

Public Law 95-283  
95th Congress

An Act

To amend the Securities Investor Protection Act of 1970.

May 21, 1978

[H.R. 8331]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Securities  
Investor  
Protection Act  
Amendments of  
1978.  
15 USC 78aaa  
note.

SHORT TITLE

SECTION 1. This Act may be cited as the "Securities Investor Protection Act Amendments of 1978".

MEMBERSHIP OF SIPC

SEC. 2. (a) Section 3(a) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ccc(a)) is amended to read as follows:

"(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 Act 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 Act, be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act (D.C. Code, section 29-1001 and fol.).

"(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 15(b) of the 1934 Act, other than—

15 USC 78o.

"(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 Act, 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.”.

Repeal.

(b) Section 3(f) of such Act (15 U.S.C. 78ccc(f)) is repealed.

#### POWERS OF SIPC

SEC. 3. Section 3(b) of such Act (15 U.S.C. 78ccc(b)) is amended—

(1) in paragraph (1), by striking out “court, State, or Federal” and inserting “State, Federal, or other court” in lieu thereof; and

(2) by striking out paragraph (3), redesignating paragraphs (4) through (8) as paragraphs (5) through (9), respectively, and inserting immediately after paragraph (2) the following new paragraphs:

“(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 Act, 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 Act.

“(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 Act, including rules relating to—

“(A) the definition of terms used in this Act, other than those terms for which a definition is provided in section 16;

“(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 Act;”.

Post, p. 260.

#### BOARD OF DIRECTORS

SEC. 4. (a) Section 3(c) (2) (C) (ii) of such Act (15 U.S.C. 78ccc(c) (2) (C) (ii)) is amended by striking out “associated with any” and all that follows through “group” and inserting in lieu thereof “associated with a broker or dealer or associated with a member of a national securities exchange, within the meaning of section 3(a) (18)

or section 3(a)(21), respectively, of the 1934 Act, or similarly associated with any self-regulatory organization or other securities industry group.”

15 USC 78c.

(b) Section 3(c)(5) of such Act (15 U.S.C. 78ccc(c)(5)) is amended to read as follows:

“(5) COMPENSATION.—All matters relating to compensation of directors shall be as provided in the bylaws of SIPC.”

#### BYLAWS AND RULES

SEC. 5. Section 3(e) of such Act (15 U.S.C. 78ccc(e)) is amended to read as follows:

“(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 Act; 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.

Notice.

“(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.

Notice.  
Hearing.

“(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 Act, 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 Act. 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 25 of the 1934 Act or deemed to be final agency action for purposes of section 704 of title 5, United States Code.

15 USC 78y.

“(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 Act, require SIPC to adopt, amend, or repeal any SIPC bylaw or rule, whenever adopted.”.

## SIPC FUND

SEC. 6. (a) Section 4(a) such Act (15 U.S.C. 78ddd(a)) is amended—

(1) in paragraph (2), by striking out “The” and inserting in lieu thereof “Except as otherwise provided in this section, the”;

(2) by amending paragraph (2)(C) to read as follows:

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

(3) by adding at the end thereof the following new paragraph:

“(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 Act as though such amounts were part of the fund.”.

(b) Section 4(c) of such Act (15 U.S.C. 78ddd(c)) is amended—

(1) by striking out “or rule” each place it appears; and

(2) in paragraph (3), by striking out “(other than section 3(f))”.

(c) Section 4(d)(1) of such Act (15 U.S.C. 78ddd(d)(1)) is amended by adding at the end thereof the following new subparagraph:

“(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.”.

(d) Section 4(e) of such Act (15 U.S.C. 78ddd(e)) is amended—

(1) by amending paragraph (2) to read as follows:

“(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.”; and

(2) by amending paragraph (3) to read as follows:

“(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

Penalty charge.

**Waiver.** the assessment. SIPC may waive such penalty charge in whole or in part in circumstances where it considers such waiver appropriate.”

(e) Section 4(f) of such Act (15 U.S.C. 78ddd(f)) is amended by striking out “examining authority as”.

**Loans.  
Transaction fee.**

(f) Section 4(g) of such Act (15 U.S.C. 78ddd(g)) is amended by striking out the last two sentences and inserting in lieu thereof the following: “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 15(b) of the 1934 Act 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) but without regard to the limits on such assessments, or in such other manner as the Commission may by rule provide.”

15 USC 78o.

(g) Section 4(i) of such Act (15 U.S.C. 78ddd(i)) is amended to read as follows:

“(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.”

#### PROTECTION OF INVESTORS

SEC. 7. (a) Section 5(a) of such Act (15 U.S.C. 78eee(a)) is amended by striking out paragraphs (2) and (3) and inserting in lieu thereof the following new paragraphs:

“(2) ACTION BY SELF-REGULATORY ORGANIZATION.—If a self-regulatory organization has given notice to SIPC pursuant to subsection (a)(1) 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) 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 21(e) or 27 of the 1934 Act, 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 9.

15 USC 78u,  
78aa.

15 USC 78iii.

“(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); 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) Section 5(b) of such Act (15 U.S.C. 78eee(b)) is amended to read as follows:

“(b) COURT ACTION.—

“(1) ISSUANCE OF PROTECTIVE DECREE.—Upon receipt of an application by SIPC under subsection (a) (3), 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 the Bankruptcy Act, or is unable to meet its obligations as they mature;

*Post*, p. 2549.

“(B) has committed an act of bankruptcy within the meaning of the Bankruptcy Act;

“(C) 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;

“(D) is not in compliance with applicable requirements under the 1934 Act or rules of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities; or

15 USC 78a.

“(E) 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 Act, shall have the jurisdiction, powers, and duties conferred upon a court of bankruptcy by the Bankruptcy Act, together with such other jurisdiction, powers, and duties as are prescribed by this Act.

“(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, the right of setoff provided in section 68 of the Bankruptcy Act, and 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 the applicable provisions of the Bankruptcy Act, except that neither SIPC nor any employee of SIPC shall be required to file a bond when appointed as trustee.

*Post*, p. 2549.

“(4) REFERENCE TO REFEREE IN BANKRUPTCY.—If the court issues a protective decree and appoints a trustee under this section, such court may, at any stage of the proceeding, refer the proceeding to a referee in bankruptcy to hear and determine any or all matters, or to a referee in bankruptcy as special master to hear and report generally or upon specified matters. Only under special circumstances shall a reference be made to a special master who is not a referee in bankruptcy.

“(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) ALLOWANCES TO REFEREE IN BANKRUPTCY OR SPECIAL MASTER.—In the event a proceeding has been referred to a referee in bankruptcy or special master, the district judge may grant reasonable allowances to such referee in bankruptcy or a special master, in the manner provided for in a case filed under chapter X of the Bankruptcy Act, as now in effect or as amended from time to time.

“(C) APPLICATION FOR ALLOWANCES.—Any person seeking allowances shall file with the court an application which complies in form and content with the provisions of the Bankruptcy Act governing applications for allowances under such Act. 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.

Hearing.  
Notice.

“(D) RECOMMENDATIONS OF SIPC AND AWARDING OF ALLOWANCES.—Whenever an application for allowances is filed pursuant to subparagraph (C), 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 Act 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.

*Post*, p. 2549.

“(E) **APPLICABLE RESTRICTIONS.**—The restrictions on sharing of compensation set forth in the Bankruptcy Act shall apply to allowances.

“(F) **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

Notice,  
publication.

retention in office of a trustee or attorney for a trustee on the grounds that such person is not disinterested.”

(c) Section 5 of such Act (15 U.S.C. 78eee) is amended by adding at the end thereof the following new subsection:

“(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.”

**GENERAL PROVISIONS OF A LIQUIDATION PROCEEDING**

SEC. 8. Section 6 of such Act (15 U.S.C. 78fff) is amended to read as follows:

**“SEC. 6. GENERAL PROVISIONS OF A LIQUIDATION PROCEEDING.**

“(a) **PURPOSES.**—The purposes of a liquidation proceeding under this Act 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 Act—

“(A) to deliver customer name securities to or on behalf of the customers of the debtor entitled thereto as provided in section 8(c)(2); and

*Post, p. 261.*

“(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 Act; and

“(4) to liquidate the business of the debtor.

“(b) **APPLICATION OF BANKRUPTCY ACT.**—To the extent consistent with the provisions of this Act, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under, the Bankruptcy Act. For purposes of applying the Bankruptcy Act to this Act, 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 Act.

*Post, p. 2549.*

“(c) **DETERMINATION OF CUSTOMER STATUS.**—In a liquidation proceeding under this Act, 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 Act, 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

- Post*, p. 271. to the general estate under this subsection shall be subject to the provisions of section 16(5) (A).
- Post*, p. 2549.  
*Post*, p. 261. “(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 the Bankruptcy Act. Costs and expenses of administration shall include payments pursuant to section 8(e) and section 9(c) (1) (to the extent such payments recovered securities which were apportioned to the general estate pursuant to subsection (d)) and costs and expenses of SIPC employees utilized by the trustee pursuant to section 7(a) (2). All funds advanced by SIPC to a trustee for such costs and expenses of administration shall be recouped from the general estate as a first priority under the Bankruptcy Act.”.
- Infra*.

## NEW SECTIONS OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970

15 USC 78o,  
78ggg-78lll.

SEC. 9. The Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) is amended by redesignating sections 7 through 12 as sections 11 through 16, respectively, and by inserting immediately after section 6 the following new sections:

15 USC 78fff-1.

## “SEC. 7. 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 bankruptcy under the Bankruptcy Act has with respect to a bankrupt and the property of a bankrupt. 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 8(f).

“(b) TRUSTEE DUTIES.—To the extent consistent with the provisions of this Act or as otherwise ordered by the court, a trustee shall be subject to the same duties as a trustee in bankruptcy, 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 by the Bankruptcy Act, 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 17 of the 1934 Act 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.

*Post p. 2549.*

15 USC 78q.

“(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).

**“SEC. 8. SPECIAL PROVISIONS OF A LIQUIDATION PROCEEDING.**

15 USC 78fff-2.

“(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 the Bankruptcy Act, except that such notice shall be given by the trustee.

*Publication.*

“(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 3(a)(18) or section 3(a)(21) of the 1934 Act, 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.

15 USC 78c.

“(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), 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) and section 9(a)) 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) 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 9(c)(1), to the extent such

advances recovered securities which were apportioned to customer property pursuant to section 6(d);

“(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 9(c) (2).

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 9(a) 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 the Bankruptcy Act. Such recovered property shall be treated as customer property. For purposes of such recovery, 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 7(b) (1) and for the transfer of customer accounts under subsection (f), in order to restore the accounts of such customers as of the filing date. To the extent consistent with subsection (c), 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 9(a).

*Ante*, p. 259.

*Post*, p. 2549.

## “(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 the date of enactment of this section, 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 paragraphs (1) and (2).

“(4) DEFINITION.—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 9(a)(5) 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); 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 9(a) and section 9(b).

“SEC. 9. SIPC ADVANCES.

15 USC 78fff-3.

“(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 \$100,000 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 \$40,000 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 8(d), 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 Act, except that SIPC as subrogee may assert no claim against customer property until after the allocation thereof to customers as provided in section 8(c).

“(b) OTHER ADVANCES.—SIPC shall advance to the trustee—

“(1) such moneys as may be required to carry out section 8(e); 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 7(b)(2);

“(2) guarantee or secure any indemnity under section 8(f); and

“(3) purchase securities under section 8(d).

15 USC 78fff-4. **“SEC. 10. 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;

15 USC 78eee.

“(2) one or more of the conditions specified in section 5(b)(1) exist with respect to such member;

“(3) the claim of each customer of the member is within the limits of protection provided in section 9(a);

"(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 15(b) of the 1934 Act has been terminated, or such member has consented to the use of the direct payment procedure set forth in this section,

15 USC 78e.

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) 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.

Publication.

"(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 8(d) and section 9(a)) 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). 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 DISTRICT 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) may, within six months following mailing by SIPC of its determination with respect to such claim, seek a final adjudication of such claim. The district courts of the United States 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) shall not prejudice any other right or remedy of the customer against the member.

15 USC 78eee.

“(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 5. 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) and pending at the time of the appointment of a trustee under section 5(b)(3) 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.

Post, p. 271.

“(g) REFERENCES.—For purposes of this section, any reference to the trustee in sections 7(b)(1), 8(d), 8(f), 9(a), 16(5) and 16(12) shall be deemed a reference to SIPC, and any reference to the date of publication of notice under section 8(a) shall be deemed a reference to the publication of notice under this section.”

#### COMMISSION FUNCTIONS

SEC. 10. Section 11(a) of such Act (15 U.S.C. 78ggg(a)), as redesignated by this Act, is amended by striking out “or regulations pursuant to section 3(e) and section 9(f)” and inserting “pursuant to section 3(e)(3) and section 13(f)”.

#### EXAMINING AUTHORITY FUNCTIONS

SEC. 11. Section 12 of such Act (15 U.S.C. 78hhh), as redesignated by this Act, is amended—

- (1) by inserting “, or collection agent if a collection agent has been designated pursuant to section 13(a),” immediately after “examining authority” the first place it appears; and
- (2) by inserting “or collection agent” immediately after “examining authority” the second place it appears.

## FUNCTIONS OF SELF-REGULATORY ORGANIZATIONS

SEC. 12. Section 13(a) of such Act (15 U.S.C. 78iii(a)), as redesignated by this Act, is amended to read as follows:

“(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 4 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.”

15 USC 78ddd.

(b) Section 13(b) of such Act (15 U.S.C. 78iii(b)), as redesignated by this Act, is amended by inserting “and section 5(a)(2)” immediately after “section 5(a)(1)”.

(c) Section 13(c) of such Act (15 U.S.C. 78iii(c)), as redesignated by this Act, is amended to read as follows:

“(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 17(d) of the 1934 Act, 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.”

15 USC 78q.

(d) Section 13(f) of such Act (15 U.S.C. 78iii(f)), as redesignated by this Act, is amended to read as follows:

“(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 Act, 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.”

Rules.  
Reports.

## PROHIBITED ACTS

SEC. 13. (a) Section 14(a) of such Act (15 U.S.C. 78jjj(a)), as redesignated by this Act, is amended—

(1) by inserting “and penalty” immediately after “interest”; and

(2) by striking out "he" each place it appears and inserting "it" in lieu thereof.

(b) Section 14(b) of such Act (15 U.S.C. 78jjj(b)), as redesignated by this Act, is amended—

(1) by inserting "or for whom a direct payment procedure has been initiated" immediately after "Act" each place it appears; and

(2) in the subsection heading, by inserting "OR INITIATION OF DIRECT PAYMENT PROCEDURE" immediately after "TRUSTEE".

(c) Section 14(c) of such Act (15 U.S.C. 78jjj(c)), as redesignated by this Act, is amended to read as follows:

"(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 Act—

"(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 forbearing 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 Act, 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."

#### LIABILITY, ADVERTISING, AND OTHER MISCELLANEOUS PROVISIONS

SEC. 14. (a) Section 15(d) of such Act (15 U.S.C. 78kkk(d)), as redesignated by this Act, is amended—

(1) by inserting " , officers, or employees" immediately after "Directors"; and

(2) in the subsection heading, by inserting " , OFFICERS, OR EMPLOYEES" immediately after "DIRECTORS".

(b) Section 15(e) of such Act (15 U.S.C. 78kkk(e)), as redesignated by this Act, is amended to read as follows:

“(e) **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 Act. 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.”.

(c) Section 15(b) of such Act of (15 U.S.C. 78kkk(b)), as redesignated by this Act, is repealed, and subsections (c) through (h) of section 15 are redesignated as subsections (b) through (g), respectively.

Repeal.

#### DEFINITIONS

SEC. 15. Section 16 of such Act (15 U.S.C. 78lll), as redesignated by this Act, is amended to read as follows:

#### “SEC. 16. DEFINITIONS.

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

“(1) **BANKRUPTCY ACT.**—The term ‘Bankruptcy Act’ means, except where the context indicates otherwise, those provisions of the Bankruptcy Act relating to ordinary bankruptcy (chapters I through VII) as now in effect or as amended from time to time, and includes the rules of bankruptcy procedure promulgated with respect to such provisions, but does not include the provisions of section 60e of the Bankruptcy Act, relating to stockbroker bankruptcies.

Post. p. 2549.

“(2) **COMMISSION.**—The term ‘Commission’ means the Securities and Exchange Commission.

“(3) **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.

“(4) **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.

“(5) **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 15 (c) (3) of the 1934 Act 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 6(d); 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.

“(6) **DEBTOR.**—The term ‘debtor’ means a member of SIPC with respect to whom an application for a protective decree has been filed under section 5(a) (3) or a direct payment procedure has been instituted under section 10(b).

“(7) **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 13(c).

“(8) **FILING DATE.**—The term ‘filing date’ means the date on which an application for a protective decree is filed under section 5(a) (3), except that—

“(A) 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, 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

15 USC 78o.

Ante, p. 259.

Ante, p. 254.

Ante, p. 266.

Post, p. 2549.



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 10(f), the term 'filing date' means the date on which notice of such direct payment procedure was published under section 10(b).

*Ante*, p. 266.

"(9) 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.

"(10) 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.

*Ante*, p. 254.

“(11) LIQUIDATION PROCEEDING.—The term ‘liquidation proceeding’ means any proceeding for the liquidation of a debtor under this Act in which a trustee has been appointed under section 5(b)(3).

“(12) 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 8(a)).

*Ante*, p. 261.

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

“(13) 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.

15 USC 78eee.

“(14) PROTECTIVE DECREE.—The term ‘protective decree’ means a decree, issued by a court upon application of SIPC under section 5(a)(3), that the customers of a member of SIPC are in need of the protection provided under this Act.

15 USC 77a.

“(15) 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), 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. 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.”

#### AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934

SEC. 16 Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end thereof the following new paragraph:

“(40) The term ‘financial responsibility rules’ means the rules and regulations of the Commission or the rules and regulations prescribed by any self-regulatory organization relating to financial responsibility and related practices which are designated by the Commission, by rule or regulation, to be financial responsibility rules.”

“Financial responsibility rules.”

#### TABLE OF CONTENTS

SEC. 17. The table of contents of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) is amended to read as follows:

#### “TABLE OF CONTENTS

- “Sec. 1. Short title.
- “Sec. 2. Application of Securities Exchange Act of 1934.
- “Sec. 3. Securities Investor Protection Corporation.
- “Sec. 4. SIPC Fund.
- “Sec. 5. Protection of customers.
- “Sec. 6. General provisions of a liquidation proceeding.
- “Sec. 7. Powers and duties of trustee.
- “Sec. 8. Special provisions of a liquidation proceeding.
- “Sec. 9. SIPC advances.
- “Sec. 10. Direct payment procedure.
- “Sec. 11. SEC functions.
- “Sec. 12. Examining authority functions.
- “Sec. 13. Functions of self-regulatory organizations.
- “Sec. 14. Prohibited acts.
- “Sec. 15. Miscellaneous provisions.
- “Sec. 16. Definitions.”

#### SMALL ISSUE EXEMPTION

SEC. 18. Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) is amended by striking out “\$500,000” and inserting in lieu thereof “\$1,500,000”.

#### AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934

SEC. 18. (a) Section 11(a)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(a)(3)) is amended by striking out “May 1, 1975” and inserting in lieu thereof “February 1, 1978” and by striking out “May 1, 1978” each place it appears and inserting in lieu thereof “February 1, 1979”.

(b) The amendment made by subsection (a) of this section shall be effective as of May 1, 1978.

Effective date.  
15 USC 78k note.

Approved May 21, 1978.

#### LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-746 (Comm. on Interstate and Foreign Commerce).

SENATE REPORT No. 95-763 (Comm. on Banking, Housing, and Urban Affairs).

#### CONGRESSIONAL RECORD:

Vol. 123 (1977): Nov. 1, considered and passed House.

Vol. 124 (1978): Apr. 26, considered and passed Senate, amended.

May 2, House agreed to certain Senate amendments; disagreed to Senate amendment No. 8; and disagreed to Senate amendment No. 9 with an amendment.

May 4, Senate insisted on its amendment No. 8; agreed to House amendment of No. 9 with an amendment.

May 9, House agreed to Senate amendment No. 9; concurred in Senate amendment of No. 8 with an amendment.

May 10, Senate concurred on House amendment of No. 8.