

111TH CONGRESS
2D SESSION

H. R. 6531

To amend the Securities Investor Protection Act of 1970 to determine a customer's net equity based on the customer's last statement, to prohibit certain recoveries, to change how trustees are appointed, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2010

Mr. GARRETT of New Jersey (for himself, Mr. KING of New York, and Ms. ROS-LEHTINEN) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Investor Protection Act of 1970 to determine a customer's net equity based on the customer's last statement, to prohibit certain recoveries, to change how trustees are appointed, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Equitable Treatment
5 of Investors Act”.

1 **SEC. 2. SECURITIES INVESTOR PROTECTION ACT OF 1970**
2 **AMENDMENTS.**

3 (a) NET EQUITY BASED ON LAST STATEMENT.—
4 Section 16(11) of the Securities Investor Protection Act
5 of 1970 (15 U.S.C. 78lll(11)) is amended to read as fol-
6 lows:

7 “(11) NET EQUITY.—

8 “(A) IN GENERAL.—The term ‘net equity’
9 means the dollar amount of the account or ac-
10 counts of a customer, to be determined by—

11 “(i) calculating the sum which would
12 have been owed by the debtor to such cus-
13 tomer if the debtor had liquidated, by sale
14 or purchase on the filing date—

15 “(I) all securities positions of
16 such customer (other than customer
17 name securities reclaimed by such
18 customer); and

19 “(II) all positions in futures con-
20 tracts and options on futures con-
21 tracts held in a portfolio margining
22 account carried as a securities account
23 pursuant to a portfolio margining pro-
24 gram approved by the Commission, in-
25 cluding all property collateralizing
26 such positions, to the extent that such

1 property is not otherwise included
2 herein; minus

3 “(ii) any indebtedness of such cus-
4 tomer to the debtor on the filing date; plus

5 “(iii) any payment by such customer
6 of such indebtedness to the debtor which is
7 made with the approval of the trustee and
8 within such period as the trustee may de-
9 termine (but in no event more than sixty
10 days after the publication of notice under
11 section 8(a)).

12 “(B) TREATMENT OF CERTAIN COM-
13 MODITY FUTURES CONTRACTS.—A claim for a
14 commodity futures contract received, acquired,
15 or held in a portfolio margining account pursu-
16 ant to a portfolio margining program approved
17 by the Commission or a claim for a security fu-
18 tures contract, shall be deemed to be a claim
19 with respect to such contract as of the filing
20 date, and such claim shall be treated as a claim
21 for cash.

22 “(C) TREATMENT OF ACCOUNTS HELD BY
23 A CUSTOMER IN SEPARATE CAPACITIES.—In de-
24 termining net equity under this paragraph, ac-
25 counts held by a customer in separate capac-

1 ities shall be deemed to be accounts of separate
2 customers.

3 “(D) RELIANCE ON FINAL CUSTOMER
4 STATEMENT.—

5 “(i) IN GENERAL.—In determining
6 net equity under this paragraph, the posi-
7 tions, options, and contracts of a customer
8 held by the debtor, and any indebtedness
9 of the customer to the debtor, shall be de-
10 termined based on—

11 “(I) the information contained in
12 the last statement received by the cus-
13 tomer from the debtor before the fil-
14 ing date; and

15 “(II) any additional specific con-
16 firmations of the customer’s positions,
17 options, contracts, or indebtedness re-
18 ceived after such last statement but
19 before the filing date.

20 “(ii) FRAUD EXCEPTION.—The provi-
21 sions of this subparagraph shall not apply
22 to any customer that—

23 “(I) knew the debtor was in-
24 volved in fraudulent activity with re-

1 spect to any customer of the debtor;
2 or

3 “(II) was a person that—

4 “(aa) was, or was required
5 to be, registered with the Securi-
6 ties and Exchange Commission
7 under the securities laws (as such
8 term is defined under section
9 3(a) of the Securities Exchange
10 Act of 1934 (15 U.S.C. 78c(a)));

11 “(bb) knew, or should have
12 known, that the debtor was in-
13 volved in fraudulent activity with
14 respect to any customer of the
15 debtor; and

16 “(cc) did not notify SIPC,
17 the Commission, or law enforce-
18 ment personnel that the debtor
19 was involved in such fraudulent
20 activity.”.

21 (b) PROHIBITION ON CERTAIN RECOVERIES.—Sec-
22 tion 8 of the Securities Investor Protection Act of 1970
23 (15 U.S.C. 78fff–2) is amended by adding at the end the
24 following new subsection:

1 “(g) PROHIBITION ON CERTAIN RECOVERIES.—Not-
 2 withstanding any other provision of this Act, a trustee
 3 may not recover any property transferred by the debtor
 4 to a customer before the filing date unless, at the time
 5 of such transfer, such customer—

6 “(1) knew the debtor was involved in fraudulent
 7 activity with respect to any customer of the debtor;
 8 or

9 “(2) was a person that—

10 “(A) was, or was required to be, registered
 11 with the Securities and Exchange Commission
 12 under the securities laws (as such term is de-
 13 fined under section 3(a) of the Securities Ex-
 14 change Act of 1934 (15 U.S.C. 78c(a)));

15 “(B) knew, or should have known, that the
 16 debtor was involved in fraudulent activity with
 17 respect to any customer of the debtor; and

18 “(C) did not notify SIPC, the Commission,
 19 or law enforcement personnel that the debtor
 20 was involved in such fraudulent activity.”.

21 (c) APPOINTMENT OF TRUSTEES.—

22 (1) IN GENERAL.—Section 5(b)(3) of the Secu-
 23 rities Investor Protection Act of 1970 (15 U.S.C.
 24 78eee(b)(3)) is amended to read as follows:

1 “(3) APPOINTMENT OF TRUSTEE AND ATTOR-
2 NEY.—

3 “(A) IN GENERAL.—If the court issues a
4 protective decree under paragraph (1), such
5 court shall forthwith appoint, as trustee for the
6 liquidation of the business of the debtor and as
7 attorney for the trustee, such persons as the
8 court determines best fit to serve as trustee and
9 as attorney from among the persons selected by
10 the Commission pursuant to subparagraph (B).
11 The persons appointed as trustee and as attor-
12 ney for the trustee may be associated with the
13 same firm.

14 “(B) COMMISSION CANDIDATES.—With re-
15 spect to a debtor and upon the court issuing a
16 protective decree under paragraph (1), the
17 Commission shall forthwith provide the court
18 with a list of candidates for the position of
19 trustee and attorney for the trustee for such
20 debtor.

21 “(C) DISINTEREST REQUIREMENT.—No
22 person may be appointed to serve as trustee or
23 attorney for the trustee if such person is not
24 disinterested within the meaning of paragraph
25 (6), except that for any specified purpose other

1 than to represent a trustee in conducting a liq-
 2 uidation proceeding, the trustee may, with the
 3 approval of SIPC and the court, employ an at-
 4 torney who is not disinterested.

5 “(D) QUALIFICATION.—A trustee ap-
 6 pointed under this paragraph shall qualify by
 7 filing a bond in the manner prescribed by sec-
 8 tion 322 of title 11, United States Code.”.

9 (2) EFFECTIVE DATE.—The amendment made
 10 by paragraph (1) shall take effect with respect to
 11 trustees and attorneys appointed after the date of
 12 the enactment of this Act.

13 **SEC. 3. EFFECTIVE DATE.**

14 Except as provided under section 2(c)(2), the amend-
 15 ments made by section 2 shall take effect with respect to
 16 a liquidation proceeding under the Securities Investor Pro-
 17 tection Act of 1970 that—

18 (1) was in progress on the date of the enact-
 19 ment of this Act; or

20 (2) is initiated after the date of the enactment
 21 of this Act.

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