

113TH CONGRESS  
1ST SESSION

# H. R. 3482

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

NOVEMBER 14, 2013

Mr. GARRETT (for himself, Mrs. CAROLYN B. MALONEY of New York, Mr. KING of New York, Mr. LUETKEMEYER, Mr. HIMES, Mrs. BACHMANN, Mr. WESTMORELAND, Mr. AL GREEN of Texas, Mr. HURT, Mr. FINCHER, Mrs. MCCARTHY of New York, Mr. MULVANEY, Mr. ROSS, Mrs. WAGNER, Mr. MURPHY of Florida, Mr. CASSIDY, Mr. SESSIONS, Ms. ROS-LEHTINEN, Mr. DEUTCH, Mr. MCCAUL, Mr. HARPER, Mr. CULBERSON, Mr. DUNCAN of Tennessee, Mr. BOUSTANY, and Mr. GRIFFIN of Arkansas) 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Restoring Main Street  
3 Investor Protection and Confidence Act”.

4 **SEC. 2. SECURITIES INVESTOR PROTECTION ACT OF 1970**  
5 **AMENDMENTS.**

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

10 “(11) NET EQUITY.—

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

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

18 “(I) all securities positions of  
19 such customer (other than customer  
20 name securities reclaimed by such  
21 customer); and

22 “(II) all positions in futures con-  
23 tracts and options on futures con-  
24 tracts held in a portfolio margining  
25 account carried as a securities account  
26 pursuant to a portfolio margining pro-

1                   gram approved by the Commission, in-  
2                   cluding all property collateralizing  
3                   such positions, to the extent that such  
4                   property is not otherwise included  
5                   herein; minus

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

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

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

1           “(C) TREATMENT OF ACCOUNTS HELD BY  
2 A CUSTOMER IN SEPARATE CAPACITIES.—In de-  
3 termining net equity under this paragraph, ac-  
4 counts held by a customer in separate capac-  
5 ities shall be deemed to be accounts of separate  
6 customers.

7           “(D) RELIANCE ON FINAL CUSTOMER  
8 STATEMENT.—

9           “(i) IN GENERAL.—In determining  
10 net equity under this paragraph, the posi-  
11 tions, options, and contracts of a customer  
12 reported to the customer as held by the  
13 debtor, and any indebtedness of the cus-  
14 tomer to the debtor, shall be determined  
15 based on—

16           “(I) the information contained in  
17 the last statement issued by the debt-  
18 or to the customer before the filing  
19 date; and

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

1           “(ii) EXCEPTION WHEN DEBTOR’S  
2           RECORDS INDICATE HIGHER VALUE.—Not-  
3           withstanding clause (i), if the books and  
4           records of the debtor indicate that the net  
5           value of a customer’s positions, options,  
6           and contracts reported to the customer as  
7           held by the debtor, and any indebtedness  
8           of the customer to the debtor, is greater  
9           than the net value of the customer as cal-  
10          culated under clause (i) using the cus-  
11          tomer’s last statement, then the determina-  
12          tion of the net equity of the customer  
13          under this paragraph shall be done using  
14          the books and records of the debtor instead  
15          of the customer’s last statement.

16           “(iii) FRAUD EXCEPTION.—The provi-  
17          sions of this subparagraph shall not apply  
18          to any customer that—

19                   “(I) knew the debtor was in-  
20                   volved in fraudulent activity with re-  
21                   spect to any customer of the debtor  
22                   which reasonably indicated a fraud  
23                   adversely affecting a substantial num-  
24                   ber of customers; or

25                   “(II) was a person that—

1           “(aa) was, or was required  
2 to be, registered—

3           “(AA) as a broker or  
4 dealer under the Securities  
5 Exchange Act of 1934; or

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

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

23           “(cc) did not notify SIPC,  
24 the Commission, or law enforce-  
25 ment personnel that the debtor

1 was involved in such fraudulent  
2 activity.”.

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

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

8 “(B) second, to customers of such debtor,  
9 as described under paragraph (4);”; and

10 (2) by adding at the end the following:

11 “(4) ALLOCATION OF CUSTOMER PROPERTY TO  
12 CUSTOMERS.—

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

17 “(i) based on the net equity of a cus-  
18 tomer, as determined using the last state-  
19 ment issued by the debtor to the customer  
20 before the filing date;

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

23 “(iii) approved by the court.

24 “(B) ALTERNATE METHODOLOGY.—If the  
25 trustee determines that allocating customer

1 property in accordance with subparagraph (A)  
2 would be unfair and inequitable to a substantial  
3 segment of customers and would not fully serve  
4 the remedial purposes of this Act, allocations of  
5 customer property to customers under para-  
6 graph (1)(B) shall be made such that customers  
7 share in customer property based on a fair and  
8 reasonable methodology, with special consider-  
9 ation for the typical, non-professional investor,  
10 that—

11 “(i) if the trustee determines that it is  
12 necessary in order to reach a fair and rea-  
13 sonable result, is determined without re-  
14 gard to section 16(11)(D);

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

17 “(iii) is approved by the court.

18 “(C) PUBLIC NOTICE AND COMMENT.—Be-  
19 fore approving a proposed methodology under  
20 subparagraph (A)(ii) or subparagraph (B)(ii),  
21 the court shall—

22 “(i) notify customers and other inter-  
23 ested parties that the court is considering  
24 the proposed methodology; and



1                   “(ii) provide the customers and inter-  
2                   ested parties an opportunity to provide  
3                   comments on the proposed methodology.”.

4           (c) PROHIBITION ON CERTAIN RECOVERIES.—

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

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

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

18                         “(2) was a person that—

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

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

23   “(ii) as an investment adviser under  
24   the Investment Advisers Act of 1940, or  
25   that would have been required to register

1 as an investment adviser under the Invest-  
2 ment Advisers Act of 1940 but for section  
3 203(m) of such Act;

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

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

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

19 (d) APPOINTMENT OF TRUSTEES.—

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

23 “(3) APPOINTMENT OF TRUSTEE AND ATTOR-  
24 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.—The  
13 Commission shall maintain a list of candidates  
14 for the position of trustee and attorney for the  
15 trustee for a debtor in a liquidation pro-  
16 ceedings, and shall periodically update the list,  
17 as appropriate. With respect to a debtor and  
18 upon the court issuing a protective decree under  
19 paragraph (1), the Commission shall forthwith  
20 provide the court with such list.

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

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

5 “(D) QUALIFICATION.—A trustee ap-  
6 pointed under this paragraph shall qualify by  
7 filing a bond in the manner prescribed by sec-  
8 tion 322 of title 11, United States Code, except  
9 that neither SIPC nor any employee of SIPC  
10 shall be required to file a bond when appointed  
11 as trustee.

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

18 (2) COMPENSATION FOR TRUSTEE AND ATTOR-  
19 NEY.—Section 5(b)(5) of the Securities Investor  
20 Protection Act of 1970 (15 U.S.C. 78eee(b)(5)) is  
21 amended—

22 (A) in subparagraph (A), by adding at the  
23 end the following: “The court shall publicly dis-  
24 close all such allowances that are granted.”;

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

3 “(C) AWARDING OF ALLOWANCES.—When-  
4 ever an application for allowances is filed pur-  
5 suant to subparagraph (B), the court shall de-  
6 termine the amount of allowances, giving due  
7 consideration to the nature, extent, and value of  
8 the services rendered.”; and

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

10 “(F) SIPC DISCLOSURES.—SIPC shall  
11 issue quarterly public reports on—

12 “(i) all payments made by SIPC to  
13 the trustee;

14 “(ii) all other costs in connection with  
15 the liquidation proceeding, including legal  
16 and accounting costs; and

17 “(iii) all additional expenses incurred  
18 by SIPC, and the nature of such ex-  
19 penses.”.

20 (3) EFFECTIVE DATE.—The amendment made  
21 this subsection shall take effect with respect to  
22 trustees and attorneys appointed after the date of  
23 the enactment of this Act.

1 (e) DEFINITION OF CUSTOMER STATUS.—Section  
2 16(2)(B) of the Securities Investor Protection Act of 1970  
3 (15 U.S.C. 78lll(2)(B)) is amended—

4 (1) in clause (ii), by striking “; and” and in-  
5 serting a semicolon;

6 (2) in clause (iii), by striking the period at the  
7 end and inserting a semicolon; and

8 (3) by adding at the end the following new  
9 clauses:

10 “(iv) any person that had cash or se-  
11 curities that were converted or otherwise  
12 misappropriated by the debtor (or any per-  
13 son who controls, is controlled by, or is  
14 under common control with the debtor, if  
15 such person was operating through the  
16 debtor), irrespective of whether the debtor  
17 held or otherwise had custody, possession,  
18 or control of such cash or securities; and

19 “(v) any other person that the Com-  
20 mission, in its discretion and without any  
21 need for court approval, deems a customer  
22 of the debtor.”.

23 (f) DETERMINATION OF NEED OF PROTECTION.—  
24 Section 5 of the Securities Investor Protection Act of 1970  
25 (15 U.S.C. 78eee) is amended—

1 (1) in subsection (a)(3)—

2 (A) by amending the heading for such  
3 paragraph by inserting “THE COMMISSION OR”  
4 before “SIPC”;

5 (B) in the first subparagraph (A)—

6 (i) by inserting “The Commission or”  
7 before “SIPC may”; and

8 (ii) by inserting “the Commission or”  
9 before “SIPC determines”; and

10 (C) by redesignating the second subpara-  
11 graph (A) and the first subparagraph (B) as  
12 clauses (i) and (ii), respectively, and moving  
13 such clauses 2 ems to the right; and

14 (2) in subsection (b)(1), by striking “applica-  
15 tion by SIPC” and inserting “application by the  
16 Commission or SIPC”.

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

21 “(f) TIMING OF SIPC ADVANCES; RESULT OF  
22 DELAY.—

23 “(1) IN GENERAL.—SIPC advances made to  
24 satisfy customer claims pursuant to subsection (a)  
25 shall be made before the end of the 3-month period

1 beginning on the date that is the end of the 6-month  
2 period described under section 8(a)(3), plus the  
3 amount of any extension granted under such para-  
4 graph.

5 “(2) RESULT OF DELAY.—If SIPC fails to  
6 make advances to the trustee in the period specified  
7 in paragraph (1), then for purposes of calculating a  
8 customer’s net equity under this Act, interest shall  
9 accrue beginning on the date that is the end of the  
10 3-month period specified in paragraph (1).

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

16 (h) TIMING OF PAYMENTS TO CUSTOMERS.—Section  
17 8(b) of the Securities Investor Protection Act of 1970 (15  
18 U.S.C. 78fff–2(b)) is amended—

19 (1) in paragraph (1), by striking “and” at the  
20 end;

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

23 (3) by inserting after paragraph (2) the fol-  
24 lowing:



1           “(3) upon petition by a customer, order the  
2 trustee to carry out the obligations of the trustee  
3 under this subsection with respect to such customer;  
4 and

5           “(4) if the court determines that the trustee  
6 has improperly delayed carrying out the obligations  
7 of the trustee under this subsection, impose financial  
8 sanctions on the trustee.”.

9           (i) COMMISSION AUTHORITY TO REQUIRE SIPC AC-  
10 TION.—Section 11(b) of the Securities Investor Protection  
11 Act of 1970 (15 U.S.C. 78ggg(b)) is amended to read as  
12 follows:

13           “(b) COMMISSION AUTHORITY TO REQUIRE SIPC  
14 ACTION.—In the event of the refusal of SIPC to commit  
15 its funds or otherwise to act for the protection of cus-  
16 tomers of any member of SIPC, the Commission may re-  
17 quire SIPC to discharge its obligations under this Act  
18 without court approval.”.

19           (j) LIMITATION ON SEC LOANS TO SIPC.—Section  
20 4(g) of the Securities Investor Protection Act of 1970 (15  
21 U.S.C. 78ddd(g)) is amended by inserting after “this Act”  
22 the following: “and the Commission, in consultation with  
23 the Secretary of the Treasury, determines that SIPC is  
24 unable to borrow in the public debt markets at reasonable  
25 terms (both as to yield and maturity)”.

1 (k) INSPECTION OF SIPC MEMBERS BY SEC AND  
2 SELF-REGULATORY ORGANIZATIONS.—

3 (1) IN GENERAL.—The Securities Investor Pro-  
4 tection Act of 1970 (15 U.S.C. 78aaa et seq.) is  
5 amended—

6 (A) in section 11, by adding at the end the  
7 following:

8 “(e) INSPECTION OF SIPC MEMBERS BY SEC.—The  
9 Commission shall carry out periodic inspections of SIPC  
10 members to ensure that the information such members  
11 provide to customers, including information contained in  
12 account statements and transaction confirmations, is ac-  
13 curate.”; and

14 (B) in section 13(e)—

15 (i) by redesignating paragraphs (1)  
16 and (2) as subparagraphs (A) and (B), re-  
17 spectively, and moving such subparagraphs  
18 2 ems to the right;

19 (ii) by striking “The self-regulatory  
20 organization” and inserting the following:

21 “(1) IN GENERAL.—The self-regulatory organi-  
22 zation”; and

23 (iii) by adding at the end the fol-  
24 lowing:

1           “(2) INSPECTION OF INFORMATION PROVIDED  
2 TO CUSTOMERS.—Under such regulations as the  
3 Commission may prescribe, the self-regulatory orga-  
4 nization of which a member of SIPC is a member  
5 or in which it is a participant shall inspect or exam-  
6 ine such member to—

7                   “(A) assess the financial stability of such  
8 member; and

9                   “(B) ensure that the information such  
10 member provides to customers, including infor-  
11 mation contained in account statements and  
12 transaction confirmations, is accurate.”.

13           (2) REPORT.—Not later than the end of the 1-  
14 year period beginning on the date of the enactment  
15 of this Act, the Securities and Exchange Commis-  
16 sion shall issue a report to the Committee on Finan-  
17 cial Services of the House of Representatives and  
18 the Committee on Banking, Housing, and Urban Af-  
19 fairs of the Senate on the implementation of the  
20 amendments made by this subsection.

21 **SEC. 3. EFFECTIVE DATE.**

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

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

3           (2) is initiated after the date of the enactment  
4           of this Act.

○