

## CHAPTER 7--LIQUIDATION

### SUBCHAPTER I--OFFICERS AND ADMINISTRATION

#### § 701. Interim trustee

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

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

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

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

#### § 702. Election of trustee

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

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

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

(3) is not an insider.

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

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

(1) creditors holding at least 20 percent in amount of the claims of a kind specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section vote; and

(2) such candidate receives the votes of creditors holding a majority in amount of claims specified in subsection (a)(1) of this section that are held by creditors that vote for a trustee.

(d) If a trustee is not elected under this section, then the interim trustee shall serve as trustee in the case.

### § 703. Successor trustee

(a) If a trustee dies or resigns during a case, fails to qualify under section 322 of this title, or is removed under section 324 of this title, creditors may elect, in the manner specified in section 702 of this title, a person to fill the vacancy in the office of trustee.

(b) Pending election of a trustee under subsection (a) of this section, if necessary to preserve or prevent loss to the estate, the United States trustee may appoint an interim trustee in the manner specified in section 701(a).

(c) If creditors do not elect a successor trustee under subsection (a) of this section or if a trustee is needed in a case reopened under section 350 of this title, then the United States trustee--

(1) shall appoint one disinterested person that is a member of the panel of private trustees established under section 586(a)(1) of title 28 to serve as trustee in the case; or

(2) may, if none of the disinterested members of such panel is willing to serve as trustee, serve as trustee in the case.

### § 704. Duties of trustee

(a)<sup>1</sup> The trustee shall--

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

(2) be accountable for all property received;

(3) ensure that the debtor shall perform his intention as specified in section 521(2)(B) of this title;

(4) investigate the financial affairs of the debtor;

(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

(6) if advisable, oppose the discharge of the debtor;

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires; ~~and~~<sup>2</sup>

(9) make a final report and file a final account of the administration of the estate with the

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<sup>1</sup>Bankruptcy Reform Act of 2001, sec. 102(c)(1).

<sup>2</sup>Bankruptcy Reform Act of 2001, sec. 219(a)(1)(A).

court and with the United States trustee;<sup>3</sup>

**(10) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c); and<sup>4</sup>**

**(11) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that-**

**(A) is in the vicinity of the health care business that is closing;**

**(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and**

**(C) maintains a reasonable quality of care.<sup>5</sup>**

**(b) (1) With respect to an individual debtor under this chapter-**

**(A) the United States trustee or bankruptcy administrator shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and**

**(B) not later than 5 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.**

**(2) The United States trustee or bankruptcy administrator shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States trustee or bankruptcy administrator does not believe that such a motion would be appropriate, if the United States trustee or bankruptcy administrator determines that the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than-**

**(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census; or**

**(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census.**

**(3) In any case in which a motion to dismiss or convert, or a statement is**

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<sup>3</sup>Bankruptcy Reform Act of 2001, sec. 219(a)(1)(B).

<sup>4</sup>Bankruptcy Reform Act of 2001, sec. 219(a)(1)(c)

<sup>5</sup>Bankruptcy Reform Act of 2001, sec. 1105(a).

required to be filed by this subsection, the United States trustee or bankruptcy administrator may decline to file a motion to dismiss or convert pursuant to section 704(b)(2) if the product of the debtor's current monthly income multiplied by 12 exceeds 100 percent, but does not exceed 150 percent of-

(A) (i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census; or

(ii) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; and

(B) the product of the debtor's current monthly income, reduced by the amounts determined under section 707(b)(2)(A)(ii) (except for the amount calculated under the other necessary expenses standard issued by the Internal Revenue Service) and clauses (iii) and (iv) of section 707(b)(2)(A), multiplied by 60 is less than the lesser of-

(i) 25 percent of the debtor's nonpriority unsecured claims in the case or \$6,000, whichever is greater; or

(ii) \$10,000.<sup>6</sup>

(c) (1) In any case described in subsection (a)(10), the trustee shall-

(A) (i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664, 666) for the State in which the holder resides for assistance in collecting child support during and after the bankruptcy procedures;

(ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and

(iii) include in the notice an explanation of the rights of the holder of the claim to payment of the claim under this chapter; and

(B) (i) notify in writing the State child support agency of the State in which the holder of the claim resides of the claim;

(ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim; and

(iii) at such time as the debtor is granted a discharge under section 727, notify the holder of that claim and the State child support agency of the State in which that holder resides of-

(I) the granting of the discharge;

(II) the last recent known address of the debtor;

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<sup>6</sup>Bankruptcy Reform Act of 2001, sec. 102(c)(2).

**(III) the last recent known name and address of the debtor's employer; and**  
**(IV) with respect to the debtor's case, the name of each creditor that holds a claim that-**  
**(aa) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or**  
**(bb) was reaffirmed by the debtor under section 524(c).**

**(2) (A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.**

**(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.<sup>7</sup>**

#### § 705. Creditors' committee

(a) At the meeting under section 341(a) of this title, creditors that may vote for a trustee under section 702(a) of this title may elect a committee of not fewer than three, and not more than eleven, creditors, each of whom holds an allowable unsecured claim of a kind entitled to distribution under section 726(a)(2) of this title.

(b) A committee elected under subsection (a) of this section may consult with the trustee or the United States trustee in connection with the administration of the estate, make recommendations to the trustee or the United States trustee respecting the performance of the trustee's duties, and submit to the court or the United States trustee any question affecting the administration of the estate.

#### § 706. Conversion

(a) The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.

(b) On request of a party in interest and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 of this title at any time.

(c) The court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests **or consents to**<sup>8</sup> such conversion.

(d) Notwithstanding any other provision of this section, a case may not be converted to a case

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<sup>7</sup>Bankruptcy Reform Act of 2001, sec. 219(a)(2).

<sup>8</sup>Bankruptcy Reform Act of 2001, sec. 101.

under another chapter of this title unless the debtor may be a debtor under such chapter.

§ 707. ~~Dismissal~~ **Dismissal of a case or conversion to a case under chapter 11 or 13**<sup>9</sup>

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including--

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
- (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.

(b) **(1)**<sup>10</sup> After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, ~~but not at the request or suggestion of trustee, bankruptcy administrator, or~~<sup>11</sup> any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, **or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title,**<sup>12</sup> if it finds that the granting of relief would be ~~a substantial abuse~~ **an abuse**<sup>13</sup> of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor. ~~In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).~~<sup>14</sup>

- (2) **(A) (i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of-**

**(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or \$6,000, whichever is greater; or**

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<sup>9</sup>Bankruptcy Reform Act of 2001, sec. 102(a)(1)

<sup>10</sup>Bankruptcy Reform Act of 2001, sec. 102(a)(2)(A).

<sup>11</sup>Bankruptcy Reform Act of 2001, sec. 102(a)(2)(B)(i)(I).

<sup>12</sup>Bankruptcy Reform Act of 2001, sec. 102(a)(2)(B)(i)(II).

<sup>13</sup>Bankruptcy Reform Act of 2001, sec. 102(a)(2)(B)(i)(III).

<sup>14</sup>Bankruptcy Reform Act of 2001, sec. 102(a)(2)(B)(ii).

**(II) \$10,000.**

**(ii) (I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the entry of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act (42 U.S.C. 10408), or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.**

**(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, and siblings of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case) who is not a dependent and who is unable to pay for such reasonable and necessary expenses.**

**(III) In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.**

**(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child under the**

age of 18 years up to \$1,500 per year per child to attend a private elementary or secondary school, if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary.

(iii) The debtor's average monthly payments on account of secured debts shall be calculated as-

(I) the sum of-

(aa) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and

(bb) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts; divided by

(II) 60.

(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as-

(I) the total amount of debts entitled to priority; divided by

(II) 60.

(B) (i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

(ii) In order to establish special circumstances, the debtor shall be required to-

(I) itemize each additional expense or adjustment of income; and

(II) provide-

(aa) documentation for such expense or adjustment to income; and

(bb) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of-

(I) 25 percent of the debtor's nonpriority unsecured claims, or \$6,000, whichever is greater; or

(II) \$10,000.

(C) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly income, and the calculations that determine whether a presumption arises under subparagraph (A)(i), that shows how each such amount is calculated.

(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of such paragraph does not apply or has been rebutted, the court shall consider-

(A) whether the debtor filed the petition in bad faith; or

(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

(4) (A) The court shall order the counsel for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion brought under section 707(b), including reasonable attorneys' fees, if-

(i) a trustee appointed under section 586(a)(1) of title 28 or from a panel of private trustees maintained by the bankruptcy administrator brings a motion for dismissal or conversion under this subsection; and

(ii) the court-

(I) grants that motion; and

(II) finds that the action of the counsel for the debtor in filing under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, at a minimum, the court shall order-

(i) the assessment of an appropriate civil penalty against the counsel for the debtor; and

(ii) the payment of the civil penalty to the trustee, the United States trustee, or the bankruptcy administrator.

(C) In the case of a petition, pleading, or written motion, the signature of an attorney shall constitute a certification that the attorney has-

- (i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and
- (ii) determined that the petition, pleading, or written motion-
  - (I) is well grounded in fact; and
  - (II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

(5) (A) Except as provided in subparagraph (B) and subject to paragraph (6), the court may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion brought by a party in interest (other than a trustee, United States trustee, or bankruptcy administrator) under this subsection if-

- (i) the court does not grant the motion; and
- (ii) the court finds that-

- (I) the position of the party that brought the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

- (II) the party brought the motion solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

(B) A small business that has a claim of an aggregate amount less than \$1,000 shall not be subject to subparagraph (A)(ii)(I).

(C) For purposes of this paragraph-

- (i) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that-

- (I) has less than 25 full-time employees as determined on the date the motion is filed; and

- (II) is engaged in commercial or business activity; and

- (ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of-

- (I) a parent corporation; and

- (II) any other subsidiary corporation of the parent corporation.

(6) Only the judge, United States trustee, or bankruptcy administrator may bring a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than-

- (A) in the case of a debtor in a household of 1 person, the median family

income of the applicable State for 1 earner last reported by the Bureau of the Census;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus \$525 per month for each individual in excess of 4.

(7) No judge, United States trustee, panel trustee, bankruptcy administrator or other party in interest may bring a motion under paragraph (2), if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than-

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus \$525 per month for each individual in excess of 4.<sup>15</sup>

(c) (1) In this subsection-

(A) the term 'crime of violence' has the meaning given that term in section 16 of title 18; and

(B) the term 'drug trafficking crime' has the meaning given that term in section 924(c)(2) of title 18.

(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victims dismiss a voluntary case filed by an individual debtor under this chapter if that individual was convicted of that crime.

(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.<sup>16</sup>

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<sup>15</sup>Bankruptcy Reform Act of 2001, sec. 102(a)(2)(C).

<sup>16</sup>Bankruptcy Reform Act of 2001, sec. 102(f)

## SUBCHAPTER II--COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

### § 721. Authorization to operate business

The court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate.

### § 722. Redemption

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien **in full at the time of redemption**<sup>17</sup>.

### § 723. Rights of partnership trustee against general partners

(a) If there is a deficiency of property of the estate to pay in full all claims which are allowed in a case under this chapter concerning a partnership and with respect to which a general partner of the partnership is personally liable, the trustee shall have a claim against such general partner to the extent that under applicable nonbankruptcy law such general partner is personally liable for such deficiency.

(b) To the extent practicable, the trustee shall first seek recovery of such deficiency from any general partner in such partnership that is not a debtor in a case under this title. Pending determination of such deficiency, the court may order any such partner to provide the estate with indemnity for, or assurance of payment of, any deficiency recoverable from such partner, or not to dispose of property.

(c) Notwithstanding section 728(c) of this title, the trustee has a claim against the estate of each general partner in such partnership that is a debtor in a case under this title for the full amount of all claims of creditors allowed in the case concerning such partnership. Notwithstanding section 502 of this title, there shall not be allowed in such partner's case a claim against such partner on which both such partner and such partnership are liable, except to any extent that such claim is secured only by property of such partner and not by property of such partnership. The claim of the trustee under this subsection is entitled to distribution in such partner's case under section 726(a) of this title the same as any other claim of a kind specified in such section.

(d) If the aggregate that the trustee recovers from the estates of general partners under subsection (c) of this section is greater than any deficiency not recovered under subsection (b) of this section, the court, after notice and a hearing, shall determine an equitable distribution of the surplus so

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<sup>17</sup>Bankruptcy Reform Act of 2001, sec. 304(2).

recovered, and the trustee shall distribute such surplus to the estates of the general partners in such partnership according to such determination.

§ 724. Treatment of certain liens

(a) The trustee may avoid a lien that secures a claim of a kind specified in section 726(a)(4) of this title.

(b) Property in which the estate has an interest and that is subject to a lien that is not avoidable under this title (**other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate**)<sup>18</sup> and that secures an allowed claim for a tax, or proceeds of such property, shall be distributed--

(1) first, to any holder of an allowed claim secured by a lien on such property that is not avoidable under this title and that is senior to such tax lien;

(2) second, to any holder of a claim of a kind specified in section 507(a)(1)(**except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title**)<sup>19</sup>, 507(a)(2), 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, to the extent of the amount of such allowed tax claim that is secured by such tax lien;

(3) third, to the holder of such tax lien, to any extent that such holder's allowed tax claim that is secured by such tax lien exceeds any amount distributed under paragraph (2) of this subsection;

(4) fourth, to any holder of an allowed claim secured by a lien on such property that is not avoidable under this title and that is junior to such tax lien;

(5) fifth, to the holder of such tax lien, to the extent that such holder's allowed claim secured by such tax lien is not paid under paragraph (3) of this subsection; and

(6) sixth, to the estate.

(c) If more than one holder of a claim is entitled to distribution under a particular paragraph of subsection (b) of this section, distribution to such holders under such paragraph shall be in the same order as distribution to such holders would have been other than under this section.

(d) A statutory lien the priority of which is determined in the same manner as the priority of a tax lien under section 6323 of the Internal Revenue Code of 1986 shall be treated under subsection (b) of this section the same as if such lien were a tax lien.

**(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall-**

**(1) exhaust the unencumbered assets of the estate; and**

**(2) in a manner consistent with section 506(c), recover from property securing**

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<sup>18</sup>Bankruptcy Reform Act of 2001, sec. 701(a)(1).

<sup>19</sup>Bankruptcy Reform Act of 2001, sec. 701(a)(2).

**an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.**

**(f) Notwithstanding the exclusion of ad valorem tax liens under this section and subject to the requirements of subsection (e), the following may be paid from property of the estate which secures a tax lien, or the proceeds of such property:**

**(1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(4).**

**(2) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(5).<sup>20</sup>**

#### § 725. Disposition of certain property

After the commencement of a case under this chapter, but before final distribution of property of the estate under section 726 of this title, the trustee, after notice and a hearing, shall dispose of any property in which an entity other than the estate has an interest, such as a lien, and that has not been disposed of under another section of this title.

#### § 726. Distribution of property of the estate

(a) Except as provided in section 510 of this title, property of the estate shall be distributed--

(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed ~~before the date on which the trustee commences distribution under this section;~~

**(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or**

**(B) the date on which the trustee commences final distribution under this section;<sup>21</sup>**

(2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is--

(A) timely filed under section 501(a) of this title;

(B) timely filed under section 501(b) or 501(c) of this title; or

(C) tardily filed under section 501(a) of this title, if--

(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and

(ii) proof of such claim is filed in time to permit payment of such claim;

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed

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<sup>20</sup>Bankruptcy Reform Act of 2001, sec. 701(a)(3).

<sup>21</sup>Bankruptcy Reform Act of 2001, sec. 713.

under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection;

(4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim;

(5) fifth, in payment of interest at the legal rate from the date of the filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4) of this subsection; and

(6) sixth, to the debtor.

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6), (7), or (8) of section 507(a) of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in each such particular paragraph, except that in a case that has been converted to this chapter under section ~~1009~~<sup>22</sup> 1112, 1208, or 1307 of this title, a claim allowed under section 503(b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503(b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.

(c) Notwithstanding subsections (a) and (b) of this section, if there is property of the kind specified in section 541(a)(2) of this title, or proceeds of such property, in the estate, such property or proceeds shall be segregated from other property of the estate, and such property or proceeds and other property of the estate shall be distributed as follows:

(1) Claims allowed under section 503 of this title shall be paid either from property of the kind specified in section 541(a)(2) of this title, or from other property of the estate, as the interest of justice requires.

(2) Allowed claims, other than claims allowed under section 503 of this title, shall be paid in the order specified in subsection (a) of this section, and, with respect to claims of a kind specified in a particular paragraph of section 507 of this title or subsection (a) of this section, in the following order and manner:

(A) First, community claims against the debtor or the debtor's spouse shall be paid from property of the kind specified in section 541(a)(2) of this title, except to the extent that such property is solely liable for debts of the debtor.

(B) Second, to the extent that community claims against the debtor are not paid under subparagraph (A) of this paragraph, such community claims shall be paid from property of the kind specified in section 541(a)(2) of this title that is solely liable for debts of the debtor.

(C) Third, to the extent that all claims against the debtor including community claims against the debtor are not paid under subparagraph (A) or (B) of this paragraph

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<sup>22</sup>Bankruptcy Reform Act of 2001, sec. 1215.

such claims shall be paid from property of the estate other than property of the kind specified in section 541(a)(2) of this title.

(D) Fourth, to the extent that community claims against the debtor or the debtor's spouse are not paid under subparagraph (A), (B), or (C) of this paragraph, such claims shall be paid from all remaining property of the estate.

## § 727. Discharge

(a) The court shall grant the debtor a discharge, unless--

(1) the debtor is not an individual;

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed--

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

(4) the debtor knowingly and fraudulently, in or in connection with the case--

(A) made a false oath or account;

(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or

(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;

(5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;

(6) the debtor has refused, in the case--

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;

(7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider;

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within ~~six~~ <sup>8</sup><sup>23</sup> years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least--

(A) 100 percent of the allowed unsecured claims in such case; or

(B) (i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort; ~~or~~<sup>24</sup>

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter; ~~or~~<sup>25</sup>

**(11) after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111.**

**(12) (A) Paragraph (11) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of that district determines that the approved instructional courses are not adequate to service the additional individuals required to complete such instructional courses under this section.**

**(B) Each United States trustee or bankruptcy administrator that makes a determination described in subparagraph (A) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.**<sup>26</sup>

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or

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<sup>23</sup>Bankruptcy Reform Act of 2001, sec. 312(1).

<sup>24</sup>Bankruptcy Reform Act of 2001, sec. 106(b)(1).

<sup>25</sup>Bankruptcy Reform Act of 2001, sec. 106(b)(2).

<sup>26</sup>Bankruptcy Reform Act of 2001, sec. 106(b)(3).

liability is allowed under section 502 of this title.

(c) (1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if--

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; ~~or~~<sup>27</sup>

(3) the debtor committed an act specified in subsection (a)(6) of this section; ~~or~~<sup>28</sup>

**(4) the debtor has failed to explain satisfactorily-**

**(A) a material misstatement in an audit referred to in section 586(f) of title 28; or**

**(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.**<sup>29</sup>

(e) The trustee, a creditor, or the United States trustee may request a revocation of a discharge--

(1) under subsection (d)(1) of this section within one year after such discharge is granted; or

(2) under subsection (d)(2) or (d)(3) of this section before the later of--

(A) one year after the granting of such discharge; and

(B) the date the case is closed.

## § 728. Special tax provisions

~~(a) For the purposes of any State or local law imposing a tax on or measured by income, the~~

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<sup>27</sup>Bankruptcy Reform Act of 2001, sec. 603(d)(1) (sec. 603(e) states: "The amendments made by this section shall take effect 18 months after the date of enactment of this Act.").

<sup>28</sup>Bankruptcy Reform Act of 2001, sec. 603(d)(2) (sec. 603(e) states: "The amendments made by this section shall take effect 18 months after the date of enactment of this Act.").

<sup>29</sup>Bankruptcy Reform Act of 2001, sec. 603(d)(3) (sec. 603(e) states: "The amendments made by this section shall take effect 18 months after the date of enactment of this Act.").

taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 1112 or 1208 of this title.

(b) Notwithstanding any State or local law imposing a tax on or measured by income, the trustee shall make tax returns of income for the estate of an individual debtor in a case under this chapter or for a debtor that is a corporation in a case under this chapter only if such estate or corporation has net taxable income for the entire period after the order for relief under this chapter during which the case is pending. If such entity has such income, or if the debtor is a partnership, then the trustee shall make and file a return of income for each taxable period during which the case was pending after the order for relief under this chapter.

(c) If there are pending a case under this chapter concerning a partnership and a case under this chapter concerning a partner in such partnership, a governmental unit's claim for any unpaid liability of such partner for a State or local tax on or measured by income, to the extent that such liability arose from the inclusion in such partner's taxable income of earnings of such partnership that were not withdrawn by such partner, is a claim only against such partnership.

(d) Notwithstanding section 541 of this title, if there are pending a case under this chapter concerning a partnership and a case under this chapter concerning a partner in such partnership, then any State or local tax refund or reduction of tax of such partner that would have otherwise been property of the estate of such partner under section 541 of this title--

(1) is property of the estate of such partnership to the extent that such tax refund or reduction of tax is fairly apportionable to losses sustained by such partnership and not reimbursed by such partner; and

(2) is otherwise property of the estate of such partner.<sup>30</sup>

### SUBCHAPTER III--STOCKBROKER LIQUIDATION

#### § 741. Definitions for this subchapter

In this subchapter--

(1) "Commission" means Securities and Exchange Commission;

(2) "customer" includes--

(A) entity with whom a person deals as principal or agent and that has a claim against such person on account of a security received, acquired, or held by such person in the ordinary course of such person's business as a stockbroker, from or for the securities account or accounts of such entity--

(i) for safekeeping;

(ii) with a view to sale;

(iii) to cover a consummated sale;

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<sup>30</sup>Bankruptcy Reform Act of 2001, 719(b)(1) (repealing 11 U.S.C. § 728) (fails to provide for clerical amendment to remove § 728 from table of sections).

- (iv) pursuant to a purchase;
  - (v) as collateral under a security agreement; or
  - (vi) for the purpose of effecting registration of transfer; and
- (B) entity that has a claim against a person arising out of--
- (i) a sale or conversion of a security received, acquired, or held as specified in subparagraph (A) of this paragraph; or
  - (ii) a deposit of cash, a security, or other property with such person for the purpose of purchasing or selling a security;
- (3) "customer name security" means security--
- (A) held for the account of a customer on the date of the filing of the petition by or on behalf of the debtor;
  - (B) registered in such customer's name on such date or in the process of being so registered under instructions from the debtor; and
  - (C) not in a form transferable by delivery on such date;
- (4) "customer property" means cash, security, or other property, and proceeds of such cash, security, or property, received, acquired, or held by or for the account of the debtor, from or for the securities account of a customer--
- (A) including--
    - (i) property that was unlawfully converted from and that is the lawful property of the estate;
    - (ii) a security held as property of the debtor to the extent such security is necessary to meet a net equity claim of a customer based on a security of the same class and series of an issuer;
    - (iii) resources provided through the use or realization of a customer's debit cash balance or a debit item includible in the Formula for Determination of Reserve Requirement for Brokers and Dealers as promulgated by the Commission under the Securities Exchange Act of 1934; and
    - (iv) other property of the debtor that any applicable law, rule, or regulation requires to be set aside or held for the benefit of a customer, unless including such property as customer property would not significantly increase customer property; but
  - (B) not including--
    - (i) a customer name security delivered to or reclaimed by a customer under section 751 of this title; or
    - (ii) property to the extent that a customer does not have a claim against the debtor based on such property;
- (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;
- (6) "net equity" means, with respect to all accounts of a customer that such customer has in the same capacity--

(A) (i) aggregate dollar balance that would remain in such accounts after the liquidation, by sale or purchase, at the time of the filing of the petition, of all securities positions in all such accounts, except any customer name securities of such customer; minus

(ii) any claim of the debtor against such customer in such capacity that would have been owing immediately after such liquidation; plus

(B) any payment by such customer to the trustee, within 60 days after notice under section 342 of this title, of any business related claim of the debtor against such customer in such capacity;

~~(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, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating to foreign currencies, or the guarantee of any settlement of cash or securities by or to a securities clearing agency;~~

**(7) "securities contract "-**

**(A) means-**

**(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;**

**(ii) any option entered into on a national securities exchange relating to foreign currencies;**

**(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;**

**(iv) any margin loan;**

**(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;**

**(vi) any combination of the agreements or transactions referred to in this subparagraph;**

**(vii) any option to enter into any agreement or transaction referred to in this subparagraph;**

**(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a**

**securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or**

**(ix) any security agreement or arrangement or other credit enhancement, related to any agreement or transaction referred to in this subparagraph, but not to exceed the actual value of such contract on the date of the filing of the petition; and**

**(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan.<sup>31</sup>**

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

(9) "SIPC" means Securities Investor Protection Corporation.

#### § 742. Effect of section 362 of this title in this subchapter

Notwithstanding section 362 of this title, SIPC may file an application for a protective decree under the Securities Investor Protection Act of 1970. The filing of such application stays all proceedings in the case under this title unless and until such application is dismissed. If SIPC completes the liquidation of the debtor, then the court shall dismiss the case.

#### § 743. Notice

The clerk shall give the notice required by section 342 of this title to SIPC and to the Commission.

#### § 744. Executory contracts

Notwithstanding section 365(d) (1) of this title, the trustee shall assume or reject, under section 365 of this title, any executory contract of the debtor for the purchase or sale of a security in the ordinary course of the debtor's business, within a reasonable time after the date of the order for relief, but not to exceed 30 days. If the trustee does not assume such a contract within such time, such contract is rejected.

#### § 745. Treatment of accounts

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<sup>31</sup>Bankruptcy Reform Act of 2001, sec. 907(a)(2).

(a) Accounts held by the debtor for a particular customer in separate capacities shall be treated as accounts of separate customers.

(b) If a stockbroker or a bank holds a customer net equity claim against the debtor that arose out of a transaction for a customer of such stockbroker or bank, each such customer of such stockbroker or bank shall be treated as a separate customer of the debtor.

(c) Each trustee's account specified as such on the debtor's books, and supported by a trust deed filed with, and qualified as such by, the Internal Revenue Service, and under the Internal Revenue Code of 1986, shall be treated as a separate customer account for each beneficiary under such trustee account.

#### § 746. Extent of customer claims

(a) If, after the date of the filing of the petition, an entity enters into a transaction with the debtor, in a manner that would have made such entity a customer had such transaction occurred before the date of the filing of the petition, and such transaction was entered into by such entity in good faith and before the qualification under section 322 of this title of a trustee, such entity shall be deemed a customer, and the date of such transaction shall be deemed to be the date of the filing of the petition for the purpose of determining such entity's net equity.

(b) An entity does not have a claim as a customer to the extent that such entity transferred to the debtor cash or a security that, by contract, agreement, understanding, or operation of law, is--

- (1) part of the capital of the debtor; or
- (2) subordinated to the claims of any or all creditors.

#### § 747. Subordination of certain customer claims

Except as provided in section 510 of this title, unless all other customer net equity claims have been paid in full, the trustee may not pay in full or pay in part, directly or indirectly, any net equity claim of a customer that was, on the date the transaction giving rise to such claim occurred--

- (1) an insider;
- (2) a beneficial owner of at least five percent of any class of equity securities of the debtor, other than--
  - (A) nonconvertible stock having fixed preferential dividend and liquidation rights; or
  - (B) interests of limited partners in a limited partnership;
- (3) a limited partner with a participation of at least five percent in the net assets or net profits of the debtor; or
- (4) an entity that, directly or indirectly, through agreement or otherwise, exercised or had the power to exercise control over the management or policies of the debtor.

#### § 748. Reduction of securities to money

As soon as practicable after the date of the order for relief, the trustee shall reduce to money,

consistent with good market practice, all securities held as property of the estate, except for customer name securities delivered or reclaimed under section 751 of this title.

#### § 749. Voidable transfers

(a) Except as otherwise provided in this section, any transfer of property that, but for such transfer, would have been customer property, may be avoided by the trustee, and such property shall be treated as customer property, if and to the extent that the trustee avoids such transfer under section 544, 545, 547, 548, or 549 of this title. For the purpose of such sections, the property so transferred shall be deemed to have been property of the debtor and, if such transfer was made to a customer or for a customer's benefit, such customer shall be deemed, for the purposes of this section, to have been a creditor.

(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.

#### § 750. Distribution of securities

The trustee may not distribute a security except under section 751 of this title.

#### § 751. Customer name securities

The trustee shall deliver any customer name security to or on behalf of the customer entitled to such security, unless such customer has a negative net equity. With the approval of the trustee, a customer may reclaim a customer name security after payment to the trustee, within such period as the trustee allows, of any claim of the debtor against such customer to the extent that such customer will not have a negative net equity after such payment.

#### § 752. Customer property

(a) The trustee shall distribute customer property ratably to customers on the basis and to the extent of such customers' allowed net equity claims and in priority to all other claims, except claims of the kind specified in section 507(a)(1) of this title that are attributable to the administration of such customer property.

- (b) (1) The trustee shall distribute customer property in excess of that distributed under subsection (a) of this section in accordance with section 726 of this title.

(2) Except as provided in section 510 of this title, if a customer is not paid the full amount of such customer's allowed net equity claim from customer property, the unpaid portion of such claim is a claim entitled to distribution under section 726 of this title.

(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.

**§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants**

**Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, financial participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.**<sup>32</sup>

SUBCHAPTER IV--COMMODITY BROKER LIQUIDATION

§ 761. Definitions for this subchapter

In this subchapter--

(1) "Act" means Commodity Exchange Act;

~~(2) "clearing organization" means organization that clears commodity contracts made on, or subject to the rules of, a contract market or board of trade;~~

**(2) 'clearing organization' means a derivatives clearing organization registered under the Act;**<sup>33</sup>

(3) "Commission" means Commodity Futures Trading Commission;

(4) "commodity contract" means--

(A) with respect to a futures commission merchant, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(B) with respect to a foreign futures commission merchant, foreign future;

(C) with respect to a leverage transaction merchant, leverage transaction;

(D) with respect to a clearing organization, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade

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<sup>32</sup>Bankruptcy Reform Act of 2001, sec 907(m).

<sup>33</sup>114 Stat 2763, \*2764, sec. 112(c)(6)(A).

that is 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; or<sup>34</sup>

(E) with respect to a commodity options dealer, commodity option;

**(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;**

**(G) any combination of the agreements or transactions referred to in this paragraph;**

**(H) any option to enter into an agreement or transaction referred to in this paragraph;**

**(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or**

**(J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition;**<sup>35</sup>

(5) "commodity option" means agreement or transaction subject to regulation under section 4c(b) of the Act;

(6) "commodity options dealer" means person that extends credit to, or that accepts cash, a security, or other property from, a customer of such person for the purchase or sale of an interest in a commodity option;

~~(7) "contract market" means board of trade designated as a contract market by the Commission under the Act;~~

**(7) 'contract market' means a registered entity;**<sup>36</sup>

~~(8) "contract of sale", "commodity", "future delivery", "board of trade", and "futures commission merchant" have the meanings assigned to those terms in the Act;~~

**(8) 'contract of sale', 'commodity', 'derivatives clearing organization', 'future delivery', 'board of trade', 'registered entity', and 'futures commission merchant' have the meanings assigned to those terms in the Act;**<sup>37</sup>

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<sup>34</sup>Bankruptcy Reform Act of 2001, sec. 907(a)(3)(A).

<sup>35</sup>Bankruptcy Reform Act of 2001, sec. 907(a)(3)(B).

<sup>36</sup>114 Stat 2763, \*2764, sec. 112(c)(6)(B).

<sup>37</sup>114 Stat 2763, \*2764, sec. 112(c)(6)(C).

(9) "customer" means--

(A) with respect to a futures commission merchant--

(i) entity for or with whom such futures commission merchant deals and that holds a claim against such futures commission merchant on account of a commodity contract made, received, acquired, or held by or through such futures commission merchant in the ordinary course of such futures commission merchant's business as a futures commission merchant from or for the commodity futures account of such entity; or

(ii) entity that holds a claim against such futures commission merchant arising out of--

(I) the making, liquidation, or change in the value of a commodity contract of a kind specified in clause (i) of this subparagraph;

(II) a deposit or payment of cash, a security, or other property with such futures commission merchant for the purpose of making or margining such a commodity contract; or

(III) the making or taking of delivery on such a commodity contract;

(B) with respect to a foreign futures commission merchant--

(i) entity for or with whom such foreign futures commission merchant deals and that holds a claim against such foreign futures commission merchant on account of a commodity contract made, received, acquired, or held by or through such foreign futures commission merchant in the ordinary course of such foreign futures commission merchant's business as a foreign futures commission merchant from or for the foreign futures account of such entity; or

(ii) entity that holds a claim against such foreign futures commission merchant arising out of--

(I) the making, liquidation, or change in value of a commodity contract of a kind specified in clause (i) of this subparagraph;

(II) a deposit or payment of cash, a security, or other property with such foreign futures commission merchant for the purpose of making or margining such a commodity contract; or

(III) the making or taking of delivery on such a commodity contract;

(C) with respect to a leverage transaction merchant--

(i) entity for or with whom such leverage transaction merchant deals and that holds a claim against such leverage transaction merchant on account of a commodity contract engaged in by or with such leverage transaction merchant in the ordinary course of such leverage transaction merchant's business as a leverage transaction merchant from or for the leverage account of such entity; or

(ii) entity that holds a claim against such leverage transaction merchant arising out of--

(I) the making, liquidation, or change in value of a commodity contract of a kind specified in clause (i) of this subparagraph;

(II) a deposit or payment of cash, a security, or other property with such leverage transaction merchant for the purpose of entering into or margining such a commodity contract; or

(III) the making or taking of delivery on such a commodity contract;

(D) with respect to a clearing organization, clearing member of such clearing organization with whom such clearing organization deals and that holds a claim against such clearing organization on account of cash, a security, or other property received by such clearing organization to margin, guarantee, or secure a commodity contract in such clearing member's proprietary account or customers' account; or

(E) with respect to a commodity options dealer--

(i) entity for or with whom such commodity options dealer deals and that holds a claim on account of a commodity contract made, received, acquired, or held by or through such commodity options dealer in the ordinary course of such commodity options dealer's business as a commodity options dealer from or for the commodity options account of such entity; or

(ii) entity that holds a claim against such commodity options dealer arising out of--

(I) the making of, liquidation of, exercise of, or a change in value of, a commodity contract of a kind specified in clause (i) of this subparagraph; or

(II) a deposit or payment of cash, a security, or other property with such commodity options dealer for the purpose of making, exercising, or margining such a commodity contract;

(10) "customer property" means cash, a security, or other property, or proceeds of such cash, security, or property, received, acquired, or held by or for the account of the debtor, from or for the account of a customer--

(A) including--

(i) property received, acquired, or held to margin, guarantee, secure, purchase, or sell a commodity contract;

(ii) profits or contractual or other rights accruing to a customer as a result of a commodity contract;

(iii) an open commodity contract;

(iv) specifically identifiable customer property;

(v) warehouse receipt or other document held by the debtor evidencing ownership of or title to property to be delivered to fulfill a commodity contract from or for the account of a customer;

(vi) cash, a security, or other property received by the debtor as payment for a commodity to be delivered to fulfill a commodity contract from or for the account of a customer;

(vii) a security held as property of the debtor to the extent such security is necessary to meet a net equity claim based on a security of the same class and series of an issuer;

(viii) property that was unlawfully converted from and that is the lawful property of the estate; and

(ix) other property of the debtor that any applicable law, rule, or regulation requires to be set aside or held for the benefit of a customer, unless including such property as customer property would not significantly increase customer property; but (B) not including property to the extent that a customer does not have a claim against the debtor based on such property;

(11) "foreign future" means contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade outside the United States;

(12) "foreign futures commission merchant" means entity engaged in soliciting or accepting orders for the purchase or sale of a foreign future or that, in connection with such a solicitation or acceptance, accepts cash, a security, or other property, or extends credit to margin, guarantee, or secure any trade or contract that results from such a solicitation or acceptance;

(13) "leverage transaction" means agreement that is subject to regulation under section 19 of the Commodity Exchange Act, and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract;

(14) "leverage transaction merchant" means person in the business of engaging in leverage transactions;

(15) "margin payment" means payment or deposit of cash, a security, or other property, that is commonly known to the commodities trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, settlement payments, variation payments, daily settlement payments, and final settlement payments made as adjustments to settlement prices;

(16) "member property" means customer property received, acquired, or held by or for the account of a debtor that is a clearing organization, from or for the proprietary account of a customer that is a clearing member of the debtor; and

(17) "net equity" means, subject to such rules and regulations as the Commission promulgates under the Act, with respect to the aggregate of all of a customer's accounts that such customer has in the same capacity--

(A) the balance remaining in such customer's accounts immediately after--

(i) all commodity contracts of such customer have been transferred, liquidated, or become identified for delivery; and

(ii) all obligations of such customer in such capacity to the debtor have been offset; plus

(B) the value, as of the date of return under section 766 of this title, of any specifically identifiable customer property actually returned to such customer before the date specified in subparagraph (A) of this paragraph; plus

(C) the value, as of the date of transfer, of--

(i) any commodity contract to which such customer is entitled that is transferred to another person under section 766 of this title; and

(ii) any cash, security, or other property of such customer transferred to such other person under section 766 of this title to margin or secure such transferred

commodity contract.

§ 762. Notice to the Commission and right to be heard

(a) The clerk shall give the notice required by section 342 of this title to the Commission.

(b) The Commission may raise and may appear and be heard on any issue in a case under this chapter.

§ 763. Treatment of accounts

(a) Accounts held by the debtor for a particular customer in separate capacities shall be treated as accounts of separate customers.

(b) A member of a clearing organization shall be deemed to hold such member's proprietary account in a separate capacity from such member's customers' account.

(c) The net equity in a customer's account may not be offset against the net equity in the account of any other customer.

§ 764. Voidable transfers

(a) Except as otherwise provided in this section, any transfer by the debtor of property that, but for such transfer, would have been customer property, may be avoided by the trustee, and such property shall be treated as customer property, if and to the extent that the trustee avoids such transfer under section 544, 545, 547, 548, 549, or 724(a) of this title. For the purpose of such sections, the property so transferred shall be deemed to have been property of the debtor, and, if such transfer was made to a customer or for a customer's benefit, such customer shall be deemed, for the purposes of this section, to have been a creditor.

(b) Notwithstanding sections 544, 545, 547, 548, 549, and 724(a) 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 commodity contract entered into or carried by or through the debtor on behalf of a customer, and of any cash, securities, or other property margining or securing such commodity contract; or

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

§ 765. Customer instructions

(a) The notice required by section 342 of this title to customers shall instruct each customer--

(1) to file a proof of such customer's claim promptly, and to specify in such claim any specifically identifiable security, property, or commodity contract; and

(2) to instruct the trustee of such customer's desired disposition, including transfer under

section 766 of this title or liquidation, of any commodity contract specifically identified to such customer.

(b) The trustee shall comply, to the extent practicable, with any instruction received from a customer regarding such customer's desired disposition of any commodity contract specifically identified to such customer. If the trustee has transferred, under section 766 of this title, such a commodity contract, the trustee shall transmit any such instruction to the commodity broker to whom such commodity contract was so transferred.

#### § 766. Treatment of customer property

(a) The trustee shall answer all margin calls with respect to a specifically identifiable commodity contract of a customer until such time as the trustee returns or transfers such commodity contract, but the trustee may not make a margin payment that has the effect of a distribution to such customer of more than that to which such customer is entitled under subsection (h) or (i) of this section.

(b) The trustee shall prevent any open commodity contract from remaining open after the last day of trading in such commodity contract, or into the first day on which notice of intent to deliver on such commodity contract may be tendered, whichever occurs first. With respect to any commodity contract that has remained open after the last day of trading in such commodity contract or with respect to which delivery must be made or accepted under the rules of the contract market on which such commodity contract was made, the trustee may operate the business of the debtor for the purpose of--

- (1) accepting or making tender of notice of intent to deliver the physical commodity underlying such commodity contract;
- (2) facilitating delivery of such commodity; or
- (3) disposing of such commodity if a party to such commodity contract defaults.

(c) The trustee shall return promptly to a customer any specifically identifiable security, property, or commodity contract to which such customer is entitled, or shall transfer, on such customer's behalf, such security, property, or commodity contract to a commodity broker that is not a debtor under this title, subject to such rules or regulations as the Commission may prescribe, to the extent that the value of such security, property, or commodity contract does not exceed the amount to which such customer would be entitled under subsection (h) or (i) of this section if such security, property, or commodity contract were not returned or transferred under this subsection.

(d) If the value of a specifically identifiable security, property, or commodity contract exceeds the amount to which the customer of the debtor is entitled under subsection (h) or (i) of this section, then such customer to whom such security, property, or commodity contract is specifically identified may deposit cash with the trustee equal to the difference between the value of such security, property, or commodity contract and such amount, and the trustee then shall--

- (1) return promptly such security, property, or commodity contract to such customer;
- or
- (2) transfer, on such customer's behalf, such security, property, or commodity contract to a commodity broker that is not a debtor under this title, subject to such rules or regulations

as the Commission may prescribe.

(e) Subject to subsection (b) of this section, the trustee shall liquidate any commodity contract that--

- (1) is identified to a particular customer and with respect to which such customer has not timely instructed the trustee as to the desired disposition of such commodity contract;
- (2) cannot be transferred under subsection (c) of this section; or
- (3) cannot be identified to a particular customer.

(f) As soon as practicable after the commencement of the case, the trustee shall reduce to money, consistent with good market practice, all securities and other property, other than commodity contracts, held as property of the estate, except for specifically identifiable securities or property distributable under subsection (h) or (i) of this section.

(g) The trustee may not distribute a security or other property except under subsection (h) or (i) of this section.

(h) Except as provided in subsection (b) of this section, the trustee shall distribute customer property ratably to customers on the basis and to the extent of such customers' allowed net equity claims, and in priority to all other claims, except claims of a kind specified in section 507(a)(1) of this title that are attributable to the administration of customer property. Such distribution shall be in the form of--

- (1) cash;
- (2) the return or transfer, under subsection (c) or (d) of this section, of specifically identifiable customer securities, property, or commodity contracts; or
- (3) payment of margin calls under subsection (a) of this section.

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.

(i) If the debtor is a clearing organization, the trustee shall distribute--

- (1) customer property, other than member property, ratably to customers on the basis and to the extent of such customers' allowed net equity claims based on such customers' accounts other than proprietary accounts, and in priority to all other claims, except claims of a kind specified in section 507(a)(1) of this title that are attributable to the administration of such customer property; and
- (2) member property ratably to customers on the basis and to the extent of such customers' allowed net equity claims based on such customers' proprietary accounts, and in priority to all other claims, except claims of a kind specified in section 507(a)(1) of this title that are attributable to the administration of member property or customer property.

(j) (1) The trustee shall distribute customer property in excess of that distributed under subsection (h) or (i) of this section in accordance with section 726 of this title.

(2) Except as provided in section 510 of this title, if a customer is not paid the full amount of such customer's allowed net equity claim from customer property, the unpaid portion of such claim is a claim entitled to distribution under section 726 of this title.

## **§ 767. Commodity broker liquidation and forward contract merchants, commodity**

brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.<sup>38</sup>

## **SUBCHAPTER V--CLEARING BANK LIQUIDATION**

### **§ 781. Definitions**

For purposes of this subchapter, the following definitions shall apply:

(1) **BOARD.**--The term 'Board' means the Board of Governors of the Federal Reserve System.

(2) **DEPOSITORY INSTITUTION.**--The term 'depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(3) **CLEARING BANK.**--The term 'clearing bank' means an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

### **§ 782. Selection of trustee**

(a) **IN GENERAL.**--

(1) **APPOINTMENT.**--Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Board designates an alternative trustee.

(2) **SUCCESSOR.**--The Board may designate a successor trustee if required.

(b) **AUTHORITY OF TRUSTEE.**--Whenever the Board appoints or designates a trustee, chapter 3 and sections 704 and 705 of this title shall apply to the Board in the same way and to the same extent that they apply to a United States trustee.

### **§ 783. Additional powers of trustee**

(a) **DISTRIBUTION OF PROPERTY NOT OF THE ESTATE.**--The trustee under this subchapter has power to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and IV of this chapter.

(b) **DISPOSITION OF INSTITUTION.**--The trustee under this subchapter may, after

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<sup>38</sup>Bankruptcy Reform Act of 2001, sec. 907(l).

notice and a hearing--

(1) sell the clearing bank to a depository institution or consortium of depository institutions (which consortium may agree on the allocation of the clearing bank among the consortium);

(2) merge the clearing bank with a depository institution;

(3) transfer contracts to the same extent as could a receiver for a depository institution under paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act;

(4) transfer assets or liabilities to a depository institution; and

(5) transfer assets and liabilities to a bridge bank as provided in paragraphs (1), (3)(A), (5), and (6) of section 11(n) of the Federal Deposit Insurance Act, paragraphs (9) through (13) of such section, and subparagraphs (A) through (H) and subparagraph (K) of paragraph (4) of such section 11(n), except that--

(A) the bridge bank to which such assets or liabilities are transferred shall be treated as a clearing bank for the purpose of this subsection; and

(B) any references in any such provision of law to the Federal Deposit Insurance Corporation shall be construed to be references to the appointing agency and that references to deposit insurance shall be omitted.

(c) **CERTAIN TRANSFERS INCLUDED.**--Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

#### **§ 784. Right to be heard**

The Board or a Federal reserve bank (in the case of a clearing bank that is a member of that bank) may raise and may appear and be heard on any issue in a case under this subchapter.<sup>39</sup>

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<sup>39</sup>114 Stat. 2763, \*2764, sec. 112(c)(5)(B).