

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend the Securities Investor Protection Act of 1970 to change how trustees and attorneys are appointed under that Act.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

S. 2155

To promote economic growth, provide tailored regulatory relief, and enhance consumer protections, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CASSIDY

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . RESTORING MAIN STREET INVESTOR PROTEC-**
3 **TION AND CONFIDENCE.**

4 (a) SECURITIES INVESTOR PROTECTION ACT OF
5 1970 AMENDMENTS.—

6 (1) APPOINTMENT OF TRUSTEES.—

7 (A) IN GENERAL.—Section 5(b)(3) of the
8 Securities Investor Protection Act of 1970 (15
9 U.S.C. 78eee(b)(3)) is amended to read as fol-
10 lows:

1 “(3) APPOINTMENT OF TRUSTEE AND ATTOR-
2 NEY.—

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

14 “(B) COMMISSION CANDIDATES.—The
15 Commission shall maintain a list of candidates
16 for the position of trustee and attorney for the
17 trustee for a debtor in a liquidation pro-
18 ceedings, and shall periodically update the list,
19 as appropriate. With respect to a debtor and
20 upon the court issuing a protective decree under
21 paragraph (1), the Commission shall forthwith
22 provide the court with such list.

23 “(C) DISINTEREST REQUIREMENT.—No
24 person may be appointed to serve as trustee or
25 attorney for the trustee if such person is not

1 disinterested within the meaning of paragraph
2 (6), except that for any specified purpose other
3 than to represent a trustee in conducting a liq-
4 uidation proceeding, the trustee may, with the
5 approval of SIPC and the court, employ an at-
6 torney who is not disinterested.

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

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

20 (B) COMPENSATION FOR TRUSTEE AND
21 ATTORNEY.—Section 5(b)(5) of the Securities
22 Investor Protection Act of 1970 (15 U.S.C.
23 78eee(b)(5)) is amended—

24 (i) in subparagraph (A), by adding at
25 the end the following: “The court shall

1 publicly disclose all such allowances that
2 are granted.”;

3 (ii) by amending subparagraph (C) to
4 read as follows:

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

11 (iii) by adding at the end the fol-
12 lowing:

13 “(F) SIPC DISCLOSURES.—SIPC shall
14 issue quarterly public reports on—

15 “(i) all payments made by SIPC to
16 the trustee;

17 “(ii) all other costs in connection with
18 the liquidation proceeding, including legal
19 and accounting costs; and

20 “(iii) all additional expenses incurred
21 by SIPC, and the nature of such ex-
22 penses.”.

23 (C) APPLICATION.—The amendments
24 made by this paragraph shall apply with respect

1 to trustees and attorneys appointed after the
2 date of enactment of this Act.

3 (2) DEFINITION OF CUSTOMER STATUS.—Sec-
4 tion 16(2)(B) of the Securities Investor Protection
5 Act of 1970 (15 U.S.C. 78lll(2)(B)) is amended—

6 (A) in clause (ii), by striking “; and” and
7 inserting a semicolon;

8 (B) in clause (iii), by striking the period at
9 the end and inserting a semicolon; and

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

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

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

24 (3) COMMISSION AUTHORITY TO REQUIRE SIPC
25 ACTION.—Section 11(b) of the Securities Investor

1 Protection Act of 1970 (15 U.S.C. 78ggg(b)) is
2 amended to read as follows:

3 “(b) COMMISSION AUTHORITY TO REQUIRE SIPC
4 ACTION.—In the event of the refusal of SIPC to commit
5 its funds or otherwise to act for the protection of cus-
6 tomers of any member of SIPC, the Commission may re-
7 quire SIPC to discharge its obligations under this Act
8 without court approval.”.

9 (b) APPLICATION.—Except as provided under sub-
10 section (a)(1)(C), the amendments made by subsection (a)
11 shall apply with respect to a liquidation proceeding under
12 the Securities Investor Protection Act of 1970 (15 U.S.C.
13 78aaa et seq.) that—

14 (1) was in progress on the date of enactment of
15 this Act; or

16 (2) is initiated after the date of enactment of
17 this Act.