

under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as an Effective Date of 1984 Amendment note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 507, 546, 901 of this title.

§ 558. Defenses of the estate

The estate shall have the benefit of any defense available to the debtor as against any entity other than the estate, including statutes of limitation, statutes of frauds, usury, and other personal defenses. A waiver of any such defense by the debtor after the commencement of the case does not bind the estate.

(Added Pub. L. 98-353, title III, §470(a), July 10, 1984, 98 Stat. 380.)

EFFECTIVE DATE

Section effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as an Effective Date of 1984 Amendment note under section 101 of this title.

§ 559. Contractual right to liquidate a repurchase agreement

The exercise of a contractual right of a repo participant to cause the liquidation of a repurchase agreement because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title, unless, where the debtor is a stockbroker or securities clearing agency, such order is authorized under the provisions of the Securities Investor Protection Act of 1970 or any statute administered by the Securities and Exchange Commission. In the event that a repo participant liquidates one or more repurchase agreements with a debtor and under the terms of one or more such agreements has agreed to deliver assets subject to repurchase agreements to the debtor, any excess of the market prices received on liquidation of such assets (or if any such assets are not disposed of on the date of liquidation of such repurchase agreements, at the prices available at the time of liquidation of such repurchase agreements from a generally recognized source or the most recent closing bid quotation from such a source) over the sum of the stated repurchase prices and all expenses in connection with the liquidation of such repurchase agreements shall be deemed property of the estate, subject to the available rights of setoff. As used in this section, the term “contractual right” includes a right set forth in a rule or bylaw, applicable to each party to the repurchase agreement, of a national securities exchange, a national securities association, or a securities clearing agency, and a right, whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice.

(Added Pub. L. 98-353, title III, §396(a), July 10, 1984, 98 Stat. 366; amended Pub. L. 103-394, title V, §501(d)(21), Oct. 22, 1994, 108 Stat. 4146.)

REFERENCES IN TEXT

The Securities Investor Protection Act of 1970, referred to in text, is Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636, as amended, which is classified generally to chapter 2B-1 (§78aaa et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

AMENDMENTS

1994—Pub. L. 103-394 struck out “(15 U.S.C. 78aaa et seq.)” after “Act of 1970”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as an Effective Date of 1984 Amendment note under section 101 of this title.

§ 560. Contractual right to terminate a swap agreement

The exercise of any contractual right of any swap participant to cause the termination of a swap agreement because of a condition of the kind specified in section 365(e)(1) of this title or to offset or net out any termination values or payment amounts arising under or in connection with any swap agreement shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title. As used in this section, the term “contractual right” includes a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

(Added Pub. L. 101-311, title I, §106(a), June 25, 1990, 104 Stat. 268.)

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AMENDMENTS

2000—Pub. L. 106-554, §1(a)(5) [title I, §112(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-396, added subchapter V heading and items 781 to 784.

1984—Pub. L. 98-353, title III, §471, July 10, 1984, 98 Stat. 380, substituted “Successor” for “Succesor” in item 703.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 103, 109, 303, 321, 326, 327, 330, 341, 346, 347, 362, 365, 502, 508, 521, 524, 547, 1106, 1112, 1129, 1141, 1173, 1174, 1201, 1207, 1208, 1225, 1228, 1301, 1306, 1307, 1325, 1328 of this title; title 7 section 24; title 15 section 78fff-1; title 20 section 1087; title 21 section 356c; title 26 sections 108, 1398, 4980, 6012; title 28 sections 586, 1930; title 29 section 1362.

SUBCHAPTER I—OFFICERS AND
ADMINISTRATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 103 of this title; title 15 section 78fff.

§ 701. Interim trustee

(a)(1) Promptly after the order for relief under this chapter, the United States trustee shall appoint one disinterested person that is a member of the panel of private trustees established under section 586(a)(1) of title 28 or that is serving as trustee in the case immediately before the order for relief under this chapter to serve as interim trustee in the case.

(2) If none of the members of such panel is willing to serve as interim trustee in the case, then the United States trustee may serve as interim trustee in the case.

(b) The service of an interim trustee under this section terminates when a trustee elected or designated under section 702 of this title to serve as trustee in the case qualifies under section 322 of this title.

(c) An interim trustee serving under this section is a trustee in a case under this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2604; Pub. L. 99-554, title II, §215, Oct. 27, 1986, 100 Stat. 3100.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

The House amendment deletes section 701(d) of the Senate amendment. It is anticipated that the Rules of Bankruptcy Procedure will require the appointment of an interim trustee at the earliest practical moment in commodity broker bankruptcies, but no later than noon of the day after the date of the filing of the petition, due to the volatility of such cases.

SENATE REPORT NO. 95-989

This section requires the court to appoint an interim trustee. The appointment must be made from the panel of private trustees established and maintained by the Director of the Administrative Office under proposed 28 U.S.C. 604(e).

Subsection (a) requires the appointment of an interim trustee to be made promptly after the order for relief, unless a trustee is already serving in the case, such as before a conversion from a reorganization to a liquidation case.

Subsection (b) specifies that the appointment of an interim trustee expires when the permanent trustee is elected or designated under section 702.

Subsection (c) makes clear that an interim trustee is a trustee in a case under the bankruptcy code.

Subsection (d) provides that in a commodity broker case where speed is essential the interim trustee must be appointed by noon of the business day immediately following the order for relief.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-554 designated existing provisions as par. (1), substituted “the United States trustee shall appoint” for “the court shall appoint”, “586(a)(1)” for “604(f)”, “that is serving” for “that was serving”, and added par. (2).

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 303, 322, 348, 557, 703 of this title.

§ 702. Election of trustee

(a) A creditor may vote for a candidate for trustee only if such creditor—

(1) holds an allowable, undisputed, fixed, liquidated, unsecured claim of a kind entitled to distribution under section 726(a)(2), 726(a)(3), 726(a)(4), 752(a), 766(h), or 766(i) of this title;

(2) does not have an interest materially adverse, other than an equity interest that is not substantial in relation to such creditor’s interest as a creditor, to the interest of creditors entitled to such distribution; and

(3) is not an insider.

(b) At the meeting of creditors held under section 341 of this title, creditors may elect one person to serve as trustee in the case if election of a trustee is requested by creditors that may vote under subsection (a) of this section, and that hold at least 20 percent in amount of the claims specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section.

(c) A candidate for trustee is elected trustee if—

(1) creditors holding at least 20 percent in amount of the claims of a kind specified in