of an assessment made upon such member, the unpaid portion thereof shall bear interest at such rate as may be determined by SIPC bylaw and, in addition to such interest, SIPC may impose such penalty charge as may be determined by SIPC bylaw. Any such penalty charge imposed upon a SIPC member shall not exceed 25 per centum of any unpaid portion of the assessment. SIPC may waive such penalty charge in whole or in part in circumstances where it considers such waiver appropriate.

(f) Borrowing authority

SIPC shall have the power to borrow moneys and to evidence such borrowed moneys by the issuance of bonds, notes, or other evidences of indebtedness, all upon such terms and conditions as the Board of Directors may determine in the case of a borrowing other than pursuant to subsection (g) of this section, or as may be pre-

scribed by the Commission in the case of a borrowing pursuant to subsection (g) of this section. The interest payable on a borrowing pursuant to subsection (g) of this section shall be equal to the interest payable on the related notes or other obligations issued by the Commission to the Secretary of the Treasury. To secure the payment of the principal of, and interest and premium, if any, on, all bonds, notes, or other evidences of indebtedness so issued, SIPC may make agreements with respect to the amount of future assessments to be made upon members and may pledge all or any part of the assets of SIPC and of the assessments made or to be made upon members. Any such pledge of future assessments shall (subject to any prior pledge) be valid and binding from the time that it is made, and the assessments so pledged and thereafter received by SIPC, or any collection agent for SIPC, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind against SIPC or such collection agent whether pursuant to this chapter, in tort, contract or otherwise, irrespective of whether such parties have notice thereof. During any period when a borrowing by SIPC pursuant to subsection (g) of this section is outstanding, no pledge of any assessment upon a member to secure any bonds, notes, or other evidences of indebtedness issued other than pursuant to subsection (g) of this section shall be effective as to the excess of the payments under the assessment on such member during any twelve-month period over one-fourth of 1 per centum of such member's gross revenues from the securities business for such period. Neither the instrument by which a pledge is authorized or created, nor any statement or other document relative thereto, need be filed or recorded in any State or other jurisdiction. The Commission may by rule or regulation provide for the filing of any instrument by which a pledge or borrowing is authorized or created, but the failure to make or any defect in any such filing shall not affect the validity of such pledge or borrowing.

(g) SEC loans to SIPC

In the event that the fund is or may reasonably appear to be insufficient for the purposes of this chapter, the Commission is authorized to make loans to SIPC. At the time of application for, and as a condition to, any such loan, SIPC shall file with the Commission a statement with respect to the anticipated use of the proceeds of the loan. If the Commission determines that such loan is necessary for the protection of customers of brokers or dealers and the maintenance of confidence in the United States securities markets and the SIPC has submitted a plan which provides as reasonable an assurance of prompt repayment as may be feasible under the circumstances, then the Commission shall so certify to the Secretary of the Treasury, and issue notes or other obligations to the Secretary of the Treasury pursuant to subsection (h) of this section. If the Commission determines that the amount or time for payment of the assessments pursuant to such plan would not satisfactorily provide for the repayment of such loan, it may, by rules and regulations, impose upon the purchasers of equity securities in transactions on national securities exchanges and in the over-the-counter markets a transaction fee in such amount as at any time or from time to time it may determine to be appropriate, but not exceeding one-fiftieth of 1 per centum of the purchase price of the securities. No such fee shall be imposed on a transaction (as defined by rules or regulations of the Commission) of less than $5,000. For the purposes of the next preceding sentence, (1) the fee shall be based upon the total dollar amount of each purchase; (2) the fee shall not apply to any purchase on a national securities exchange or in an over-the-counter market by or for the account of a broker or dealer registered under section 78*o*(b) of this title unless such purchase is for an investment account of such broker or dealer (and for this purpose any transfer from a trading account to an investment account shall be deemed a purchase at fair market value); and (3) the Commission may, by rule, exempt any transaction in the over-the-counter markets or on any national securities exchange where necessary to provide for the assessment of fees on purchasers in transactions in such markets and exchanges on a comparable basis. Such fee shall be collected by the broker or dealer effecting the transaction for or with the purchaser, or by such other person as provided by the Commission by rule, and shall be paid to SIPC in the same manner as assessments imposed pursuant to subsection (c) of this section but without regard to the limits on such assessments, or in such other manner as the Commission may by rule provide.

(h) SEC notes issued to Treasury

To enable the Commission to make loans under subsection (g) of this section, the Commission is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed $1,000,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury may reduce the interest rate if he determines such reduction to be in the national interest. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be

treated as public debt transactions of the United States.

(i) Consolidated group

Except as otherwise provided by SIPC bylaw, gross revenues from the securities business of a member of SIPC shall be computed on a consolidated basis for such member and all its subsidiaries (other than the foreign subsidiaries of such member), and the operations of a member of SIPC shall include those of any business to which such member has succeeded.

(Pub. L. 91–598, § 4, Dec. 30, 1970, 84 Stat. 1639; Pub. L. 95–283, § 6, May 21, 1978, 92 Stat. 253.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (4), (c)(3), (g), and (i)(1), was in the original ''this Act'', meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (h), ''chapter 31 of title 31'' and ''that chapter'' substituted for ''the Second Liberty Bond Act, as amended'' and ''that Act, as amended,'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–283, § 6(a), in par. (2) substituted ''Except as otherwise provided in this section, the'' for ''The'', in par. (2)(C) inserted provisions for inapplicability to other lines of credit, and added par. (4).

Subsec. (c). Pub. L. 95–283, § 6(b), in par. (2) struck out ''or rule'' after ''bylaw'', and in par. (3) struck out reference to section 78ccc(f) of this title in introductory text and ''or rule'' after ''bylaw'' in subpar. (B).

Subsec. (d)(1)(C). Pub. L. 95–283, § 6(c), added subpar. (C).

Subsec. (e). Pub. L. 95–283, § 6(d), in par. (2) substituted ''be recoverable only against future payments by such member, except as otherwise provided by SIPC bylaw'' for ''not be recoverable except against future payments by such member in accordance with a bylaw or rule of SIPC'', and in par. (3) substituted provisions authorizing interest and penalty charges to be imposed by SIPC bylaw and amount of penalty charge, for provisions authorizing interest to be imposed by SIPC bylaw or rule.

Subsec. (f). Pub. L. 95–283, § 6(e), struck out ''examining authority as'' before ''collection agent for SIPC, shall immediately be subject''.

Subsec. (g). Pub. L. 95–283, § 6(f), redesignated cls. (A) to (C) as (1) to (3), respectively, and, as so redesignated, in cl. (2) struck out applicability to a member of a national securities exchange and in cl. (3) substituted provisions relating to exemptions by rule of transactions in the over-the-counter market or on any national securities exchange, for provisions relating to exemptions by rules and regulations of transactions in the over-the-counter market, and inserted provisions authorizing the collection of fees by such other persons as designated by the Commission by rule for such purpose, and provisions relating to limits on manner of payment of fees.

Subsec. (i). Pub. L. 95–283, § 6(g), substituted ''Consolidated group'' for '' 'Gross revenues' defined'' in heading, redesignated par. (2) as entire section and, as so redesignated, substituted provisions relating to computations by a member, for provisions relating to computations by a broker or dealer. Pars. (1) and (3), which generally defined term ''gross revenues'' and authorized the SIPC to define all other terms used in this subsec., respectively, were struck out.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78ccc, 78hhh, 78iii, 78kkk of this title.

§ 78eee. Protection of customers

(a) Determination of need of protection

(1) Notice to SIPC

If the Commission or any self-regulatory organization is aware of facts which lead it to believe that any broker or dealer subject to its regulation is in or is approaching financial difficulty, it shall immediately notify SIPC, and, if such notification is by a self-regulatory organization, the Commission.

(2) Action by self-regulatory organization

If a self-regulatory organization has given notice to SIPC pursuant to subsection (a)(1) of this section with respect to a broker or dealer, and such broker or dealer undertakes to liquidate or reduce its business either pursuant to the direction of a self-regulatory organization or voluntarily, such self-regulatory organization may render such assistance or oversight to such broker or dealer as it considers appropriate to protect the interests of customers of such broker or dealer. The assistance or oversight by a self-regulatory organization shall not be deemed the assumption or adoption by such self-regulatory organization of any obligation or liability to customers, other creditors, shareholders, or partners of the broker or dealer, and shall not prevent or act as a bar to any action by SIPC.

(3) Action by SIPC

If SIPC determines that—

(A) any member of SIPC (including any person who was a member within one hundred eighty days prior to such determination) has failed or is in danger of failing to meet its obligations to customers; and

(B) one or more of the conditions specified in subsection (b)(1) of this section exist with respect to such member,

SIPC may, upon notice to such member, file an application for a protective decree with any court of competent jurisdiction specified in section 78u(e) or 78aa, except that no such application shall be filed with respect to a member the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 78fff–3.

(4) Effect of other pending actions

An application with respect to a member of SIPC filed with a court under paragraph (3)—

(A) may, with the consent of the Commission, be combined with any action brought by the Commission, including an action by the Commission for a temporary receiver pending an appointment of a trustee under subsection (b)(3) of this section; and

(B) may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding or any proceeding to reorganize, conserve, or liquidate such member or its property, or any proceeding to enforce a lien against property of such member.

(b) Court action

(1) Issuance of protective decree

Upon receipt of an application by SIPC under subsection (a)(3) of this section, the

court shall forthwith issue a protective decree if the debtor consents thereto, if the debtor fails to contest such application, or if the court finds that such debtor—

(A) is insolvent within the meaning of section 101 of title 11, or is unable to meet its obligations as they mature;

(B) is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;

(C) is not in compliance with applicable requirements under the 1934 Act [15 U.S.C. 78a et seq.] or rules of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities; or

(D) is unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules.

Unless the debtor consents to the issuance of a protective decree, the application shall be heard three business days after the date on which it is filed, or at such other time as the court shall determine, taking into consideration the urgency which the circumstances require.

(2) Jurisdiction and powers of court

(A) Exclusive jurisdiction

Upon the filing of an application with a court for a protective decree with respect to a debtor, such court—

(i) shall have exclusive jurisdiction of such debtor and its property wherever located (including property located outside the territorial limits of such court and property held by any other person as security for a debt or subject to a lien);

(ii) shall have exclusive jurisdiction of any suit against the trustee with respect to a liquidation proceeding; and

(iii) except as inconsistent with the provisions of this chapter, shall have the jurisdiction, powers, and duties conferred upon a court of the United States having jurisdiction over cases under title 11, together with such other jurisdiction, powers, and duties as are prescribed by this chapter.

(B) Stay of pending actions

Pending the issuance of a protective decree under paragraph (1), the court with which an application has been filed—

(i) shall stay any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the debtor or its property and any other suit against any receiver, conservator, or trustee of the debtor or its property, and shall continue such stay upon appointment of a trustee pursuant to paragraph (3);

(ii) may stay any proceeding to enforce a lien against property of the debtor or any other suit against the debtor, including a suit by stockholders of the debtor which interferes with prosecution by the trustee of claims against former directors, officers, or employees of the debtor, and may continue such stay upon appointment of a trustee pursuant to paragraph (3);

(iii) may stay enforcement of, and upon appointment of a trustee pursuant to paragraph (3), may continue the stay for such period of time as may be appropriate, but shall not abrogate any right of setoff, except to the extent such right may be affected under section 553 of title 11, and shall not abrogate the right to enforce a valid, nonpreferential lien or pledge against the property of the debtor; and

(iv) may appoint a temporary receiver.

(3) Appointment of trustee and attorney

If the court issues a protective decree under paragraph (1), such court shall forthwith appoint, as trustee for the liquidation of the business of the debtor and as attorney for the trustee, such persons as SIPC, in its sole discretion, specifies. The persons appointed as trustee and as attorney for the trustee may be associated with the same firm. SIPC may, in its sole discretion, specify itself or one of its employees as trustee in any case in which SIPC has determined that the liabilities of the debtor to unsecured general creditors and to subordinated lenders appear to aggregate less than $750,000 and that there appear to be fewer than five hundred customers of such debtor. No person may be appointed to serve as trustee or attorney for the trustee if such person is not disinterested within the meaning of paragraph (6), except that for any specified purpose other than to represent a trustee in conducting a liquidation proceeding, the trustee may, with the approval of SIPC and the court, employ an attorney who is not disinterested. A trustee appointed under this paragraph shall qualify by filing a bond in the manner prescribed by section 322 of title 11, except that neither SIPC nor any employee of SIPC shall be required to file a bond when appointed as trustee.

(4) Removal to bankruptcy court

Upon the issuance of a protective decree and appointment of a trustee, or a trustee and counsel, under this section, the court shall forthwith order the removal of the entire liquidation proceeding to the court of the United States in the same judicial district having jurisdiction over cases under title 11. The latter court shall thereupon have all of the jurisdiction, powers, and duties conferred by this chapter upon the court to which application for the issuance of the protective decree was made.

(5) Compensation for services and reimbursement of expenses

(A) Allowances in general

The court shall grant reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred (hereinafter in this paragraph referred to as ''allowances'') by a trustee, and by the attorney for such a trustee, in connection with a liquidation proceeding. No allowances (other than reimbursement for

proper costs and expenses incurred) shall be granted to SIPC or any employee of SIPC for serving as trustee. Allowances may be granted on an interim basis during the course of the liquidation proceeding at such times and in such amounts as the court considers appropriate.

(B) Application for allowances

Any person seeking allowances shall file with the court an application which complies in form and content with the provisions of title 11 governing applications for allowances under such title. A copy of such application shall be served upon SIPC when filed. The court shall fix a time for a hearing on such application, and notice of such hearing shall be given to the applicant, the trustee, the debtor, the creditors, SIPC, and such other persons as the court may designate, except that notice need not be given to customers whose claims have been or will be satisfied in full or to creditors who cannot reasonably be expected to receive any distribution during the course of the liquidation proceeding.

(C) Recommendations of SIPC and awarding of allowances

Whenever an application for allowances is filed pursuant to subparagraph (B), SIPC shall file its recommendation with respect to such allowances with the court prior to the hearing on such application and shall, if it so requests, be allowed a reasonable time after such hearing within which to file a further recommendation. In any case in which such allowances are to be paid by SIPC without reasonable expectation of recoupment thereof as provided in this chapter and there is no difference between the amounts requested and the amounts recommended by SIPC, the court shall award the amounts recommended by SIPC. In determining the amount of allowances in all other cases, the court shall give due consideration to the nature, extent, and value of the services rendered, and shall place considerable reliance on the recommendation of SIPC.

(D) Applicable restrictions

The restrictions on sharing of compensation set forth in section 504 of title 11 shall apply to allowances.

(E) Charge against estate

Allowances granted by the court, including interim allowances, shall be charged against the general estate of the debtor as a cost and expense of administration. If the general estate is insufficient to pay allowances in whole or in part, SIPC shall advance such funds as are necessary for such payment.

(6) Disinterestedness

(A) Standards

For purposes of paragraph (3), a person shall not be deemed disinterested if—

(i) such person is a creditor (including a customer), stockholder, or partner of the debtor;

(ii) such person is or was an underwriter of any of the outstanding securities of the debtor or within five years prior to the filing date was the underwriter of any securities of the debtor;

(iii) such person is, or was within two years prior to the filing date, a director, partner, officer, or employee of the debtor or such an underwriter, or an attorney for the debtor or such an underwriter; or

(iv) it appears that such person has, by reason of any other direct or indirect relationship to, connection with, or interest in the debtor or such an underwriter, or for any other reason, an interest materially adverse to the interests of any class of creditors (including customers) or stockholders,

except that SIPC shall in all cases be deemed disinterested, and an employee of SIPC shall be deemed disinterested if such employee would, except for his association with SIPC, meet the standards set forth in this subparagraph.

(B) Hearing

The court shall fix a time for a hearing on disinterestedness, to be held promptly after the appointment of a trustee. Notice of such hearing shall be mailed at least ten days prior thereto to each person who, from the books and records of the debtor, appears to have been a customer of the debtor with an open account within the past twelve months, to the address of such person as it appears from the books and records of the debtor, and to the creditors and stockholders of the debtor, to SIPC, and to such other persons as the court may designate. The court may, in its discretion, also require that notice be given by publication in such newspaper or newspapers of general circulation as it may designate. At such hearing, at any adjournment thereof, or upon application, the court shall hear objections to the retention in office of a trustee or attorney for a trustee on the grounds that such person is not disinterested.

(c) SEC participation in proceedings

The Commission may, on its own motion, file notice of its appearance in any proceeding under this chapter and may thereafter participate as a party.

(d) SIPC participation

SIPC shall be deemed to be a party in interest as to all matters arising in a liquidation proceeding, with the right to be heard on all such matters, and shall be deemed to have intervened with respect to all such matters with the same force and effect as if a petition for such purpose had been allowed by the court.

(Pub. L. 91–598, § 5, Dec. 30, 1970, 84 Stat. 1644; Pub. L. 95–283, § 7, May 21, 1978, 92 Stat. 254; Pub. L. 95–598, title III, § 308(a)–(f), Nov. 6, 1978, 92 Stat. 2674.)

REFERENCES IN TEXT

The 1934 Act, referred to in subsec. (b)(1)(C), means act June 6, 1934, ch. 404, 48 Stat. 881, as amended, known as the Securities Exchange Act of 1934, which is classified principally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

This chapter, referred to in subsecs. (b)(2)(A)(iii), (5)(C), and (c), was in the original ''this Act'', meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–283, § 7(a), added par. (2), redesignated former par. (2) as (3) and, as so redesignated, revised format of provisions by setting out cls. (A) and (B) and inserted provisions relating to any person who was a member within 180 days prior to such determination and provisions relating to claims filed under section 78fff–3 of this title, and redesignated former par. (3) as (4) and, as so redesignated, substituted ''with respect to a member of SIPC filed with a court under paragraph (3)'' for ''under paragraph (2)'' in introductory text and inserted ''may,'' before ''with the'' in cl. (A).

Subsec. (b)(1)(A). Pub. L. 95–598, § 308(a)(1), substituted ''section 101 of title 11'' for ''the Bankruptcy Act''.

Subsec. (b)(1)(B) to (E). Pub. L. 95–598, § 308(a)(2), (3), redesignated subpars. (C) to (E) as subpars. (B) to (D), respectively. Former subpar. (B), which provided for issuance of protective decree where court found that debtor had committed act of bankruptcy within meaning of Bankruptcy Act, was struck out.

Subsec. (b)(2)(A)(iii). Pub. L. 95–598, § 308(b), substituted ''the United States having jurisdiction over cases under title 11'' for ''bankruptcy by the Bankruptcy Act''.

Subsec. (b)(2)(B)(iii). Pub. L. 95–598, § 308(c), substituted ''any right of setoff, except to the extent such right may be affected under section 553 of title 11, and shall not abrogate'' for ''the right of setoff provided in section 68 of the Bankruptcy Act''.

Subsec. (b)(3). Pub. L. 95–598, § 308(d), substituted ''section 322 of title 11'' for ''the applicable provisions of the Bankruptcy Act''.

Subsec. (b)(4). Pub. L. 95–598, § 308(e), substituted provisions relating to removal of proceeding to Bankruptcy Court for provisions relating to reference of proceeding to referee in bankruptcy.

Subsec. (b)(5)(B). Pub. L. 95–598, § 308(f)(1), (2), (5), redesignated subpar. (C) as (B) and substituted ''title 11 governing applications for allowances under such title'' for ''the Bankruptcy Act governing applications for allowances under such Act''. Former subpar. (B), which covered allowances to a referee in bankruptcy or special master, was struck out.

Subsec. (b)(5)(C). Pub. L. 95–598, § 308(f)(2), (3), (5), redesignated subpar. (D) as (C) and substituted ''subparagraph (B)'' for ''subparagraph (C)''. Former subpar. (C) redesignated (B).

Subsec. (b)(5)(D). Pub. L. 95–598, § 308(f)(2), (4), (5), redesignated subpar. (E) as (D) and substituted ''Section 504 of title 11'' for ''the Bankruptcy Act''. Former subpar. (D) redesignated (C).

Subsec. (b)(5)(E), (F). Pub. L. 95–598, § 308(f)(5), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Subsec. (b). Pub. L. 95–283, § 7(b), in par. (1) inserted ''protective'' after ''of'' in heading and substituted provisions relating to issuance of protective decrees, for provisions relating to specific findings necessary for issuance of a decree and uncontested, etc., applications, in par. (2) substituted ''Jurisdiction and powers of court'' for ''Exclusive jurisdiction over debtor'' in heading and substituted provisions setting forth jurisdiction and powers of court with respect to exclusivity of such jurisdiction, for provisions relating to exclusive jurisdiction over the debtor, in par. (3) inserted ''and attorney'' after ''trustee'' in heading and substituted provisions relating to appointment of trustee and attorney, for provisions relating to appointment of trustee, in par. (4) substituted ''Reference to referee in bankruptcy'' for ''Debtor and filing date defined'' in heading and substituted provisions relating to reference to referee in bankruptcy, for provisions defining terms ''debtor'' and ''filing date'', and added pars. (5) and (6).

Subsec. (d). Pub. L. 95–283, § 7(c), added subsec. (d).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78fff–4, 78iii, 78*lll* of this title; title 11 section 362.

§ 78fff. General provisions of a liquidation proceeding

(a) Purposes

The purposes of a liquidation proceeding under this chapter shall be—

(1) as promptly as possible after the appointment of a trustee in such liquidation proceeding, and in accordance with the provisions of this chapter—

(A) to deliver customer name securities to or on behalf of the customers of the debtor entitled thereto as provided in section 78fff–2(c)(2) of this title; and

(B) to distribute customer property and (in advance thereof or concurrently therewith) otherwise satisfy net equity claims of customers to the extent provided in this section;

(2) to sell or transfer offices and other productive units of the business of the debtor;

(3) to enforce rights of subrogation as provided in this chapter; and

(4) to liquidate the business of the debtor.

(b) Application of title 11

To the extent consistent with the provisions of this chapter, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under chapters 1, 3, and 5 and subchapters I and II of chapter 7 of title 11. For the purposes of applying such title in carrying out this section, a reference in such title to the date of the filing of the petition shall be deemed to be a reference to the filing date under this chapter.

(c) Determination of customer status

In a liquidation proceeding under this chapter, whenever a person has acted with respect to cash or securities with the debtor after the filing date and in a manner which would have given him the status of a customer with respect to such cash or securities had the action occurred prior to the filing date, and the trustee is satisfied that such action was taken by the customer in good faith and prior to the appointment of the trustee, the date on which such action was taken shall be deemed to be the filing date for purposes of determining the net equity of such customer with respect to such cash or securities.

(d) Apportionment

In a liquidation proceeding under this chapter, any cash or securities remaining after the liquidation of a lien or pledge made by a debtor shall be apportioned between his general estate and customer property in the proportion in which the general property of the debtor and the cash and securities of the customers of such

debtor contributed to such lien or pledge. Securities apportioned to the general estate under this subsection shall be subject to the provisions of section 78*lll*(5)(A) of this title.

(e) Costs and expenses of administration

All costs and expenses of administration of the estate of the debtor and of the liquidation proceeding shall be borne by the general estate of the debtor to the extent it is sufficient therefor, and the priorities of distribution from the general estate shall be as provided in section 726 of title 11. Costs and expenses of administration shall include payments pursuant to section 78fff–2(e) of this title and section 78fff–3(c)(1) of this title (to the extent such payments recovered securities which were apportioned to the general estate pursuant to subsection (d) of this section) and costs and expenses of SIPC employees utilized by the trustee pursuant to section 78fff–1(a)(2) of this title. All funds advanced by SIPC to a trustee for such costs and expenses of administration shall be recouped from the general estate under section 507(a)(1) of title 11.

(Pub. L. 91–598, § 6, Dec. 30, 1970, 84 Stat. 1646; Pub. L. 95–283, § 8, May 21, 1978, 92 Stat. 259; Pub. L. 95–598, title III, § 308(g), (h), Nov. 6, 1978, 92 Stat. 2675.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (3), (b), (c), and (d), was in the original ''this Act'', meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1978—Pub. L. 95–283 substituted ''General provisions of a liquidation proceeding'' for ''Liquidation proceedings'' in section catchline.

Subsec. (a). Pub. L. 95–283 in heading substituted ''Purposes'' for ''General purposes of liquidation proceeding'', in introductory text substituted provisions relating to purposes of liquidation proceedings under this chapter, for provisions relating to purposes of any proceeding in which a trustee has been appointed under section 78eee(b)(3) of this title, in par. (1) substituted provisions requiring execution of authorities to deliver customer name securities and distribute customer property in accordance with this chapter, for provisions requiring execution of authorities to return specifically identifiable property and distribute the single and separate fund in accordance with this section, and in par. (2) substituted provisions authorizing sale, etc., of productive units of the debtor, for provisions authorizing operation of the business of the debtor.

Subsec. (b). Pub. L. 95–598, § 308(g), in heading substituted ''title 11'' for ''Bankruptcy Act'' and in text ''under chapters 1, 3, and 5 and subchapters I and II of chapter 7 of title 11. For the purposes of applying such title in carrying out this section, a reference in such title to the date of the filing of the petition shall be deemed to be a reference to the filing date under this chapter.'' for ''under, the Bankruptcy Act. For purposes of applying the Bankruptcy Act to this chapter, any reference in the Bankruptcy Act to the date of commencement of proceedings under the Bankruptcy Act shall be deemed to be a reference to the filing date under this chapter.''

Pub. L. 95–283 in heading substituted ''Application of Bankruptcy Act'' for ''Powers and Duties of Trustee'', and in text substituted provisions relating to applicability of Bankruptcy Act to liquidation proceedings, for provisions relating to the powers and duties of trustees. See section 78fff–1 of this title.

Subsec. (c). Pub. L. 95–283 in heading substituted ''Determination of customer status'' for ''Application of Bankruptcy Act'', and in text substituted provisions relating to determination of status of a customer with respect to cash or securities, for provisions setting forth general and special provisions of the Bankruptcy Act applicable to liquidation proceedings, and defining terms for purposes of such applicability and the provisions of this section. See subsec. (b) of this section and section 78fff–2(c) of this title.

Subsec. (d). Pub. L. 95–283 in heading substituted ''Apportionment'' for ''Completion of open contractual commitments'', and in text substituted provisions relating to apportionment of cash or securities remaining after the liquidation of a lien or pledge made by a debtor, for provisions relating to completion by the trustee of open contractual commitments, which were made in the ordinary course of the debtor's business and which were outstanding on the filing date. See section 78fff–2(e) of this title.

Subsec. (e). Pub. L. 95–598, § 308(h), substituted in first sentence ''section 726 of title 11'' for ''the Bankruptcy Act'' and in last sentence ''under section 507(a)(1) of title 11'' for ''as a first priority under the Bankruptcy Act''.

Pub. L. 95–283 in heading substituted ''Costs and expense of administration'' for ''Notice'', and in text substituted provisions relating to costs and expenses of administration of the estate of the debtor and of the liquidation proceeding, for provisions relating to notice requirements for the trustee subsequent to appointment as trustee. See section 78fff–2(a)(1) of this title.

Subsec. (f). Pub. L. 95–283 struck out subsec. (f) requiring advances by the SIPC to the trustee for customers' claims and completion of open contractual commitments, and authorizing discretionary advances to the trustee for compensation of personnel deemed necessary for the liquidation proceeding. See section 78fff–3 of this title.

Subsec. (g). Pub. L. 95–283 struck out subsec. (g) setting forth provisions relating to payments to customers by the trustee, and provisions respecting the quantum of proof of claim required for such payment. See section 78fff–2(a)(2) and (b) of this title.

Subsec. (h). Pub. L. 95–283 struck out subsec. (h) relating to nonapplicability of provisions to proof of claim by associates and others connected in some way with the debtor. See section 78fff–2(a)(2) of this title.

Subsec. (i). Pub. L. 95–283 struck out subsec. (i) setting forth provisions relating to reports by the trustee to the court. See section 78fff–1(c) of this title.

Subsec. (j). Pub. L. 95–283 struck out subsec. (j) which related to nonapplicability of provisions to rights of persons to establish by formal proof such claims as they may have to payment or delivery of specific securities. See section 78fff–2(a)(4) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78fff–2, 78*lll* of this title.

§ 78fff–1. Powers and duties of a trustee

(a) Trustee powers

A trustee shall be vested with the same powers and title with respect to the debtor and the property of the debtor, including the same rights to avoid preferences, as a trustee in a case under title 11. In addition, a trustee may, with the approval of SIPC but without any need for court approval—

(1) hire and fix the compensation of all personnel (including officers and employees of the debtor and of its examining authority) and

other persons (including accountants) that are deemed by the trustee necessary for all or any purposes of the liquidation proceeding;

(2) utilize SIPC employees for all or any purposes of a liquidation proceeding; and

(3) margin and maintain customer accounts of the debtor for the purposes of section 78fff–2(f) of this title.

(b) Trustee duties

To the extent consistent with the provisions of this chapter or as otherwise ordered by the court, a trustee shall be subject to the same duties as a trustee in a case under chapter 7 of title 11, including, if the debtor is a commodity broker, as defined under section 101 of such title, the duties specified in subchapter IV of such chapter 7, except that a trustee may, but shall have no duty to, reduce to money any securities constituting customer property or in the general estate of the debtor. In addition, the trustee shall—

(1) deliver securities to or on behalf of customers to the maximum extent practicable in satisfaction of customer claims for securities of the same class and series of an issuer; and

(2) subject to the prior approval of SIPC but without any need for court approval, pay or guarantee all or any part of the indebtedness of the debtor to a bank, lender, or other person if the trustee determines that the aggregate market value of securities to be made available to the trustee upon the payment or guarantee of such indebtedness does not appear to be less than the total amount of such payment or guarantee.

(c) Reports by trustee to court

The trustee shall make to the court and to SIPC such written reports as may be required of a trustee in a case under chapter 7 of title 11, and shall include in such reports information with respect to the progress made in distributing cash and securities to customers. Such reports shall be in such form and detail as the Commission determines by rule to present fairly the results of the liquidation proceeding as of the date of or for the period covered by such reports, having due regard for the requirements of section 78q of this title and the rules prescribed under such section and the magnitude of items and transactions involved in connection with the operations of a broker or dealer.

(d) Investigations

The trustee shall—

(1) as soon as practicable, investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business, and any other matter, to the extent relevant to the liquidation proceeding, and report thereon to the court;

(2) examine, by deposition or otherwise, the directors and officers of the debtor and any other witnesses concerning any of the matters referred to in paragraph (1);

(3) report to the court any facts ascertained by the trustee with respect to fraud, misconduct, mismanagement, and irregularities, and to any causes of action available to the estate; and

(4) as soon as practicable, prepare and submit, to SIPC and such other persons as the court designates and in such form and manner as the court directs, a statement of his investigation of matters referred to in paragraph (1).

(Pub. L. 91–598, § 7, as added Pub. L. 95–283, § 9, May 21, 1978, 92 Stat. 260; amended Pub. L. 95–598, title III, § 308(i)–(k), Nov. 6, 1978, 92 Stat. 2675.)

PRIOR PROVISIONS

A prior section 7 of Pub. L. 91–598 was renumbered section 11 and is classified to section 78ggg of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–598, § 308(i), substituted ''trustee in a case under title 11'' for ''trustee in bankruptcy under the Bankruptcy Act has with respect to a bankrupt and the property of a bankrupt''.

Subsec. (b). Pub. L. 95–598, § 308(j), substituted ''trustee in a case under chapter 7 of title 11, including, if the debtor is a commodity broker, as defined under section 101 of such title, the duties specified in subchapter IV of such chapter 7,'' for ''trustee in bankruptcy''.

Subsec. (c). Pub. L. 95–598, § 308(k), substituted ''required of a trustee in a case under chapter 7 of title 11'' for ''required by the Bankruptcy Act''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78fff, 78fff–2, 78fff–3, 78fff–4 of this title.

§ 78fff–2. Special provisions of a liquidation proceeding

(a) Notice and claims

(1) Notice of proceedings

Promptly after the appointment of the trustee, such trustee shall cause notice of the commencement of proceedings under this section to be published in one or more newspapers of general circulation in the form and manner determined by the court, and at the same time shall cause a copy of such notice to be mailed to each person who, from the books and records of the debtor, appears to have been a customer of the debtor with an open account within the past twelve months, to the address of such person as it appears from the books and records of the debtor. Notice to creditors other than customers shall be given in the manner prescribed by title 11, except that such notice shall be given by the trustee.

(2) Statement of claim

A customer shall file with the trustee a written statement of claim but need not file a formal proof of claim, except that no obligation of the debtor to any person associated with the debtor within the meaning of section 78c(a)(18) of this title or section 78c(a)(21) of this title, any beneficial owner of 5 per centum or more of the voting stock of the debtor, or any member of the immediate family of any such person or owner may be satisfied without formal proof of claim.

(3) Time limitations

No claim of a customer or other creditor of the debtor which is received by the trustee

after the expiration of the six-month period beginning on the date of publication of notice under paragraph (1) shall be allowed, except that the court may, upon application within such period and for cause shown, grant a reasonable, fixed extension of time for the filing of a claim by the United States, by a State or political subdivision thereof, or by an infant or incompetent person without a guardian. Any claim of a customer for net equity which is received by the trustee after the expiration of such period of time as may be fixed by the court (not exceeding sixty days after the date of publication of notice under paragraph (1)) need not be paid or satisfied in whole or in part out of customer property, and, to the extent such claim is satisfied from moneys advanced by SIPC, it shall be satisfied in cash or securities (or both) as the trustee determines is most economical to the estate.

(4) Effect on claims

Except as otherwise provided in this section, and without limiting the powers and duties of the trustee to discharge obligations promptly as specified in this section, nothing in this section shall limit the right of any person, including any subrogee, to establish by formal proof or otherwise as the court may provide such claims as such person may have against the debtor, including claims for the payment of money and the delivery of specific securities, without resort to moneys advanced by SIPC to the trustee.

(b) Payments to customers

After receipt of a written statement of claim pursuant to subsection (a)(2), of this section, the trustee shall promptly discharge, in accordance with the provisions of this section, all obligations of the debtor to a customer relating to, or net equity claims based upon, securities or cash, by the delivery of securities or the making of payments to or for the account of such customer (subject to the provisions of subsection (d) of this section and section 78fff–3(a) of this title) insofar as such obligations are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee. For purposes of distributing securities to customers, all securities shall be valued as of the close of business on the filing date. For purposes of this subsection, the court shall, among other things—

(1) with respect to net equity claims, authorize the trustee to satisfy claims out of moneys made available to the trustee by SIPC notwithstanding the fact that there has not been any showing or determination that there are sufficient funds of the debtor available to satisfy such claims; and

(2) with respect to claims relating to, or net equities based upon, securities of a class and series of an issuer which are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, authorize the trustee to deliver securities of such class and series if and to the extent available to satisfy such claims in whole or in part, with partial deliveries to be made pro rata to the greatest extent considered practicable by the trustee.

Any payment or delivery of property pursuant to this subsection may be conditioned upon the trustee requiring claimants to execute, in a form to be determined by the trustee, appropriate receipts, supporting affidavits, releases, and assignments, but shall be without prejudice to any right of a claimant to file formal proof of claim within the period specified in subsection (a)(3) of this section for any balance of securities or cash to which such claimant considers himself entitled.

(c) Customer related property

(1) Allocation of customer property

The trustee shall allocate customer property of the debtor as follows:

(A) first, to SIPC in repayment of advances made by SIPC pursuant to section 78fff–3(c)(1) of this title, to the extent such advances recovered securities which were apportioned to customer property pursuant to section 78fff(d) of this title;

(B) second, to customers of such debtor, who shall share ratably in such customer property on the basis and to the extent of their respective net equities;

(C) third, to SIPC as subrogee for the claims of customers;

(D) fourth, to SIPC in repayment of advances made by SIPC pursuant to section 78fff–3(c)(2) of this title.

Any customer property remaining after allocation in accordance with this paragraph shall become part of the general estate of the debtor. To the extent customer property and SIPC advances pursuant to section 78fff–3(a) of this title are not sufficient to pay or otherwise satisfy in full the net equity claims of customers, such customers shall be entitled, to the extent only of their respective unsatisfied net equities, to participate in the general estate as unsecured creditors. For purposes of allocating customer property under this paragraph, securities to be delivered in payment of net equity claims for securities of the same class and series of an issuer shall be valued as of the close of business on the filing date.

(2) Delivery of customer name securities

The trustee shall deliver customer name securities to or on behalf of a customer of the debtor entitled thereto if the customer is not indebted to the debtor. If the customer is so indebted, such customer may, with the approval of the trustee, reclaim customer name securities upon payment to the trustee, within such period of time as the trustee determines, of all indebtedness of such customer to the debtor.

(3) Recovery of transfers

Whenever customer property is not sufficient to pay in full the claims set forth in subparagraphs (A) through (D) of paragraph (1), the trustee may recover any property transferred by the debtor which, except for such transfer, would have been customer property if and to the extent that such transfer is voidable or void under the provisions of title 11. Such recovered property shall be treated as customer property. For purposes of such re-

covery, the property so transferred shall be deemed to have been the property of the debtor and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding.

(d) Purchase of securities

The trustee shall, to the extent that securities can be purchased in a fair and orderly market, purchase securities as necessary for the delivery of securities to customers in satisfaction of their claims for net equities based on securities under section 78fff–1(b)(1) of this title and for the transfer of customer accounts under subsection (f) of this section, in order to restore the accounts of such customers as of the filing date. To the extent consistent with subsection (c) of this section, customer property and moneys advanced by SIPC may be used by the trustee to pay for securities so purchased. Moneys advanced by SIPC for each account of a separate customer may not be used to purchase securities to the extent that the aggregate value of such securities on the filing date exceeded the amount permitted to be advanced by SIPC under the provisions of section 78fff–3(a) of this title.

(e) Closeouts

(1) In general

Any contract of the debtor for the purchase or sale of securities in the ordinary course of its business with other brokers or dealers which is wholly executory on the filing date shall not be completed by the trustee, except to the extent permitted by SIPC rule. Upon the adoption by SIPC of rules with respect to the closeout of such a contract but prior to the adoption of rules with respect to the completion of such a contract, the other broker or dealer shall close out such contract, without unnecessary delay, in the best available market and pursuant to such SIPC rules. Until such time as SIPC adopts rules with respect to the completion or closeout of such a contract, such a contract shall be closed out in accordance with Commission Rule S6(d)–1 as in effect on May 21, 1978, or any comparable rule of the Commission subsequently adopted, to the extent not inconsistent with the provisions of this subsection.

(2) Net profit or loss

A broker or dealer shall net all profits and losses on all contracts closed out under this subsection and—

(A) if such broker or dealer shows a net profit on such contracts, he shall pay such net profit to the trustee; and

(B) if such broker or dealer sustains a net loss on such contracts, he shall be entitled to file a claim against the debtor with the trustee in the amount of such net loss.

To the extent that a net loss sustained by a broker or dealer arises from contracts pursuant to which such broker or dealer was acting for its own customer, such broker or dealer shall be entitled to receive funds advanced by SIPC to the trustee in the amount of such loss, except that such broker or dealer may not receive more than $40,000 for each separate customer with respect to whom it sustained a loss. With respect to a net loss which is not payable under the preceding sentence from funds advanced by SIPC, the broker or dealer shall be entitled to participate in the general estate as an unsecured creditor.

(3) Registered clearing agencies

Neither a registered clearing agency which by its rules has an established procedure for the closeout of open contracts between an insolvent broker or dealer and its participants, nor its participants to the extent such participants' claims are or may be processed within the registered clearing agency, shall be entitled to receive SIPC funds in payment of any losses on such contracts, except as SIPC may otherwise provide by rule. If such registered clearing agency or its participants sustain a net loss on the closeout of such contracts with the debtor, they shall have the right to participate in the general estate as unsecured creditors to the extent of such loss. Any funds or other property owed to the debtor, after the closeout of such contracts, shall be promptly paid to the trustee. Rules adopted by SIPC under this paragraph shall provide that in no case may a registered clearing agency or its participants, to the extent such participants' claims are or may be processed within the registered clearing agency, be entitled to receive funds advanced by SIPC in an amount greater, in the aggregate, than could be received by the participants if such participants proceeded individually under paragraph (1) and (2).

(4) "Customer" defined

For purposes of this subsection, the term ''customer'' does not include any person who—

(A) is a broker or dealer;

(B) had a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, was part of the capital of the claiming broker or dealer or was subordinated to the claims of any or all creditors of such broker or dealer; or

(C) had a relationship of the kind specified in section 78fff–3(a)(5) of this title with the debtor.

A claiming broker or dealer shall be deemed to have been acting on behalf of its customer if it acted as agent for such customer or if it held such customer's order which was to be executed as a part of its contract with the debtor.

(f) Transfer of customer accounts

In order to facilitate the prompt satisfaction of customer claims and the orderly liquidation of the debtor, the trustee may, pursuant to terms satisfactory to him and subject to the prior approval of SIPC, sell or otherwise transfer to another member of SIPC, without consent of any customer, all or any part of the account of a customer of the debtor. In connection with any such sale or transfer to another member of SIPC and subject to the prior approval of SIPC, the trustee may—

(1) waive or modify the need to file a written statement of claim pursuant to subsection (a)(2) of this section; and

(2) enter into such agreements as the trustee considers appropriate under the circumstances

to indemnify any such member of SIPC against shortages of cash or securities in the customer accounts sold or transferred.

The funds of SIPC may be made available to guarantee or secure any indemnification under paragraph (2). The prior approval of SIPC to such indemnification shall be conditioned, among such other standards as SIPC may determine, upon a determination by SIPC that the probable cost of any such indemnification can reasonably be expected not to exceed the cost to SIPC of proceeding under section 78fff–3(a) of this title and section 78fff–3(b) of this title.

(Pub. L. 91–598, § 8, as added Pub. L. 95–283, § 9, May 21, 1978, 92 Stat. 261; amended Pub. L. 95–598, title III, § 308(*l*), (m), Nov. 6, 1978, 92 Stat. 2675.)

PRIOR PROVISIONS

A prior section 8 of Pub. L. 91–598 was renumbered section 12 and is classified to section 78hhh of this title.

AMENDMENTS

1978—Subsecs. (a)(1), (c)(3). Pub. L. 95–598 substituted ''title 11'' for ''the Bankruptcy Act''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78fff, 78fff–1, 78fff–3, 78fff–4, 78*lll* of this title.

§ 78fff–3. SIPC advances

(a) Advances for customers' claims

In order to provide for prompt payment and satisfaction of net equity claims of customers of the debtor, SIPC shall advance to the trustee such moneys, not to exceed $500,000 for each customer, as may be required to pay or otherwise satisfy claims for the amount by which the net equity of each customer exceeds his ratable share of customer property, except that—

(1) if all or any portion of the net equity claim of a customer in excess of his ratable share of customer property is a claim for cash, as distinct from a claim for securities, the amount advanced to satisfy such claim for cash shall not exceed $100,000 for each such customer;

(2) a customer who holds accounts with the debtor in separate capacities shall be deemed to be a different customer in each capacity;

(3) if all or any portion of the net equity claim of a customer in excess of his ratable share of customer property is satisfied by the delivery of securities purchased by the trustee pursuant to section 78fff–2(d) of this title, the securities so purchased shall be valued as of the filing date for purposes of applying the dollar limitations of this subsection;

(4) no advance shall be made by SIPC to the trustee to pay or otherwise satisfy, directly or indirectly, any net equity claim of a customer who is a general partner, officer, or director of the debtor, a beneficial owner of five per centum or more of any class of equity security of the debtor (other than a nonconvertible stock having fixed preferential dividend and liquidation rights), a limited partner with a participation of five per centum or more in the net assets or net profits of the debtor, or a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the debtor; and

(5) no advance shall be made by SIPC to the trustee to pay or otherwise satisfy any net equity claim of any customer who is a broker or dealer or bank, other than to the extent that it shall be established to the satisfaction of the trustee, from the books and records of the debtor or from the books and records of a broker or dealer or bank, or otherwise, that the net equity claim of such broker or dealer or bank against the debtor arose out of transactions for customers of such broker or dealer or bank (which customers are not themselves a broker or dealer or bank or a person described in paragraph (4)), in which event each such customer of such broker or dealer or bank shall be deemed a separate customer of the debtor.

To the extent moneys are advanced by SIPC to the trustee to pay or otherwise satisfy the claims of customers, in addition to all other rights it may have at law or in equity, SIPC shall be subrogated to the claims of such customers with the rights and priorities provided in this chapter, except that SIPC as subrogee may assert no claim against customer property until after the allocation thereof to customers as provided in section 78fff–2(c) of this title.

(b) Other advances

SIPC shall advance to the trustee—

(1) such moneys as may be required to carry out section 78fff–2(e) of this title; and

(2) to the extent the general estate of the debtor is not sufficient to pay any and all costs and expenses of administration of the estate of the debtor and of the liquidation proceeding, the amount of such costs and expenses.

(c) Discretionary advances

SIPC may advance to the trustee such moneys as may be required to—

(1) pay or guarantee indebtedness of the debtor to a bank, lender, or other person under section 78fff–1(b)(2) of this title;

(2) guarantee or secure any indemnity under section 78fff–2(f) of this title; and

(3) purchase securities under section 78fff–2(d) of this title.

(Pub. L. 91–598, § 9, as added Pub. L. 95–283, § 9, May 21, 1978, 92 Stat. 265; amended Pub. L. 96–433, § 1, Oct. 10, 1980, 94 Stat. 1855.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 9 of Pub. L. 91–598 was renumbered section 13 and is classified to section 78iii of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–433, § 1(1), substituted in opening par. ''$500,000'' for ''$100,000''.

Subsec. (a)(1). Pub. L. 96–433, §1(2), substituted ''$100,000'' for ''$40,000''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–433 effective Oct. 10, 1980, see section 5(a) of Pub. L. 96–433, set out as a note under section 78u of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78eee, 78fff, 78fff–2, 78fff–4 of this title.

§ 78fff–4. Direct payment procedure

(a) Determination regarding direct payments

If SIPC determines that—

(1) any member of SIPC (including a person who was a member within one hundred eighty days prior to such determination) has failed or is in danger of failing to meet its obligations to customers;

(2) one or more of the conditions specified in section 78eee(b)(1) of this title exist with respect to such member;

(3) the claim of each customer of the member is within the limits of protection provided in section 78fff–3(a) of this title;

(4) the claims of all customers of the member aggregate less than $250,000;

(5) the cost to SIPC of satisfying customer claims under this section will be less than the cost under a liquidation proceeding; and

(6) such member's registration as a broker-dealer under section 78*o*(b) of this title has been terminated, or such member has consented to the use of the direct payment procedure set forth in this section,

SIPC may, in its discretion, use the direct payment procedure set forth in this section in lieu of instituting a liquidation proceeding with respect to such member.

(b) Notice

Promptly after a determination under subsection (a) of this section that the direct payment procedure is to be used with respect to a member, SIPC shall cause notice of such direct payment procedure to be published in one or more newspapers of general circulation in a form and manner determined by SIPC, and at the same time shall cause to be mailed a copy of such notice to each person who appears, from the books and records of such member, to have been a customer of the member with an open account within the past twelve months, to the address of such person as it appears from the books and records of such member. Such notice shall state that SIPC will satisfy customer claims directly, without a liquidation proceeding, and shall set forth the form and manner in which claims may be presented. A direct payment procedure shall be deemed to commence on the date of first publication under this subsection and no claim by a customer shall be paid or otherwise satisfied by SIPC unless received within the six-month period beginning on such date, except that SIPC shall, upon application within such period, and for cause shown, grant a reasonable, fixed extension of time for the filing of a claim by the United States, by a State or political subdivision thereof, or by an infant or incompetent person without a guardian.

(c) Payments to customers

SIPC shall promptly satisfy all obligations of the member to each of its customers relating to, or net equity claims based upon, securities or cash by the delivery of securities or the effecting of payments to such customer (subject to the provisions of section 78fff–2(d) of this title and section 78fff–3(a) of this title insofar as such obligations are ascertainable from the books and records of the member or are otherwise established to the satisfaction of SIPC. For purposes of distributing securities to customers, all securities shall be valued as of the close of business on the date of publication under subsection (b) of this section. Any payment or delivery of securities pursuant to this section may be conditioned upon the execution and delivery, in a form to be determined by SIPC, of appropriate receipts, supporting affidavits, releases, and assignments. To the extent moneys of SIPC are used to satisfy the claims of customers, in addition to all other rights it may have at law or in equity, SIPC shall be subrogated to the claims of such customers against the member.

(d) Effect on claims

Except as otherwise provided in this section, nothing in this section shall limit the right of any person, including any subrogee, to establish by formal proof or otherwise such claims as such person may have against the member, including claims for the payment of money and the delivery of specific securities, without resort to moneys of SIPC.

(e) Jurisdiction of Bankruptcy Courts

After SIPC has published notice of the institution of a direct payment procedure under this section, any person aggrieved by any determination of SIPC with respect to his claim under subsection (c) of this section may, within six months following mailing by SIPC of its determination with respect to such claim, seek a final adjudication of such claim. The courts of the United States having jurisdiction over cases under title 11 shall have original and exclusive jurisdiction of any civil action for the adjudication of such claim, without regard to the citizenship of the parties or the amount in controversy. Any such action shall be brought in the judicial district where the head office of the debtor is located. Any determination of the rights of a customer under subsection (c) of this section shall not prejudice any other right or remedy of the customer against the member.

(f) Discontinuance of direct payment procedures

If, at any time after the institution of a direct payment procedure with respect to a member, SIPC determines, in its discretion, that continuation of such direct payment procedure is not appropriate, SIPC may cease such direct payment procedure and, upon so doing, may seek a protective decree pursuant to section 78eee of this title. To the extent payments of cash, distributions of securities, or determinations with respect to the validity of a customer's claim are made under this section, such payments, distributions, and determinations shall be recognized and given full effect in the event of any subsequent liquidation proceeding. Any action brought under subsection (e) of this section and

pending at the time of the appointment of a trustee under section 78eee(b)(3) of this title shall be permanently stayed by the court at the time of such appointment, and the court shall enter an order directing the transfer or removal to it of such suit. Upon such removal or transfer the complaint in such action shall constitute the plaintiff's claim in the liquidation proceeding, if appropriate, and shall be deemed received by the trustee on the date of his appointment regardless of the date of actual transfer or removal of such action.

(g) References

For purposes of this section, any reference to the trustee in sections 78fff–1(b)(1), 78fff–2(d), 78fff–2(f), 78fff–3(a), 78*lll*(5) and 78*lll*(12) of this title shall be deemed a reference to SIPC, and any reference to the date of publication of notice under section 78fff–2(a) of this title shall be deemed a reference to the publication of notice under this section.

(Pub. L. 91–598, § 10, as added Pub. L. 95–283, § 9, May 21, 1978, 92 Stat. 266; amended Pub. L. 95–598, title III, § 308(n), Nov. 6, 1978, 92 Stat. 2675.)

PRIOR PROVISIONS

A prior section 10 of Pub. L. 91–598 was renumbered section 14 and is classified to section 78jjj of this title.

AMENDMENTS

1978—Subsec. (e). Pub. L. 95–598 substituted in heading ''Bankruptcy Courts'' for ''District Courts'' and in text ''courts of the United States having jurisdiction over cases under title 11'' for ''district courts of the United States'' and struck out '', without regard to the citizenship of the parties or the amount in controversy'' after ''adjudication of such claim''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78*lll* of this title.

§ 78ggg. SEC functions

(a) Administrative procedure

Determinations of the Commission, for purposes of making rules pursuant to section 78ccc(e)(3) and section 78iii(f) of this title shall be after appropriate notice and opportunity for a hearing, and for submission of views of interested persons in accordance with the rulemaking procedures specified in section 553 of title 5, but the holding of a hearing shall not prevent adoption of any such rule or regulation upon expiration of the notice period specified in subsection (d) of such section and shall not be required to be on a record within the meaning of subchapter II of chapter 5 of such title.

(b) Enforcement of actions

In the event of the refusal of SIPC to commit its funds or otherwise to act for the protection of customers of any member of SIPC, the Commission may apply to the district court of the United States in which the principal office of SIPC is located for an order requiring SIPC to discharge its obligations under this chapter and for such other relief as the court may deem appropriate to carry out the purposes of this chapter.

(c) Examinations and reports

(1) Examination of SIPC, etc.

The Commission may make such examinations and inspections of SIPC and require SIPC to furnish it with such reports and records or copies thereof as the Commission may consider necessary or appropriate in the public interest or to effectuate the purposes of this chapter.

(2) Reports from SIPC

As soon as practicable after the close of each fiscal year, SIPC shall submit to the Commission a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this chapter, during such fiscal year. Such report shall include financial statements setting forth the financial position of SIPC at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The financial statements so included shall be examined by an independent public accountant or firm of independent public accountants, selected by SIPC and satisfactory to the Commission, and shall be accompanied by the report thereon of such accountant or firm. The Commission shall transmit such report to the President and the Congress with such comment thereon as the Commission may deem appropriate.

(Pub. L. 91–598, § 11, formerly § 7, Dec. 30, 1970, 84 Stat. 1652, 1653; renumbered § 11 and amended Pub. L. 95–283, §§ 9, 10, May 21, 1978, 92 Stat. 260, 268.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original ''this Act'', meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section is comprised of section 11 of Pub. L. 91–598. Subsec. (d) of section 11 of Pub. L. 91–598 amended section 78*o* of this title.

PRIOR PROVISIONS

A prior section 11 of Pub. L. 91–598 was renumbered section 15 and is classified to section 78kkk of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–283 substituted ''pursuant to section 78ccc(e)(3) and section 78iii(f) of this title'' for ''or regulations pursuant to section 78ccc(e) and 78iii(f) of this title''.

§ 78hhh. Examining authority functions

Each member of SIPC shall file with such member's examining authority, or collection agent if a collection agent has been designated pursuant to section 78iii(a) of this title, such information (including reports of, and information with respect to, the gross revenues from the securities business of such member, including the composition thereof, transactions in securities

effected by such member, and other information with respect to such member's activities, whether in the securities business or otherwise, including customer accounts maintained, net capital employed, and activities conducted) as SIPC may determine to be necessary or appropriate for the purpose of making assessments under section 78ddd of this title. The examining authority or collection agent shall file with SIPC all or such part of such information (and such compilations and analyses thereof) as SIPC, by bylaw or rule, shall prescribe. No application, report, or document filed pursuant to this section shall be deemed to be filed pursuant to section 78r of this title.

(Pub. L. 91–598, § 12, formerly § 8, Dec. 30, 1970, 84 Stat. 1653; renumbered § 12 and amended Pub. L. 95–283, §§ 9, 11, May 21, 1978, 92 Stat. 260, 268.)

PRIOR PROVISIONS

A prior section 12 of Pub. L. 91–598 was renumbered section 16 and is classified to section 78*lll* of this title.

AMENDMENTS

1978—Pub. L. 95–283 inserted provisions relating to applicability to a collection agent.

§ 78iii. Functions of self-regulatory organizations

(a) Collection agent

Each self-regulatory organization shall act as collection agent for SIPC to collect the assessments payable by all members of SIPC for whom such self-regulatory organization is the examining authority, unless SIPC designates a self-regulatory organization other than the examining authority to act as collection agent for any member of SIPC who is a member of or participant in more than one self-regulatory organization. If the only self-regulatory organization of which a member of SIPC is a member or in which it is a participant is a registered clearing agency that is not the examining authority for the member, SIPC may, nevertheless, designate such registered clearing agency as collection agent for the member or may require that payments be made directly to SIPC. The collection agent shall be obligated to remit to SIPC assessments made under section 78ddd of this title only to the extent that payments of such assessment are received by such collection agent. Members of SIPC who are not members of or participants in a self-regulatory organization shall make payments directly to SIPC.

(b) Immunity

No self-regulatory organization shall have any liability to any person for any action taken or omitted in good faith pursuant to section 78eee(a)(1) and section 78eee(a)(2) of this title.

(c) Inspections

The self-regulatory organization of which a member of SIPC is a member or in which it is a participant shall inspect or examine such member for compliance with applicable financial responsibility rules, except that—

(1) if the self-regulatory organization is a registered clearing agency, the Commission may designate itself as responsible for the examination of such member for compliance with applicable financial responsibility rules; and

(2) if a member of SIPC is a member of or participant in more than one self-regulatory organization, the Commission, pursuant to section 78q(d) of this title, shall designate one of such self-regulatory organizations or itself as responsible for the examination of such member for compliance with applicable financial responsibility rules.

(d) Reports

There shall be filed with SIPC by the self-regulatory organizations such reports of inspections or examinations of the members of SIPC (or copies thereof) as may be designated by SIPC by bylaw or rule.

(e) Consultation

SIPC shall consult and cooperate with the self-regulatory organizations toward the end:

(1) that there may be developed and carried into effect procedures reasonably designed to detect approaching financial difficulty upon the part of any member of SIPC;

(2) that, as nearly as may be practicable, examinations to ascertain whether members of SIPC are in compliance with applicable financial responsibility rules will be conducted by the self-regulatory organizations under appropriate standards (both as to method and scope) and reports of such examinations will, where appropriate, be standard in form; and

(3) that, as frequently as may be practicable under the circumstances, each member of SIPC will file financial information with, and be examined by, the self-regulatory organization which is the examining authority for such member.

(f) Financial condition of members

The Commission may, by such rules as it determines necessary or appropriate in the public interest and to carry out the purposes of this chapter, require any self-regulatory organization to furnish SIPC with reports and records (or copies thereof) relating to the financial condition of members of or participants in such self-regulatory organization.

(Pub. L. 91–598, § 13, formerly § 9, Dec. 30, 1970, 84 Stat. 1654; amended Pub. L. 94–29, § 26, June 4, 1975, 89 Stat. 163; renumbered § 13 and amended Pub. L. 95–283, §§ 9, 12, May 21, 1978, 92 Stat. 260, 269.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original ''this Act'', meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–283, § 12(a), in heading substituted ''Collection'' for ''Collecting'', and in text inserted provisions relating to designation of a self-regulatory organization other than the examining authority to act as collection agent and provisions relating to designation of a registered clearing agency as collection agent, and substituted provisions relating to remittances by the collection agent to SIPC, for provisions relating to remittances by an examining authority to SIPC.

Subsec. (b). Pub. L. 95–283, § 12(b), inserted reference to section 78eee(a)(2) of this title.

Subsec. (c). Pub. L. 95–283, § 12(c), revised existing format and provisions into introductory text and cl. (2)

and, as so revised, in introductory text inserted provisions respecting participation by a member of SIPC in a self-regulatory organization and in cl. (2) inserted provisions respecting such participation and authorization for the Commission to designate itself as responsible for the statutory examination, and added cl. (1).

Subsec. (f). Pub. L. 95–283, § 12(d), substituted provisions authorizing the Commission to set out rules requiring self-regulatory organizations to furnish SIPC with reports and records of members or participants in such self-regulatory organizations, for provisions authorizing the Commission to set out rules, and regulations requiring self-regulatory organizations to adopt rules, practices, and procedures respecting inspections and examinations of members and examiners, to furnish SIPC and the Commission with reports and records of members, and to inspect or examine members.

1975—Subsec. (c). Pub. L. 94–29 directed the Commission to designate the self-regulatory organization to be responsible for enforcing applicable rules with respect to any firm which is a member of more than one self-regulatory organization.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78ddd, 78ggg, 78hhh, 78*lll* of this title.

§ 78jjj. Prohibited acts

(a) Failure to pay assessment, etc.

If a member of SIPC shall fail to file any report or information required pursuant to this chapter, or shall fail to pay when due all or any part of an assessment made upon such member pursuant to this chapter, and such failure shall not have been cured, by the filing of such report or information or by the making of such payment, together with interest and penalty thereon, within five days after receipt by such member of written notice of such failure given by or on behalf of SIPC, it shall be unlawful for such member, unless specifically authorized by the Commission, to engage in business as a broker or dealer. If such member denies that it owes all or any part of the amount specified in such notice, it may after payment of the full amount so specified commence an action against SIPC in the appropriate United States district court to recover the amount it denies owing.

(b) Engaging in business after appointment of trustee or initiation of direct payment procedure

It shall be unlawful for any broker or dealer for whom a trustee has been appointed pursuant to this chapter or for whom a direct payment procedure has been initiated to engage thereafter in business as a broker or dealer, unless the Commission otherwise determines in the public interest. The Commission may by order bar or suspend for any period, any officer, director, general partner, owner of 10 per centum or more of the voting securities, or controlling person of any broker or dealer for whom a trustee has been appointed pursuant to this chapter or for whom a direct payment procedure has been initiated from being or becoming associated with a broker or dealer, if after appropriate notice and opportunity for hearing, the Commission shall determine such bar or suspension to be in the public interest.

(c) Concealment of assets; false statements or claims

(1) Specific prohibited acts

Any person who, directly or indirectly, in connection with or in contemplation of any liquidation proceeding or direct payment procedure—

(A) employs any device, scheme, or artifice to defraud;

(B) engages in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or

(C) fraudulently or with intent to defeat this chapter—

(i) conceals or transfers any property belonging to the estate of a debtor;

(ii) makes a false statement or account;

(iii) presents or uses any false claim for proof against the estate of a debtor;

(iv) receives any material amount of property from a debtor;

(v) gives, offers, receives, transfers, or obtains any money or property, remuneration, compensation, reward, advantage, other consideration, or promise thereof, for acting or forebearing to act;

(vi) conceals, destroys, mutilates, falsifies, makes a false entry in, or otherwise falsifies any document affecting or relating to the property or affairs of a debtor; or

(vii) withholds, from any person entitled to its possession, any document affecting or relating to the property or affairs of a debtor,

shall be fined not more than $50,000 or imprisoned for not more than five years, or both.

(2) Fraudulent conversion

Any person who, directly or indirectly steals, embezzles, or fraudulently, or with intent to defeat this chapter, abstracts or converts to his own use or to the use of another any of the moneys, securities, or other assets of SIPC, or otherwise defrauds or attempts to defraud SIPC or a trustee by any means, shall be fined not more than $50,000 or imprisoned not more than five years, or both.

(Pub. L. 91–598, § 14, formerly § 10, Dec. 30, 1970, 84 Stat. 1655; renumbered § 14 and amended Pub. L. 95–283, §§ 9, 13, May 21, 1978, 92 Stat. 260, 269.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (c)(1)(C), (2), was in the original ''this Act'', meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–283, § 13(a), inserted ''and penalty'' after ''interest'', and substituted ''it'' for ''he'' wherever appearing.

Subsec. (b). Pub. L. 95–283, § 13(b), in heading inserted ''or initiation of direct payment procedure'' after ''trustee'', and in text inserted references to initiation of direct payment procedure in two places.

Subsec. (c). Pub. L. 95–283, § 13(c), in heading substituted ''Concealment of assets; false statements or claims'' for ''Embezzlement, etc., of assets of SIPC'', added par. (1), and designated existing provisions as par. (2) and, as so designated, inserted references to direct or indirect acts, and provisions covering defraud-

ing or attempts to defraud SIPC or a trustee, and substituted provisions covering activities constituting fraudulent, or with intent to defeat this chapter, abstracts or conversions, for provisions covering activities constituting unlawfully abstracting or unlawfully and willfully converting moneys, etc.

§ 78kkk. Miscellaneous provisions

(a) Public inspection of reports

Any notice, report, or other document filed with SIPC pursuant to this chapter shall be available for public inspection unless SIPC or the Commission shall determine that disclosure thereof is not in the public interest. Nothing herein shall act to deny documents or information to the Congress of the United States or the committees of either House having jurisdiction over financial institutions, securities regulation, or related matters under the rules of each body. Nor shall the Commission be denied any document or information which the Commission, in its judgment, needs.

(b) Liability of members of SIPC

Except for such assessments as may be made upon such member pursuant to the provisions of section 78ddd of this title, no member of SIPC shall have any liability under this chapter as a member of SIPC for, or in connection with, any act or omission of any other broker or dealer whether in connection with the conduct of the business or affairs of such broker or dealer or otherwise and, without limiting the generality of the foregoing, no member shall have any liability for or in respect of any indebtedness or other liability of SIPC.

(c) Liability of SIPC and Directors, officers, or employees

Neither SIPC nor any of its Directors, officers, or employees shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter contemplated by this chapter.

(d) Advertising

SIPC shall by bylaw prescribe the manner in which a member of SIPC may display any sign or signs (or include in any advertisement a statement) relating to the protection to customers and their accounts, or any other protections, afforded under this chapter. No member may display any such sign, or include in an advertisement any such statement, except in accordance with such bylaws. SIPC may also by bylaw prescribe such minimal requirements as it considers necessary and appropriate to require a member of SIPC to provide public notice of its membership in SIPC.

(e) SIPC exempt from taxation

SIPC, its property, its franchise, capital, reserves, surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of SIPC shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed. Assessments made upon a member of SIPC shall constitute ordinary and necessary expenses in carrying on the business of such member for the purpose of section 162(a) of title 26. The contribution and transfer to SIPC of funds or securities held by any trust established by a national securities exchange prior to January 1, 1970, for the purpose of providing assistance to customers of members of such exchange, shall not result in any taxable gain to such trust or give rise to any taxable income to any member of SIPC under any provision of title 26, nor shall such contribution or transfer, or any reduction in assessments made pursuant to this chapter, in any way affect the status, as ordinary and necessary expenses under section 162(a) of title 26, of any contributions made to such trust by such exchange at any time prior to such transfer. Upon dissolution of SIPC, none of its net assets shall inure to the benefit of any of its members.

(f) Section 78t(a) of this title not to apply

The provisions of subsection (a) of section 78t of this title shall not apply to any liability under or in connection with this chapter.

(g) SEC study of unsafe or unsound practices

Not later than twelve months after December 30, 1970, the Commission shall compile a list of unsafe or unsound practices by members of SIPC in conducting their business and report to the Congress (1) the steps being taken under the authority of existing law to eliminate those practices and (2) recommendations concerning additional legislation which may be needed to eliminate those unsafe or unsound practices.

(Pub. L. 91–598, § 15, formerly § 11, Dec. 30, 1970, 84 Stat. 1655; renumbered § 15 and amended Pub. L. 95–283, §§ 9, 14, May 21, 1978, 92 Stat. 260, 270; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (f), was in the original ''this Act'', meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1986—Subsec. (e). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing, which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1978—Subsec. (b). Pub. L. 95–283, § 14(c), redesignated subsec. (c) as (b). Former subsec. (b), relating to application of securities investor protection provisions to foreign members, was struck out.

Subsec. (c). Pub. L. 95–283, § 14(a), (c), redesignated subsec. (d) as (c) and inserted '', officers, or employees'' after ''Directors'' in heading and text. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 95–283, § 14(b), (c), redesignated subsec. (e) as (d), inserted provisions authorizing SIPC to prescribe necessary and proper minimal requirements for providing public notice of membership by a member of SIPC in SIPC, and struck out provisions authorizing rules by SIPC to implement advertising requirements. Former subsec. (d) redesignated (c).

Subsecs. (e) to (h). Pub. L. 95–283, § 14(c), redesignated subsecs. (e) to (h) as (d) to (g), respectively.

§ 78*lll*. Definitions

For purposes of this chapter, including the application of the Bankruptcy Act to a liquidation proceeding:

(1) Commission

The term ''Commission'' means the Securities and Exchange Commission.

(2) Customer

The term ''customer'' of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral security, or for purposes of effecting transfer. The term ''customer'' includes any person who has a claim against the debtor arising out of sales or conversions of such securities, and any person who has deposited cash with the debtor for the purpose of purchasing securities, but does not include—

(A) any person to the extent that the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC; or

(B) any person to the extent that such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor.

(3) Customer name securities

The term ''customer name securities'' means securities which were held for the account of a customer on the filing date by or on behalf of the debtor and which on the filing date were registered in the name of the customer, or were in the process of being so registered pursuant to instructions from the debtor, but does not include securities registered in the name of the customer which, by endorsement or otherwise, were in negotiable form.

(4) Customer property

The term ''customer property'' means cash and securities (except customer name securities delivered to the customer) at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted. The term ''customer property'' includes—

(A) securities held as property of the debtor to the extent that the inability of the debtor to meet its obligations to customers for their net equity claims based on securities of the same class and series of an issuer is attributable to the debtor's noncompliance with the requirements of section 78*o*(c)(3) of this title and the rules prescribed under such section;

(B) resources provided through the use or realization of customers' debit cash balances and other customer-related debit items as defined by the Commission by rule;

(C) any cash or securities apportioned to customer property pursuant to section 78fff(d) of this title; and

(D) any other property of the debtor which, upon compliance with applicable laws, rules, and regulations, would have been set aside or held for the benefit of customers, unless the trustee determines that including such property within the meaning of such term would not significantly increase customer property.

(5) Debtor

The term ''debtor'' means a member of SIPC with respect to whom an application for a protective decree has been filed under section 78eee(a)(3) of this title or a direct payment procedure has been instituted under section 78fff–4(b) of this title.

(6) Examining authority

The term ''examining authority'' means, with respect to any member of SIPC (A) the self-regulatory organization which inspects or examines such member of SIPC, or (B) the Commission if such member of SIPC is not a member of or participant in any self-regulatory organization or if the Commission has designated itself examining authority for such member pursuant to section 78iii(c) of this title.

(7) Filing date

The term ''filing date'' means the date on which an application for a protective decree is filed under section 78eee(a)(3) of this title, except that—

(A) if a petition under title 11 concerning the debtor was filed before such date, the term ''filing date'' means the date on which such petition was filed;

(B) if the debtor is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term ''filing date'' means the date on which such proceeding was commenced; or

(C) if the debtor is the subject of a direct payment procedure or was the subject of a direct payment procedure discontinued by SIPC pursuant to section 78fff–4(f) of this title, the term ''filing date'' means the date on which notice of such direct payment procedure was published under section 78fff–4(b) of this title.

(8) Foreign subsidiary

The term ''foreign subsidiary'' means any subsidiary of a member of SIPC which has its principal place of business in a foreign country or which is organized under the laws of a foreign country.

(9) Gross revenues from the securities business

The term ''gross revenues from the securities business'' means the sum of (but without duplication)—

(A) commissions earned in connection with transactions in securities effected for customers as agent (net of commissions paid to

other brokers and dealers in connection with such transactions) and markups with respect to purchases or sales of securities as principal;

(B) charges for executing or clearing transactions in securities for other brokers and dealers;

(C) the net realized gain, if any, from principal transactions in securities in trading accounts;

(D) the net profit, if any, from the management of or participation in the underwriting or distribution of securities;

(E) interest earned on customers' securities accounts;

(F) fees for investment advisory services (except when rendered to one or more registered investment companies or insurance company separate accounts) or account supervision with respect to securities;

(G) fees for the solicitation of proxies with respect to, or tenders or exchanges of, securities;

(H) income from service charges or other surcharges with respect to securities;

(I) except as otherwise provided by rule of the Commission, dividends and interest received on securities in investment accounts of the broker or dealer;

(J) fees in connection with put, call, and other option transactions in securities;

(K) commissions earned from transactions in (i) certificates of deposit, and (ii) Treasury bills, bankers acceptances, or commercial paper which have a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited, except that SIPC shall by bylaw include in the aggregate of gross revenues only an appropriate percentage of such commissions based on SIPC's loss experience with respect to such instruments over at least the preceding five years; and

(L) fees and other income from such other categories of the securities business as SIPC shall provide by bylaw.

Such term does not include revenues received by a broker or dealer in connection with the distribution of shares of a registered open end investment company or unit investment trust or revenues derived by a broker or dealer from the sale of variable annuities or from the conduct of the business of insurance.

(10) Liquidation proceeding

The term ''liquidation proceeding'' means any proceeding for the liquidation of a debtor under this chapter in which a trustee has been appointed under section 78eee(b)(3) of this title.

(11) Net equity

The term ''net equity'' means the dollar amount of the account or accounts of a customer, to be determined by—

(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date, all securities positions of such customer (other than customer name securities reclaimed by such customer); minus

(B) any indebtedness of such customer to the debtor on the filing date; plus

(C) any payment by such customer of such indebtedness to the debtor which is made with the approval of the trustee and within such period as the trustee may determine (but in no event more than sixty days after the publication of notice under section 78fff–2(a) of this title).

In determining net equity under this paragraph, accounts held by a customer in separate capacities shall be deemed to be accounts of separate customers.

(12) Persons registered as brokers or dealers

The term ''persons registered as brokers or dealers'' includes any person who is a member of a national securities exchange other than a government securities broker or government securities dealer registered under section 78*o*–5(a)(1)(A) of this title.

(13) Protective decree

The term ''protective decree'' means a decree, issued by a court upon application of SIPC under section 78eee(a)(3) of this title, that the customers of a member of SIPC are in need of the protection provided under this chapter.

(14) Security

The term ''Security'' means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, any collateral trust certificate, preorganization certificate or subscription, transferable share, voting trust certificate, certificate of deposit, certificate of deposit for a security, any investment contract or certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or mineral royalty or lease (if such investment contract or interest is the subject of a registration statement with the Commission pursuant to the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.]), any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase or sell any of the foregoing, and any other instrument commonly known as a security. Except as specifically provided above, the term ''security'' does not include any currency, or any commodity or related contract or futures contract, or any warrant or right to subscribe to or purchase or sell any of the foregoing.

(Pub. L. 91–598, § 16, formerly § 12, Dec. 30, 1970, 84 Stat. 1656; renumbered § 16 and amended Pub. L. 95–283, §§ 9, 15, May 21, 1978, 92 Stat. 260, 271; Pub. L. 95–598, title III, § 308(*o*), Nov. 6, 1978, 92 Stat. 2676; Pub. L. 97–303, § 7, Oct. 13, 1982, 96 Stat. 1410; Pub. L. 100–181, title VIII, § 802, Dec. 4, 1987, 101 Stat. 1265.)

REFERENCES IN TEXT

This chapter, referred to in provision preceding par. (1), and in pars. (10) and (13), was in the original ''this Act'', meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The Bankruptcy Act, referred to in provision preceding par. (1), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

The Securities Act of 1933, referred to in par. (14), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

1987—Par. (12). Pub. L. 100–181 inserted ''other than a government securities broker or government securities dealer registered under section 78*o*–5(a)(1)(A) of this title''.

1982—Par. (14). Pub. L. 97–303 inserted ''any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency,'' after ''the Securities Act of 1933 [15 U.S.C.A. §77a et seq.]),'' and substituted ''Except as specifically provided above, the term 'security' does not include'' for ''The term 'security' does not include''.

1978—Par. (1). Pub. L. 95–598, §308(*o*)(1), (3), struck out par. (1) definition of ''Bankruptcy Act'' and redesignated par. (2) as (1).

Pars. (2) to (6). Pub. L. 95–598, §309(*o*)(3), redesignated pars. (3) to (7) as (2) to (6), respectively. Former par. (2) redesignated (1).

Par. (7). Pub. L. 95–598, §308(*o*)(2), (3), redesignated par. (8) as (7) and substituted in subpar. (A) ''if a petition under title 11 concerning the debtor was filed before such date'' for ''if a petition was filed before such date by or against the debtor under the Bankruptcy Act, or under chapter X or XI of such Act, as now in effect or as amended from time to time''. Former par. (7) redesignated (6).

Pars. (8) to (15). Pub. L. 95–598, §308(*o*)(3), redesignated pars. (9) to (15) as (8) to (14), respectively. Former par. (8) redesignated (7).

Pub. L. 95–283 in introductory text inserted requirement for applicability of terms to a liquidation proceeding involving the Bankruptcy Act, in par. (1) heading substituted ''Bankruptcy Act'' for ''Self-regulatory organization'', and in text substituted provisions defining such terms, in par. (2) heading substituted ''Commission'' for ''Financial responsibility rules'', and in text substituted provisions defining such terms, in par. (3) heading substituted ''Customer'' for ''Examining authority'', and in text substituted provisions defining such terms, and added pars. (4) to (15).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of section by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78ccc, 78fff, 78fff–4 of this title.

CHAPTER 2C—PUBLIC UTILITY HOLDING COMPANIES

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