To revise the banking and bankruptcy insolvency laws with respect to the termination and netting of financial contracts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 4, 1998

Mr. LEACH (for himself and Mr. LAFAUCI) introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committees on the Judiciary, and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To revise the banking and bankruptcy insolvency laws with respect to the termination and netting of financial contracts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Financial Contract Netting Improvement Act of 1998”.

August 6, 1998 (8:37 a.m.)
SEC. 2. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by inserting “, resolution or order” after “any similar agreement that the Corporation determines by regulation”.

(b) DEFINITION OF SECURITIES CONTRACT.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

“(ii) SECURITIES CONTRACT.—The term ‘securities contract’—

“(I) means a contract for the purchase, sale, or loan of a security, or any mortgage loan, mortgage related security (as defined in section 3(a)(41) of the Securities Exchange Act of 1934) or interest therein, 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 securi-
ties exchange relating to foreign currencies, or the guarantee of any settlement of cash or securities by or to a securities clearing agency, or any other similar agreement;

“(II) does not include any participation in or servicing agreement for a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

“(III) means any option entered into on a national securities exchange relating to foreign currencies;

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

“(V) means any margin loan;

“(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

“(VII) means any combination of the agreements or transactions referred to in this clause;

“(VIII) means any option to enter into any agreement or transaction referred to in this clause;

“(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (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 clause, except that the master agreement shall be consid-
erred to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI) or (VII); and

“(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.’’.

(c) Definition of Commodity Contract.—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows:

“(iii) Commodity Contract.—The term ‘commodity contract’ means—

“(I) with respect to a futures commission merchant, a 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;
“(II) with respect to a foreign futures commission merchant, a foreign future;

“(III) with respect to a leverage transaction merchant, a leverage transaction;

“(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contact market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contact market or board of trade that is cleared by such clearing organization;

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

“(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;
“(VII) any combination of the agreements or transactions referred to in this clause;

“(VIII) any option to enter into any agreement or transaction referred to in this clause;

“(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII) or (VIII), together with supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII) or (VIII); or

“(X) a security agreement or arrangement or other credit enhance-
ment related to any agreement or
transaction referred to in this
clause.”).

(d) DEFINITION OF FORWARD CONTRACT.—Section
11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12
U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

“(iv) FORWARD CONTRACT.—The
term ‘forward contract’ means—

“(I) a contract (other than a
commodity contract) for the purchase,
sale, or transfer of a commodity or
any similar good, article, service,
right, or interest which is presently or
in the future becomes the subject of
dealing in the forward contract trade,
or product or byproduct thereof, with
a maturity date more than 2 days
after the date the contract is entered
into, including a repurchase agree-
ment, consignment, lease, swap, hedge
transaction, deposit, loan, option, allo-
cated transaction, unallocated trans-
action, or any other similar agree-
ment;
“(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

“(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

“(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), 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 forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II) or (III); or

“(V) a security agreement or arrangement or other credit enhancement related to any agreement or
transaction referred to in subclause
(I), (II), (III) or (IV).”.

(e) DEFINITION OF REPURCHASE AGREEMENT.—
Section 11(e)(8)(D)(v) of the Federal Deposit Insurance
Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as
follows:

“(v) REPURCHASE AGREEMENT.—The
term ‘repurchase agreement’ (which also
applies to a reverse repurchase agree-
ment)—

“(I) means an agreement, includ-
ing related terms, that provides for
the transfer of certificates of deposit,
mortgage-related securities (as such
term is defined in section 3(a)(41) of
the Securities Exchange Act of 1934),
any mortgage loan, and any interest
in any mortgage loan, eligible bank-
ers’ acceptances, qualified foreign gov-
ernment securities or securities that
are direct obligations of, or that are
fully guaranteed as to principal and
interest by, the United States or any
agency of the United States against
the transfer of funds by the transferee
of such certificates of deposit, eligible bankers’ acceptances, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, mortgage-related securities, and mortgage loan, and any interest in any mortgage loan, eligible bankers’ acceptances, or securities as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

“(II) does not include any participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

“(III) means any combination of agreements or transactions referred to in subclauses (I) and (III);

“(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (II);
“(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (II) or (III), together with all supplements, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this section, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II) or (III); and

“(VI) means a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV).

For purposes of this clause, the term ‘qualified foreign government security’ means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Orga-
nization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).”.

(f) **Definition of Swap Agreement.**—The Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

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“(vi) Swap Agreement.—The term ‘swap agreement’ means—

“(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward or other foreign exchange agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a credit swap, option, future, or forward agreement; a
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agreement; a commodity swap, option, future, or forward agreement or any other similar agreement;

“(II) an agreement or transaction similar to any other agreement or transaction referred to in this clause that is presently, or in the future becomes, regularly entered into in the swap agreement market (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on 1 or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;

“(III) any combination of agreements or transactions referred to in this clause;

“(IV) any option to enter into any agreement or transaction referred to in this clause;
“(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to such master agreement, without regard to whether the master agreement contains an agreement or transaction that is described in any of those subclauses, except that the master agreement shall be considered to be a swap agreement only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

“(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (I), (II), (III), or (IV).

Such term shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement or any instrument defined as a swap agreement herein, under any
other statute, regulation, or rule, including
the Securities Act of 1933, the Securities
Exchange Act of 1934, the Public Utility
Holding Company Act of 1935, the Trust
Indenture Act of 1939, the Investment
Company Act of 1940, the Investment Ad-
visers Act of 1940, the Securities Investor
Protection Act of 1970, the Commodity
Exchange Act, and the regulations promul-
gated by the Securities and Exchange
Commission or the Commodity Futures
Trading Commission.”.

(g) DEFINITION OF TRANSFER.—Section
11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12
U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:
“(viii) TRANSFER.—The term ‘trans-
fer’ means every mode, direct or indirect,
absolute or conditional, voluntary or invol-
untary, of disposing of or parting with
property or with an interest in property,
including retention of title as a security in-
terest and foreclosure of the debtor’s eq-
uity of redemption.”.
(h) Treatment of Qualified Financial Contracts.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (A), by striking “paragraph (10)” and inserting “paragraphs (9) and (10)”;

(2) in subparagraph (A)(i), by striking “to cause the termination or liquidation” and inserting “such person has to cause the termination, liquidation, or acceleration”;

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

“(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);”; and

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

“(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);”.

(i) AVOIDANCE OF TRANSFERS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section 5242 of the Revised Statutes (12 U.S.C. 91) or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,” before “the Corporation”.

SEC. 3. AUTHORITY OF THE CORPORATION WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.

(a) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (E), by striking “other than paragraph (12) of this subsection, subsection (d)(9)” and inserting “other than subsections (d)(9) and (d)(10)”;

(2) by adding at the end the following new subparagraphs:

“(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this
subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

“(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

“(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

“(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term ‘walkaway clause’ means a provision in a qualified financial contract that, after calculation of a value of a party’s position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of
such party’s status as a nondefaulting party.”.

(b) Technical and Conforming Amendment.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting “or the exercise of rights or powers” after “the appointment”.

SEC. 4. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.

(a) Transfers of Qualified Financial Contracts to Financial Institutions.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

“(9) Transfer of Qualified Financial Contracts.—

“(A) In general.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

“(i) transfer to 1 financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been
appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

“(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

“(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

“(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

“(IV) all property securing any claim described in subclause (II) or (III) under any such contract, or any other credit enhancement for any contract described in clause (I); or

“(ii) transfer none of the qualified financial contracts, claims, or property re-
ferred to in clause (i) (with respect to such person and any affiliate of such person).

“(B) **Transfer to foreign bank, foreign financial institution, or branch or agency of a foreign bank or financial institution.**—In transferring any qualified financial contracts and related claims and property pursuant to subparagraph (A)(i), the conservator or receiver for such depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, the contractual rights of the parties to such qualified financial contracts are enforceable substantially to the same extent as permitted under this section.

“(C) **Transfer of contracts subject to the rules of a clearing organization.**—In the event that a conservator or receiver transfers any qualified financial contract and related claims and property pursuant to
subparagraph (A)(i) and such contract is subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

“(D) DEFINITION.—For purposes of this section, the term ‘financial institution’ means a broker or dealer, a depository institution, a futures commission merchant, or any other institution as determined by the Corporation by regulation to be a financial institution.”.

(b) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended by amending the flush material following clause (ii) to read as follows: “the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver, in the case of a receivership, or the business day following such transfer, in the case of a conservatorship.”.

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is further amended—
(1) by redesignating subparagraph (B) as sub-
paragraph (D); and

(2) by inserting after subparagraph (A) the fol-
lowing new subparagraphs:

“(B) CERTAIN RIGHTS NOT ENFORCE-
ABLE.—

“(i) RECEIVERSHIP.—A person who is
a party to a qualified financial contract
with an insured depository institution may
not exercise any right such person has to
terminate, liquidate, or net such contract
under paragraph (8)(A) or section 403 or
404 of the Federal Deposit Insurance Cor-
poration Improvement Act of 1991 solely
by reason of or incidental to the appoint-
ment of a receiver for the depository insti-
tution (or the insolvency or financial condi-
tion of the depository institution for which
the receiver has been appointed)—

“(I) until 5:00 p.m. (eastern
time) on the business day following
the date of the appointment of the re-
ceiver; or

“(II) after the person has re-
ceived notice that the contract has
been transferred pursuant to paragraph (9)(A).

“(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right such person has to terminate, liquidate, or net such contract under paragraph (8)(E) or sections 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

“(iii) NOTICE.—For purposes of this subsection, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to
such person by the time specified in sub-
paragraph (A) of this subsection.

“(C) Treatment of Bridge Banks.—
The following institutions shall not be consid-
ered a financial institution for which a con-
servator, receiver, trustee in bankruptcy, or
other legal custodian has been appointed or
which is otherwise the subject of a bankruptcy
or insolvency proceeding for purposes of sub-
section (e)(9)—

“(i) a bridge bank; or

“(ii) a depository institution organized
by the Corporation, for which a conserva-
tor is appointed either—

“(I) immediately upon the orga-
nization of the institution; or

“(II) at the time of a purchase
and assumption transaction between
such institution and the Corporation
as receiver for a depository institution
in default.”.
SEC. 5. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is further amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively; and

(2) by inserting after paragraph (10) the following new paragraph:

“(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

“(A) disaffirm or repudiate all qualified financial contracts between—

“(i) any person or any affiliate of such person; and

“(ii) the depository institution in default; or

“(B) disaffirm or repudiate none of the qualified financial contracts referred to in sub-
paragraph (A) (with respect to such person or any affiliate of such person).”.

SEC. 6. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.

Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

“(vii) Treatment of Master Agreement as 1 Agreement.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.”.

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

“(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;”;

and

(C) by amending subparagraph (C) (as redesignated) to read as follows:

“(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;”;

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(2) in paragraph (11), by adding before the period “and any other clearing organization with which such clearing organization has a netting contract”; 

(3) by amending paragraph (14)(A)(i) to read as follows:

“(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or closeout values relating to such obligations or entitlements) among the parties to the agreement; and’’; and 

(4) by adding at the end the following new paragraph:

“(15) PAYMENT.—The term ‘payment’ means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.”.

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—
(1) by amending subsection (a) to read as follows:

“(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1971, the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract.”; and

(2) by adding at the end the following new subsection:

“(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to 1 or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1971).”
(c) ENFORCEABILITY OF CLEARING ORGANIZATION

Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by amending subsection (a) to read as follows:

“(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1971, the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract.”; and

(2) by adding at the end the following new subsection:

“(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to 1 or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms and shall not be stayed, avoided, or otherwise
limited by any State or Federal law other than paragraphs
(8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal
Deposit Insurance Act and section 5(b)(2) of the Securities
Investor Protection Act of 1971.”.


(1) by redesignating section 407 as section 408;

and

(2) by adding after section 406 the following new section:

SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.

“(a) In General.—Notwithstanding any other provision of law, paragraphs (8), (9), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency except—

“(1) any reference to the ‘Corporation as receiver’ or ‘the receiver or the Corporation’ shall refer to the receiver of an uninsured national bank or un-
insured Federal branch or Federal agency appointed by the Comptroller of the Currency;

“(2) any reference to the ‘Corporation’ (other than in section 11(e)(8)(D) of such Act), the ‘Corporation, whether acting as such or as conservator or receiver’, a ‘receiver’, or a ‘conservator’ shall refer to the receiver or conservator of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency; and

“(3) any reference to an ‘insured depository institution’ or ‘depository institution’ shall refer to an uninsured national bank or an uninsured Federal branch or Federal agency.

“(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank or uninsured Federal branch or agency shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.

“(c) REGULATORY AUTHORITY.—

“(1) IN GENERAL.—The Comptroller of the Currency, in consultation with the Federal Deposit
Insurance Corporation, may promulgate regulations
to implement this section.

“(2) SPECIFIC REQUIREMENT.—In promulgat-
ing regulations to implement this section, the Com-
troller of the Currency shall ensure that the regula-
tions generally are consistent with the regulations
and policies of the Federal Deposit Insurance Cor-
poration adopted pursuant to the Federal Deposit
Insurance Act.

“(d) DEFINITIONS.—For purposes of this section, the
terms ‘Federal branch’, ‘Federal agency’, and ‘foreign
bank’ have the same meaning as in section 1(b) of the
International Banking Act.”.

SEC. 8. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITIONS OF SWAP AGREEMENT, SECURITIES
CONTRACT, FORWARD CONTRACT, COMMODITY CON-
TRACT, AND REPURCHASE AGREEMENT.—Title 11,
United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking “means a contract”
and inserting “means—
“(A) a contract”;
(ii) by striking ‘‘, or any combination thereof or option thereon;’’ and inserting ‘‘, or any other similar agreement;’’; and

(iii) by adding at the end the following new subparagraphs:

“(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

“(C) any option to enter into any agreement or transaction referred to in subparagraph (A) or (B);

“(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B) or (C), 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 forward contract under this paragraph, except that the master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B) or (C); or
“(E) a security agreement or arrangement
or other credit enhancement related to any
agreement or transaction referred to in sub-
paragraph (A), (B), (C) or (D);”;

(B) by amending paragraph (47) to read
as follows:

“(47) the term ‘repurchase agreement’ (which
definition also applies to a reverse repurchase agree-
ment)—

“(A) means—

“(i) an agreement, including related
terms, which provides for the transfer of 1
or more certificates of deposit, mortgage-
related securities (as such term is defined
in the Securities Exchange Act of 1934),
mortgage loans, interests in mortgage-re-
lated securities or mortgage loans, eligible
bankers’ acceptances, qualified foreign gov-
ernment securities or securities that are di-
rect obligations of, or that are fully guar-
anteed as to principal and interest by, the
United States or any agency of the United
States against the transfer of funds by the
transferee of such certificates of deposit,
eligible bankers’ acceptances, securities,
loans or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds; or any other similar agreement; and

“(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

“(iii) any option to enter into any agreement or transaction referred to in clause (i) or (ii);

“(iv) a master agreement that provides for an agreement or transaction referred to in clauses (i), (ii) or (iii), together with all supplements, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this subparagraph, except that the master agreement shall be considered to be a repurchase agreement under this subpara-
graph only with respect to each agreement
or transaction under the master agreement
that is referred to in clause (i), (ii) or (iii); or

“(v) a security agreement or arrangement or other credit enhancement related
to any agreement or transaction referred to in clauses (i), (ii), (iii) or (iv); and

“(B) does not include any repurchase obligation under a participation in a commercial
mortgage loan,

and, for purposes of this paragraph, the term ‘qualified foreign government security’ means a security
that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the
Organization for Economic Cooperation and Development.”; and

(C) by amending paragraph (53B) to read as follows:

“(53B) the term ‘swap agreement’—

“(A) means—

“(i) any agreement, including the
terms and conditions incorporated by refer-
ence in any such agreement, which is an
interest rate swap, option, future, or for-
ward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-to-morrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement;

“(ii) any agreement similar to any other agreement or transaction referred to in this subparagraph that—

“(I) is presently, or in the future becomes, regularly entered into in the swap agreement market (including terms and conditions incorporated by reference therein); and

“(II) is a forward, swap, future, or option on 1 or more rates, currencies, commodities, equity securities
or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;

“(iii) any combination of agreements or transactions referred to in this subparagraph;

“(iv) any option to enter into any agreement or transaction referred to in this subparagraph;

“(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is described in any of such clause, except that the master agreement shall be considered to be a swap agreement only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

“(C) is applicable for purposes of this title only and shall not be construed or applied to
challenge or affect the characterization, definition, or treatment of any swap agreement or any instrument defined as a swap agreement herein, under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission.”;

(2) by amending section 741(7) to read as follows:

“(7) the term ‘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, or a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value
thereof) or option on any of the foregoing, including any 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 any settlement of cash, securities, certificates of deposit, mortgage loans or interest therein, or group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any 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 any 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 the master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); and

“(ix) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subparagraph; and

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“(B) does not include any purchase, sale, or repurchase obligation under a participation in or servicing agreement for a commercial mortgage loan.”; and

(3) in section 761(4)—

(A) by striking “or” at the end of subparagraph (D); and

(B) by adding at the end the following new subparagraphs:

“(F) any other agreement or transaction that is similar to any 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 any 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 any 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) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph;”.

(b) Definitions of Financial Institution, Financial Participant, and Forward Contract Merchant.—Section 101 of title 11, United States Code, is amended—

(1) by amending paragraph (22) to read as follows:

“(22) the term ‘financial institution’ means a Federal reserve bank, or a person that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such person and, when any such Federal reserve bank, receiver, or conservator or person acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741(7) of this title, such customer;”;}
(2) by inserting after paragraph (22) the following new paragraph:

“(22A) the term ‘financial participant’ means any entity that, at the time it enters into a securities contract, commodity contract or forward contract, or at the time of the filing of the petition, has 1 or more agreements or transactions that is described in section 561(a)(2) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of at least $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of at least $100,000,000 (aggregated across counterparties) in 1 or more such agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period;”; and

(3) by amending paragraph (26) to read as follows:

“(26) the term ‘forward contract merchant’ means a Federal reserve bank, or a person whose business consists in whole or in part of entering into forward contracts as or with merchants or in a commodity, as defined or in section 761(8) of this title, or any similar good, article, service, right, or interest
which is presently or in the future becomes the subject of dealing or in the forward contract trade;’.’

(c) Definition of Master Netting Agreement and Master Netting Agreement Participant.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

‘‘(38A) the term ‘master netting agreement’ means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or closeout, under or in connection with 1 or more contracts that are described in any 1 or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to 1 or more of the foregoing. If a master netting agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), the master netting agreement shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any 1 or more of the paragraphs (1) through (5) of section 561(a);’’
“(38B) the term ‘master netting agreement participant’ means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;”.

(d) Swap Agreements, Securities Contracts, Commodity Contracts, Forward Contracts, Repurchase Agreements, and Master Netting Agreements Under the Automatic-Stay.—

(1) In General.—Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (6), by inserting “, pledged to, and under the control of,” after “held by”;

(B) in paragraph (7), by inserting “, pledged to, and under the control of,” after “held by”;

(C) by amending paragraph (17) to read as follows:

“(17) under subsection (a), of the setoff by a swap participant of any mutual debt and claim under or in connection with 1 or more swap agreements that constitute the setoff of a claim against the debtor for any payment due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the
swap participant under or in connection with any swap agreement or against cash, securities, or other property of the debtor held by, pledged to, and under the control of, or due from such swap participant to guarantee, secure, or settle any swap agreement;”;

(D) in paragraph (18), by striking the period and inserting “; or”; and

(E) by inserting after paragraph (18) the following new paragraph:

“(19) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with 1 or more master netting agreements to the extent such participant could offset the claim under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue.”.

(2) LIMITATION.—Section 362 of title 11, United States Code, is amended by adding at the end the following new subsection:

“(i) LIMITATION.—The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (19) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.”.
(c) **LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.**—Section 546 of title 11, United States Code, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking “under a swap agreement”;

(B) by striking “in connection with a swap agreement” and inserting “under or in connection with any swap agreement”;

(2) by redesignating subsection (g) (as added by section 222(a) of Public Law 103–394) as subsection (i); and

(3) by inserting before subsection (i) (as redesignated) the following new subsection:

“(h) Notwithstanding sections 544, 545, 547, 548(a)(2), and 548(b) of this title, to the extent that under subsection (e), (f), or (g), the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with each individual contract covered by any master netting agreement that is made before the commencement of the case, the trustee may not avoid a transfer made by or to such master netting agreement participant under or in connection with the master netting agreement in issue, except under section 548(a)(1) of this title.”.
(f) **Fraudulent Transfers of Master Netting Agreements.**—Section 548(d)(2) of title 11, United States Code, is amended—

1. in subparagraph (C), by striking “and’’;
2. (2) in subparagraph (D), by striking the period and inserting “; and’’; and
3. (3) by adding at the end the following new sub-
   paragraph:
   “(E) a master netting agreement partici-
   pant that receives a transfer in connection with
   a master netting agreement takes for value to
   the extent of such transfer, but only to the ex-
   tent that such participant would take for value
   under paragraph (B), (C), or (D) for each indi-
   vidual contract covered by the master netting
   agreement in issue.”.

(g) **Termination or Acceleration of Securities Contracts.**—Section 555 of title 11, United States Code, is amended—

1. (1) by amending the section heading to read
   “**Contractual right to liquidate, termi-
   nate, or accelerate a securities contract**’’;
   and
(2) in the first sentence, by striking “liquidation” and inserting “liquidation, termination, or acceleration”.

(h) **Termination or Acceleration of Commodities or Forward Contracts.**—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read “**Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract**”; and

(2) in the first sentence, by striking “liquidation” and inserting “liquidation, termination, or acceleration”.

(i) **Termination or Acceleration of Repurchase Agreements.**—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read “**Contractual right to liquidate, terminate, or accelerate a repurchase agreement**”; and

(2) in the first sentence, by striking “liquidation” and inserting “liquidation, termination, or acceleration”.

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(j) Liquidation, Termination, or Acceleration of Swap Agreements.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read “Contractual right to liquidate, terminate, or accelerate a swap agreement”; and

(2) in the first sentence, by striking “termination of a swap agreement” and inserting “liquidation, termination, or acceleration of 1 or more swap agreements”; and

(3) by striking “in connection with any swap agreement” and inserting “in connection with the termination, liquidation, or acceleration of 1 or more swap agreements”.

(k) Liquidation, Termination, Acceleration, or Offset Under a Master Netting Agreement and Across Contracts.—Title 11, United States Code, is amended by inserting after section 560 the following new section:

“§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts

“(a) In General.—Subject to subsection (b), the exercise of any contractual right, because of a condition of
the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset, or net termination values, payment amounts or other transfer obligations arising under or in connection with the termination, liquidation, or acceleration of 1 or more—

“(1) securities contracts, as defined in section 741(7);

“(2) commodity contracts, as defined in section 761(4);

“(3) forward contracts;

“(4) repurchase agreements;

“(5) swap agreements; or

“(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

“(b) EXCEPTION.—

“(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.
“(2)(A) A party may not exercise a contractual right described in subsection (a) to offset or to net obligations arising under, or in connection with, a commodity contract against obligations arising under, or in connection with, any instrument listed in subsection (a) if the obligations are not mutual.

“(B) If a debtor is a commodity broker subject to subchapter IV of chapter 7 of this title, a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract against any claim arising under, or in connection with, other instruments listed in subsection (a) if the party has no positive net equity in the commodity account at the debtor, as calculated under subchapter IV.

“(c) DEFINITION.—As used in this section, the term ‘contractual right’ includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right whether or not evidenced in writing arising under common law, under law merchant, or by reason of normal business practice.”.
(l) MUNICIPAL BANKRUPTCIES.—Section 901 of title 11, United States Code, is amended—

(1) by inserting “, 555, 556” after “553”; and

(2) by inserting “, 559, 560, 561, 562” after “557”.

(m) ANCILLARY PROCEEDINGS.—Section 304 of title 11, United States Code, is amended by adding at the end the following new subsection:

“(d) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case ancillary to a foreign proceeding under this section or any other section of this title so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any proceeding under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).”.

(n) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following new section:
§ 767. Commodity broker 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, 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 or affect the provisions of this subchapter IV regarding customer property or distributions.”

(o) Stockbroker Liquidations.—Title 11, United States Code, is amended by inserting after section 752 the following new section:

§ 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, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of rights or affect the provisions of this subchapter regarding customer property or distributions.”.

(p) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(3)(C), by inserting “(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 555, 556, 559, 560, or 561 of this title)” before the period; and

(2) in subsection (b)(1), by striking “362(b)(14),” and inserting “362(b)(17), 555, 556, 559, 560, 561”.

(q) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking “financial institutions,” each place such term appears and inserting “financial institution, financial participant”;”;

(2) in section 546(e), by inserting “financial participant” after “financial institution,”;
(3) in section 548(d)(2)(B), by inserting “financial participant” after “financial institution,”;

(4) in section 555—

(A) by inserting “financial participant” after “financial institution,”; and

(B) by inserting before the period “, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice”; and

(5) in section 556, by inserting “, financial participant” after “commodity broker”.

(r) TECHNICAL AND CONFORMING AMENDMENT.—

Section 104 of title 11, United States Code, is amended by adding at the end the following new subsection:

“(c) EXCEPTION FOR CERTAIN DEFINED TERMS.—

No adjustments shall be made under this section to the dollar amounts set forth in the definition of the term ‘financial participant’ in section 101(22A).”.

SEC. 9. RECORDKEEPING REQUIREMENTS.

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:
The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping with respect to qualified financial contracts (including market valuations) by insured depository institutions.”.

SEC. 10. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

“(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

“(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

“(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

“(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or
“(D) 1 or more qualified financial contracts, as defined in section 11(e)(8)(D),
shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.”.

SEC. 11. DAMAGE MEASURE.

(a) Title 11, United States Code, is amended by inserting after section 561 (as added by section 7(k)) the following new section:

§ 562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements

“If the trustee rejects a swap agreement, securities contract as defined in section 741 of this title, forward contract, repurchase agreement, or master netting agreement pursuant to section 365(a) of this title, or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, master netting agreement participant, or swap participant liquidates,
terminates, or accelerates any such contract or agreement, damages shall be measured as of the earlier of—

“(1) the date of such rejection; or

“(2) the date of such liquidation, termination, or acceleration.”.

(b) Claims Arising From Rejection.—Section 502(g) of title 11, United States Code, is amended—

(1) by designating the existing text as paragraph (1); and

(2) by adding at the end the following new paragraph:

“(2) A claim for damages calculated in accordance with section 562 of this title shall be allowed under subsection (a),(b), or (e) of this section or disallowed under subsection (d) or (e) of this section as if such claim had arisen before the date of the filing of the petition.”.

SEC. 12. ASSET-BACKED SECURITIZATIONS.

Section 541 of title 11, United States Code, is amended—

(1) in subsection (b), by striking “or” at the end of paragraph (4);

(2) by redesignating paragraph (5) of subsection (b) as paragraph (6);
(3) by inserting after paragraph (4) of subsection (b) the following new paragraph:

“(5) any eligible asset (or proceeds thereof), to the extent that such eligible asset was transferred by the debtor, before the date of commencement of the case, to an eligible entity in connection with an asset-backed securitization, except to the extent such asset (or proceeds or value thereof) may be recovered by the trustee under section 550 by virtue of avoidance under section 548(a); or”; and

(4) by adding at the end the following new subsection:

“(e) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) ASSET-BACKED SECURITIZATION.—The term ‘asset-backed securitization’ means a transaction in which eligible assets transferred to an eligible entity are used as the source of payment on securities, the most senior of which are rated investment grade by 1 or more nationally recognized securities rating organizations, issued by an issuer;

“(2) ELIGIBLE ASSET.—The term ‘eligible asset’ means—

“(A) financial assets (including interests therein and proceeds thereof), either fixed or re-
volving, including residential and commercial mortgage loans, consumer receivables, trade receivables, and lease receivables, that, by their terms, convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

“(B) cash; and

“(C) securities.

“(3) ELIGIBLE ENTITY.—The term ‘eligible entity’ means—

“(A) an issuer; or

“(B) a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer and taking actions ancillary thereto;

“(4) ISSUER.—The term ‘issuer’ means a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and holding eligible assets, issuing securities backed by eligible assets, and taking actions ancillary thereto.

“(5) TRANSFERRED.—The term ‘transferred’ means the debtor, pursuant to a written agreement, represented and warranted that eligible assets were
sold, contributed, or otherwise conveyed with the intention of removing them from the estate of the debtor pursuant to subsection (b)(5), irrespective, without limitation of—

“(A) whether the debtor directly or indirectly obtained or held an interest in the issuer or in any securities issued by the issuer;

“(B) whether the debtor had an obligation to repurchase or to service or supervise the servicing of all or any portion of such eligible assets; or

“(C) the characterization of such sale, contribution, or other conveyance for tax, accounting, regulatory reporting, or other purposes.”.

**SEC. 13. SIPC STAY.**

Section 5(b)(2) of the Securities Investor Protection Act of 1971 (15 U.S.C. 78eee(b)(2)) is amended by adding after subparagraph (B) the following new subparagraph:

“(C) EXCEPTION FROM STAY.—

“(i) Notwithstanding section 362 of title 11, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by Securities Investor Protection Corporation from the court shall operate as a stay of any contractual rights
of a creditor to liquidate, terminate, or ac-
celerate a securities contract, commodity
contract, forward contract, repurchase
agreement, swap agreement, or master net-
ting agreement, each as defined in title 11,
to offset or net termination values, pay-
ment amounts, or other transfer obliga-
tions arising under or in connection with 1
or more of such contracts or agreements,
or to foreclose on any cash collateral
pledged by the debtor whether or not with
respect to 1 or more of such contracts or
agreements.

“(ii) Notwithstanding clause (i), such
application, order, or decree may operate
as a stay of the foreclosure on securities
collateral pledged by the debtor, whether
or not with respect to 1 or more of such
contracts or agreements, or securities sold
by the debtor under a repurchase agree-
ment.

“(iii) As used in this section, the term
‘contractual right’ includes a right set
forth in a rule or bylaw of a national secu-
rities exchange, a national securities asso-
ciation, or a securities clearing agency, a
right set forth in a bylaw of a clearing or-
ganization or contract market or in a reso-
lution of the governing board thereof, and
a right, whether or not in writing, arising
under common law, under law merchant,
or by reason of normal business practice.”

SEC. 14. FEDERAL RESERVE COLLATERAL REQUIREMENTS.

The 2d sentence of the 2d undesignated paragraph
of section 16 of the Federal Reserve Act (12 U.S.C. 412)
is amended by striking “acceptances acquired under sec-
tion 13 of this Act” and inserting “acceptances acquired
under section 10A, 10B, 13, or 13A of this Act”.

SEC. 15. SEVERABILITY; EFFECTIVE DATE; APPLICATION
OF AMENDMENTS.

(a) SEVERABILITY.—If any provision of this Act or
any amendment made by this Act, or the application of
any such provision or amendment to any person or cir-
cumstance, is held to be unconstitutional, the remaining
provisions of and amendments made by this Act and the
application of such other provisions and amendments to
any person or circumstance shall not be affected thereby.

(b) EFFECTIVE DATE.—This Act shall take effect on
the date of the enactment of this Act.
(c) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall apply with respect to cases commenced or appointments made under any Federal or State law after the date of enactment of this Act, but shall not apply with respect to cases commenced or appointments made under any Federal or State law before the date of enactment of this Act.