Public Law 97-222
97th Congress

An Act

To amend title 11, United States Code, to correct technical errors, and to clarify and make substantive changes, with respect to securities and commodities.

July 27, 1982
[H.R. 4935]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 101 of title 11, United States Code, is amended—

Bankruptcy, amendment.

(1) by redesignating paragraphs (35), (36), (37), (38), (39), and (40) as paragraphs (36), (37), (38), (39), (40), and (41), respectively, and

(2) by inserting after paragraph (34) the following new paragraph:

"(35) 'securities clearing agency' means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) or whose business is confined to the performance of functions of a clearing agency with respect to exempted securities, as defined in section 3(a)(12) of such Act (15 U.S.C. 78c(12)) for the purposes of such section 17A;".

"Securities clearing agency."

(b) Section 101(36)(A)(xii) of title 11, United States Code, as so redesignated, is amended by striking out "is the subject of a registration statement" and inserting in lieu thereof "is required to be the subject of a registration statement".

(c) Section 101(36)(B)(iii) of title 11, United States Code, as so redesignated, is amended by striking out "commodity" the second place it appears.

(d) Section 101(40) of title 11, United States Code, as so redesignated, is amended to read as follows:

"(40) 'stockbroker' means person—

"Stockbroker."

"(A) with respect to which there is a customer, as defined in section 741(2) of this title; and

11 USC 741.

"(B) that is engaged in the business of effecting transactions in securities—

"(i) for the account of others; or

"(ii) with members of the general public, from or for such person's own account;".

SEC. 2. Section 103(d) of title 11, United States Code, is amended by striking out "except with respect to section 746(c) which applies to margin payments made by any debtor to a commodity broker or forward contract merchant".

SEC. 3. (a) Section 362(a) of title 11, United States Code, is amended by inserting ", or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3))," after "title" the first place it appears.

(b) Section 362(b) of title 11, United States Code, is amended by adding ", or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3))," after "title" the first place it appears.

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(c) Section 362(b)(6) of title 11, United States Code, is amended to read as follows:

"(6) under subsection (a) of this section, of the setoff by a commodity broker, forward contract merchant, stockbroker, or securities clearing agency of any mutual debt and claim under or in connection with commodity contracts, as defined in section 761(4) of this title, forward contracts, or securities contracts, as defined in section 741(7) of this title, that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, arising out of commodity contracts, forward contracts, or securities contracts against cash, securities, or other property held by such commodity broker, forward contract merchant, stockbroker, or securities clearing agency to margin, guarantee, or secure commodity contracts, forward contracts, or securities contracts;".

11 USC 761.
Post, p. 237.
Post, p. 237.
11 USC 761.
Post, p. 237.

SEC. 4. Section 546 of title 11, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) Notwithstanding sections 544, 545, 547, 548(a)(2), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 741(5) or 761(15) of this title, or settlement payment, as defined in section 741(8) of this title, made by or to a commodity broker, forward contract merchant, stockbroker, or securities clearing agency, that is made before the commencement of the case, except under section 548(a)(1) of this title.".

11 USC 544, 545, 547, 548.

SEC. 5. Section 548(d)(2)(B) of title 11, United States Code, is amended—

(1) by striking out "or forward contract merchant" and inserting in lieu thereof ", forward contract merchant, stockbroker, or securities clearing agency",

(2) by inserting "741(5) or" after "section",

(3) by inserting ", or settlement payment, as defined in section 741(8) of this title" after "of this title", and

(4) by striking out "value." and inserting in lieu thereof "value to the extent of such payment.".

SEC. 6. (a) Chapter 5 of title 11, United States Code, is amended by adding at the end thereof the following new sections:

11 USC 555.

"§ 555. Contractual right to liquidate a securities contract

"The exercise of a contractual right of a stockbroker or securities clearing agency to cause the liquidation of a securities contract, as defined in section 741(7), 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 such order is authorized under the provisions of the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) or any statute administered by the Securities and Exchange Commission. As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency.

11 USC 365.

"Contractual right."

11 USC 556.

"§ 556. Contractual right to liquidate a commodities contract or forward contract

"The contractual right of a commodity broker or forward contract merchant to cause the liquidation of a commodity contract, as defined in section 761(4), or forward contract because of a condition

11 USC 761.

of the kind specified in section 365(e)(1) of this title, and the right to a variation or maintenance margin payment received from a trustee with respect to open commodity contracts or forward contracts, shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by the order of a court in any proceeding under this title. As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a clearing organization or contract market or in a resolution of the governing board thereof.". 11 USC 365. "Contractual right."

(b) The analysis of sections for chapter 5 of title 11, United States Code, is amended by adding at the end thereof the following new items:

"555. Contractual right to liquidate a securities contract.
"556. Contractual right to liquidate a commodity contract or forward contract.".

SEC. 7. Section 702(a)(1) of title 11, United States Code, is amended by striking out "or 726(a)(4)" and inserting in lieu thereof "726(a)(4), 752(a), 766(h), or 766(i)".

SEC. 8. Section 741 of title 11, United States Code, is amended—

(1) in paragraph (4)—

(A) by striking out "at any time", and

(B) in subparagraph (A)(ii) by inserting "of a customer" after "claim",

(2) by redesignating paragraphs (5) and (6) as paragraphs (6) and (9), respectively,

(3) by inserting after paragraph (4) the following new paragraph:

"(5) 'margin payment' means payment or deposit of cash, a security, or other property, that is commonly known to the securities trade as original margin, initial margin, maintenance margin, or variation margin, or as a mark-to-market payment, or that secures an obligation of a participant in a securities clearing agency;", "Margin payment."

(4) in paragraph (6), as so redesignated—

(A) by striking out "the aggregate of all of a customer's accounts that such customer holds" and inserting in lieu thereof "all accounts of a customer that such customer has",

(B) in subparagraph (A)(ii) by inserting "in such capacity" after "customer", and

(C) in subparagraph (B) by inserting "in such capacity" before the semicolon,

(5) by inserting after paragraph (6), as so redesignated, the following new paragraphs:

"(7) 'securities contract' means contract for the purchase, sale, or loan of a security, including an option for the purchase or sale of a security, or the guarantee of any settlement of cash or securities by or to a securities clearing agency; Definitions.

"(8) 'settlement payment' means a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, or any other similar payment commonly used in the securities trade; and", and

(6) in paragraph (9), as so redesignated, by striking out "Security" and inserting "Securities" in lieu thereof.

SEC. 9. Section 742 of title 11, United States Code, is amended by striking out "chapter" and inserting in lieu thereof "title".

SEC. 10. Section 744 of title 11, United States Code, is amended by inserting "but" after "relief,".

SEC. 11. Section 745(c) of title 11, United States Code, is amended by striking out "A" and inserting in lieu thereof "Each".

SEC. 12. (a) Section 746(a) of title 11, United States Code, is amended—

(1) by striking out "effects, with respect to cash or a security," and inserting in lieu thereof "enters into",

(2) by striking out "with respect to such cash or security" each place it appears,

(3) by striking out "such date" and inserting in lieu thereof "the date of the filing of the petition", and

(4) by striking out "effected" and inserting in lieu thereof "entered into".

(b) Section 746(b) of title 11, United States Code, is amended—

(1) by striking out "has a claim for" and inserting in lieu thereof "transferred to the debtor", and

(2) in paragraph (2) by striking out "is".

(c) The heading for section 746 of title 11, United States Code, is amended by striking out "claim" and inserting in lieu thereof "claims".

SEC. 13. Section 747 of title 11, United States Code, is amended by striking out "such claim arose" and inserting in lieu thereof "the transaction giving rise to such claim occurred".

SEC. 14. Section 749 of title 11, United States Code, is amended—

(1) by striking out "Any" and inserting in lieu thereof "(a) Except as otherwise provided in this section, any",

(2) by striking out "except" and inserting in lieu thereof "but",

(3) by inserting "such property" after "trustee, and",

(4) by striking out "549, or 724(a)" and inserting in lieu thereof "or 549", and

(5) by adding at the end thereof the following new subsection:

11 USC 544, 545, 547-549.

"(b) Notwithstanding sections 544, 545, 547, 548, and 549 of this title, the trustee may not avoid a transfer made before five days after the order for relief if such transfer is approved by the Commission by rule or order, either before or after such transfer, and if such transfer is—

"(1) a transfer of a securities contract entered into or carried by or through the debtor on behalf of a customer, and of any cash, security, or other property margining or securing such securities contract; or

"(2) the liquidation of a securities contract entered into or carried by or through the debtor on behalf of a customer.".

SEC. 15. Section 752(c) of title 11, United States Code, is amended to read as follows:

Cash or security, apportionment.

"(c) Any cash or security remaining after the liquidation of a security interest created under a security agreement made by the debtor, excluding property excluded under section 741(4)(B) of this title, shall be apportioned between the general estate and customer property in the same proportion as the general estate of the debtor and customer property were subject to such security interest.".

11 USC 741.

SEC. 16. Section 761 of title 11, United States Code, is amended—

(1) in paragraph (2) by inserting "made" after "commodity contracts",

(2) in paragraph (4)—

(A) by striking out "if the debtor is" each place it appears and inserting in lieu thereof "with respect to", and

(B) in subparagraph (D) by striking out "cleared by the debtor" and inserting in lieu thereof "cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization",

(3) in paragraph (9)—

(A) by striking out "if the debtor is" each place it appears and inserting in lieu thereof "with respect to",

(B) in subparagraph (A)—

(i) by striking out "the debtor" each place it appears and inserting in lieu thereof "such futures commission merchant", and

(ii) by striking out "the debtor's" and inserting in lieu thereof "such futures commission merchant's",

(C) in subparagraph (B)—

(i) by striking out "the debtor" each place it appears and inserting in lieu thereof "such foreign futures commission merchant", and

(ii) by striking out "the debtor's" and inserting in lieu thereof "such foreign futures commission merchant's",

(D) in subparagraph (C)—

(i) by striking out "the debtor" each place it appears and inserting in lieu thereof "such leverage transaction merchant",

(ii) by striking out "the debtor's" and inserting in lieu thereof "such leverage transaction merchant's",

(iii) in clause (i) by inserting "or" after the semicolon, and

(iv) in clause (ii) by striking out "hold" and inserting in lieu thereof "holds",

(E) in subparagraph (D) by striking out "the debtor" each place it appears and inserting in lieu thereof "such clearing organization", and

(F) in subparagraph (E)—

(i) by striking out "the debtor" each place it appears and inserting in lieu thereof "such commodity options dealer", and

(ii) by striking out "the debtor's" and inserting in lieu thereof "such commodity options dealer's",

(4) in paragraph (10) by striking out "at any time",

(5) in paragraph (12)—

(A) by inserting a comma after "property", and

(B) by striking out the comma after "credit",

(6) in paragraph (13) by striking out "217 of the Commodity Futures Trading Commission Act of 1974 (7 U.S.C. 15a)" and inserting in lieu thereof "19 of the Commodity Exchange Act (7 U.S.C. 23)",

(7) in paragraph (14) by striking out "that is engaged",

(8) in paragraph (15) by striking out "a daily variation settlement payment" and inserting in lieu thereof "mark-to-market payments, settlement payments, variation payments, daily settlement payments, and final settlement payments made as adjustments to settlement prices",

(9) in paragraph (16) by striking out "at any time", and

(10) in paragraph (17)—

(A) by striking out "holds" and inserting in lieu thereof "has", and

(B) in subparagraph (A)—

(i) by inserting "the" after "(A)", and

(ii) in clause (ii) by inserting "in such capacity" after "customer".

SEC. 17. (a) Section 764(a) of title 11, United States Code, is amended—

(1) by striking out "except" and inserting in lieu thereof "but",

(2) by inserting "such property" after "trustee, and", and

(3) by striking out "is" each place it appears and inserting in lieu thereof "shall be".

(b) Section 764(b) of title 11, United States Code, is amended by striking out "date of the filing of the petition" and inserting in lieu thereof "order for relief".

(c) Section 764(c) of title 11, United States Code, is repealed.

SEC. 18. Section 765(b) of title 11, United States Code, is amended by striking out "commitment" and inserting in lieu thereof "commodity contract".

SEC. 19. (a) Section 766(a) of title 11, United States Code, is amended by inserting "to such customer" after "distribution".

(b) Section 766(b) of title 11, United States Code, is amended—

(1) by striking out "that is being actively traded as of the date of the filing of the petition", and

(2) by inserting "the" after "rules of".

(c) Section 766(d) of title 11, United States Code, is amended—

(1) by striking out "such amount, then the" and inserting in lieu thereof "the amount to which the customer of the debtor is entitled under subsection (h) or (i) of this section, then such", and

(2) by inserting "then" after "trustee" the second place it appears.

(d) Section 766(h) of title 11, United States Code, is amended by adding at the end thereof the following: "Notwithstanding any other provision of this subsection, a customer net equity claim based on a proprietary account, as defined by Commission rule, regulation, or order, may not be paid either in whole or in part, directly or indirectly, out of customer property unless all other customer net equity claims have been paid in full.".

SEC. 20. (a) Section 19 of the Commodity Exchange Act (7 U.S.C. 24), as added by section 302 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2673), is redesignated as section 20.

(b) Section 20(a)(3), as so redesignated, of the Commodity Exchange Act (7 U.S.C. 24) is amended by inserting before the semicolon the following: ", including the payment and allocation of margin with respect to commodity contracts not specifically identifiable to a particular customer pending their orderly liquidation".

Approved July 27, 1982.

LEGISLATIVE HISTORY—H.R. 4935:

HOUSE REPORT No. 97-420 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 128 (1982):
Feb. 9, considered and passed House.
July 13, considered and passed Senate.