

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.

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

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 capaci-
5 ties 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(c)—

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.

○