

112TH CONGRESS  
1ST SESSION

# H. R. 757

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.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 17, 2011

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

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## 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 capaci-

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

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

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

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

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

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

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

1 spect to any customer of the debtor;  
2 or

3 “(II) was a person that—

4 “(aa) was, or was required  
5 to be, registered—

6 “(AA) as a broker or  
7 dealer under the Securities  
8 Exchange Act of 1934; or

9 “(BB) as an investment  
10 adviser under the Invest-  
11 ment Advisers Act of 1940,  
12 or that would have been re-  
13 quired to register as an in-  
14 vestment adviser under the  
15 Investment Advisers Act of  
16 1940 but for section 203(m)  
17 of such Act;

18 “(bb) knew, or, due to the  
19 activities of such person causing  
20 such person to be described  
21 under item (aa), should have  
22 known, that the debtor was in-  
23 volved in fraudulent activity with  
24 respect to any customer of the  
25 debtor; and

1                   “(cc) did not notify SIPC,  
2                   the Commission, or law enforce-  
3                   ment personnel that the debtor  
4                   was involved in such fraudulent  
5                   activity.”.

6           (b) PROHIBITION ON CERTAIN RECOVERIES.—

7                   (1) IN GENERAL.—Section 8 of the Securities  
8           Investor Protection Act of 1970 (15 U.S.C. 78fff–2)  
9           is amended by adding at the end the following new  
10          subsection:

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

16                   “(1) knew the debtor was involved in fraudulent  
17                  activity with respect to any customer of the debtor;  
18                  or

19                   “(2) was a person that—

20                                  “(A) was, or was required to be, reg-  
21                                  istered—

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

24    “(ii) as an investment adviser under  
25    the Investment Advisers Act of 1940, or

1           that would have been required to register  
2           as an investment adviser under the Invest-  
3           ment Advisers Act of 1940 but for section  
4           203(m) of such Act;

5           “(B) knew, or, due to the activities of such  
6           person causing such person to be described  
7           under subparagraph (A), should have known,  
8           that the debtor was involved in fraudulent ac-  
9           tivity with respect to any customer of the debt-  
10          or; and

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

14          (2) CONSTRUCTION.—Nothing in this Act, or  
15          the amendments made by this Act, shall be con-  
16          strued as prohibiting a trustee appointed under the  
17          Securities Investor Protection Act of 1970 from re-  
18          covering property transferred by a debtor to a per-  
19          son who is not a customer of the debtor.

20          (c) APPOINTMENT OF TRUSTEES.—

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

24                 “(3) APPOINTMENT OF TRUSTEE AND ATTOR-  
25          NEY.—

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

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

19           “(C) DISINTEREST REQUIREMENT.—No  
20 person may be appointed to serve as trustee or  
21 attorney for the trustee if such person is not  
22 disinterested within the meaning of paragraph  
23 (6), except that for any specified purpose other  
24 than to represent a trustee in conducting a liq-  
25 uidation proceeding, the trustee may, with the

1 approval of SIPC and the court, employ an at-  
2 torney who is not disinterested.

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

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

11 **SEC. 3. EFFECTIVE DATE.**

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

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

18 (2) is initiated after the date of the enactment  
19 of this Act.

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