

112TH CONGRESS
2D SESSION

H. R. 6695

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 20, 2012

Mr. GARRETT 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 confirm that a customer's net equity claim is based on the customer's last statement and that certain recoveries are prohibited, 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 reported to the customer as held by the
9 debtor, and any indebtedness of the cus-
10 tomer to the debtor, shall be determined
11 based on—

12 “(I) the information contained in
13 the last statement issued by the debt-
14 or to the customer before the filing
15 date; and

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

21 “(ii) EXCEPTION WHEN DEBTOR’S RE-
22 CORDERS INDICATE HIGHER VALUE.—Not-
23 withstanding clause (i), if the books and
24 records of the debtor indicate that the net
25 value of a customer’s positions, options,

1 and contracts reported to the customer as
2 held by the debtor, and any indebtedness
3 of the customer to the debtor, is greater
4 than the net value of the customer as cal-
5 culated under clause (i) using the cus-
6 tomer's last statement, then the determina-
7 tion of the net equity of the customer
8 under this paragraph shall be done using
9 the books and records of the debtor instead
10 of the customer's last statement.

11 “(iii) FRAUD EXCEPTION.—The provi-
12 sions of this subparagraph shall not apply
13 to any customer that—

14 “(I) knew the debtor was in-
15 volved in fraudulent activity with re-
16 spect to any customer of the debtor
17 which reasonably indicated a fraud
18 adversely affecting a substantial num-
19 ber of customers; or

20 “(II) was a person that—

21 “(aa) was, or was required
22 to be, registered—

23 “(AA) as a broker or
24 dealer under the Securities
25 Exchange Act of 1934; or

1 “(BB) as an investment
 2 adviser under the Invest-
 3 ment Advisers Act of 1940,
 4 or that would have been re-
 5 quired to register as an in-
 6 vestment adviser under the
 7 Investment Advisers Act of
 8 1940 but for section 203(m)
 9 of such Act;

10 “(bb) knew, or, due to the
 11 activities of such person causing
 12 such person to be described
 13 under item (aa), should have
 14 known, that the debtor was in-
 15 volved in fraudulent activity with
 16 respect to any customer of the
 17 debtor; and

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

23 (b) ALLOCATION OF CUSTOMER PROPERTY TO CUS-
 24 TOMERS.—Section 8(c) of the Securities Investor Protec-
 25 tion Act of 1970 (15 U.S.C. 78fff–2(c)) is amended—

1 (1) in paragraph (1), by amending subpara-
2 graph (B) to read as follows:

3 “(B) second, to customers of such debtor,
4 as described under paragraph (4);” and
5 (2) by adding at the end the following:

6 “(4) ALLOCATION OF CUSTOMER PROPERTY TO
7 CUSTOMERS.—

8 “(A) IN GENERAL.—Allocations of cus-
9 tomer property to customers under paragraph
10 (1)(B) shall be made such that customers share
11 in customer property based on a methodology—

12 “(i) based on the net equity of a cus-
13 tomer, as determined using the last state-
14 ment issued by the debtor to the customer
15 before the filing date;

16 “(ii) determined by the trustee, in
17 consultation with the Commission; and

18 “(iii) approved by the court.

19 “(B) ALTERNATE METHODOLOGY.—If the
20 trustee determines that allocating customer
21 property in accordance with subparagraph (A)
22 would be unfair and inequitable to a substantial
23 segment of customers and would not fully serve
24 the remedial purposes of this Act, allocations of
25 customer property to customers under para-

graph (1)(B) shall be made such that customers share in customer property based on a fair and reasonable methodology, with special consideration for the typical, non-professional investor, that—

“(i) if the trustee determines that it is necessary in order to reach a fair and reasonable result, is determined without regard to section 16(11)(D);

“(ii) is determined by the trustee, in consultation with the Commission; and

“(iii) is approved by the court.

“(C) PUBLIC NOTICE AND COMMENT.—Before approving a proposed methodology under subparagraph (A)(ii) or subparagraph (B)(ii), the court shall—

“(i) notify customers and other interested parties that the court is considering the proposed methodology; and

“(ii) provide the customers and interested parties an opportunity to provide comments on the proposed methodology.”.

(c) PROHIBITION ON CERTAIN RECOVERIES.—

(1) IN GENERAL.—Section 8 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–2)

1 is amended by adding at the end the following new
2 subsection:

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

8 “(1) knew the debtor was involved in fraudulent
9 activity with respect to any customer of the debtor
10 which reasonably indicated a fraud adversely affect-
11 ing a substantial number of customers; or

12 “(2) was a person that—

13 “(A) was, or was required to be, reg-
14 istered—

15 “(i) as a broker or dealer under the
16 Securities Exchange Act of 1934; or

17 “(ii) as an investment adviser under
18 the Investment Advisers Act of 1940, or
19 that would have been required to register
20 as an investment adviser under the Invest-
21 ment Advisers Act of 1940 but for section
22 203(m) of such Act;

23 “(B) knew, or, due to the activities of such
24 person causing such person to be described
25 under subparagraph (A), should have known,

1 that the debtor was involved in fraudulent ac-
2 tivity with respect to any customer of the debt-
3 or; and

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

7 (2) CONSTRUCTION.—Nothing in this Act, or
8 the amendments made by this Act, shall be con-
9 strued as prohibiting a trustee appointed under the
10 Securities Investor Protection Act of 1970 from re-
11 covering property transferred by a debtor to a per-
12 son who is not a customer of the debtor.

13 (d) APPOINTMENT OF TRUSTEES.—

14 (1) IN GENERAL.—Section 5(b)(3) of the Secu-
15 rities Investor Protection Act of 1970 (15 U.S.C.
16 78eee(b)(3)) is amended to read as follows:

17 “(3) APPOINTMENT OF TRUSTEE AND ATTOR-
18 NEY.—

19 “(A) IN GENERAL.—If the court issues a
20 protective decree under paragraph (1), such
21 court shall forthwith appoint, as trustee for the
22 liquidation of the business of the debtor and as
23 attorney for the trustee, such persons as the
24 court determines best fit to serve as trustee and
25 as attorney from among the persons selected by

1 the Commission pursuant to subparagraph (B).
2 The persons appointed as trustee and as attor-
3 ney for the trustee may be associated with the
4 same firm.

5 “(B) COMMISSION CANDIDATES.—The
6 Commission shall maintain a list of candidates
7 for the position of trustee and attorney for the
8 trustee for a debtor in a liquidation pro-
9 ceedings, and shall periodically update the list,
10 as appropriate. With respect to a debtor and
11 upon the court issuing a protective decree under
12 paragraph (1), the Commission shall forthwith
13 provide the court with such list.

14 “(C) DISINTEREST REQUIREMENT.—No
15 person may be appointed to serve as trustee or
16 attorney for the trustee if such person is not
17 disinterested within the meaning of paragraph
18 (6), except that for any specified purpose other
19 than to represent a trustee in conducting a liq-
20 uidation proceeding, the trustee may, with the
21 approval of SIPC and the court, employ an at-
22 torney who is not disinterested.

23 “(D) QUALIFICATION.—A trustee ap-
24 pointed under this paragraph shall qualify by
25 filing a bond in the manner prescribed by sec-

tion 322 of title 11, United States Code, except that neither SIPC nor any employee of SIPC shall be required to file a bond when appointed as trustee.

“(E) PROHIBITION ON TRUSTEE SERVING IN MULTIPLE LIQUIDATIONS.—A trustee may not be appointed under this paragraph if the trustee is currently serving as trustee for the liquidation of the business of another debtor under this Act.”.

(2) COMPENSATION FOR TRUSTEE AND ATTORNEY.—Section 5(b)(5) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(5)) is amended—

(A) in subparagraph (A), by adding at the end the following: “The court shall publicly disclose all such allowances that are granted.”;

(B) by amending subparagraph (C) to read as follows:

“(C) AWARDING OF ALLOWANCES.—Whenever an application for allowances is filed pursuant to subparagraph (B), the court shall determine the amount of allowances, giving due consideration to the nature, extent, and value of the services rendered.”; and

1 (C) by adding at the end the following:

2 “(F) SIPC DISCLOSURES.—SIPC shall
3 issue quarterly public reports on—

4 “(i) all payments made by SIPC to
5 the trustee; and

6 “(ii) all other costs in connection with
7 the liquidation proceeding, including legal
8 and accounting costs.”.

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

13 (e) TIMING OF SIPC ADVANCES; RESULT OF
14 DELAY.—Section 9 of the Securities Investor Protection
15 Act of 1970 (15 U.S.C. 78fff–3) is amended by adding
16 at the end the following:

17 “(f) TIMING OF SIPC ADVANCES; RESULT OF
18 DELAY.—

19 “(1) IN GENERAL.—SIPC advances made to
20 satisfy customer claims pursuant to subsection (a)
21 shall be made before the end of the 3-month period
22 beginning on the date that is the end of the 6-month
23 period described under section 8(a)(3), plus the
24 amount of any extension granted under such para-
25 graph.

1 “(2) RESULT OF DELAY.—If SIPC fails to
2 make advances to the trustee in the period specified
3 in paragraph (1), then for purposes of calculating a
4 customer’s net equity under this Act, interest shall
5 accrue beginning on the date that is the end of the
6 3-month period specified in paragraph (1).

7 “(3) COURT DETERMINATION.—If the trustee
8 determines that enough information has been pro-
9 vided to SIPC to make an advance pursuant to sub-
10 section (a), the trustee may petition the court to
11 have the court direct SIPC to make such advance.”.

12 (f) TIMING OF PAYMENTS TO CUSTOMERS.—Section
13 8(b) of the Securities Investor Protection Act of 1970 (15
14 U.S.C. 78fff–2(b)) is amended—

15 (1) in paragraph (1), by striking “and” at the
16 end;

17 (2) in paragraph (2), by striking the period at
18 the end and inserting a semicolon; and

19 (3) by inserting after paragraph (2) the fol-
20 lowing:

21 “(3) upon petition by a customer, order the
22 trustee to carry out the obligations of the trustee
23 under this subsection with respect to such customer;
24 and

1 “(4) if the court determines that the trustee
2 has improperly delayed carrying out the obligations
3 of the trustee under this subsection, impose financial
4 sanctions on the trustee.”.

5 (g) COMMISSION AUTHORITY TO REQUIRE SIPC AC-
6 TION.—Section 11(b) of the Securities Investor Protection
7 Act of 1970 (15 U.S.C. 78ggg(b)) is amended to read as
8 follows:

9 “(b) COMMISSION AUTHORITY TO REQUIRE SIPC
10 ACTION.—In the event of the refusal of SIPC to commit
11 its funds or otherwise to act for the protection of cus-
12 tomers of any member of SIPC, the Commission may re-
13 quire SIPC to discharge its obligations under this Act.”.

14 **SEC. 3. EFFECTIVE DATE.**

15 Except as provided under section 2(d)(3), the amend-
16 ments made by section 2 shall take effect with respect to
17 a liquidation proceeding under the Securities Investor Pro-
18 tection Act of 1970 that—

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

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

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