

105TH CONGRESS
2D SESSION

H. R. 4393

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. LAFALCE) 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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. TREATMENT OF CERTAIN AGREEMENTS BY CON-**
2 **SERVATORS OR RECEIVERS OF INSURED DE-**
3 **POSITORY INSTITUTIONS.**

4 (a) DEFINITION OF QUALIFIED FINANCIAL CON-
5 TRACT.—Section 11(e)(8)(D)(i) of the Federal Deposit In-
6 surance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by
7 inserting “, resolution or order” after “any similar agree-
8 ment that the Corporation determines by regulation”.

9 (b) DEFINITION OF SECURITIES CONTRACT.—Sec-
10 tion 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act
11 (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as fol-
12 lows:

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

15 “(I) means a contract for the
16 purchase, sale, or loan of a security,
17 or any mortgage loan, mortgage relat-
18 ed security (as defined in section
19 3(a)(41) of the Securities Exchange
20 Act of 1934) or interest therein, in-
21 cluding an option for the purchase or
22 sale of a security, certificate of de-
23 posit, or group or index of securities
24 (including any interest therein or
25 based on the value thereof) or any op-
26 tion entered into on a national securi-

1 ties exchange relating to foreign cur-
2 rencies, or the guarantee of any settle-
3 ment of cash or securities by or to a
4 securities clearing agency, or any
5 other similar agreement;

6 “(II) does not include any par-
7 ticipation in or servicing agreement
8 for a commercial mortgage loan unless
9 the Corporation determines by regula-
10 tion, resolution, or order to include
11 any such participation within the
12 meaning of such term;

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

16 “(IV) means the guarantee by or
17 to any securities clearing agency of
18 any settlement of cash, securities, cer-
19 tificates of deposit, mortgage loans or
20 interest therein, or group or index of
21 securities, certificates of deposit, or
22 mortgage loans or interests therein
23 (including any interest therein or
24 based on the value thereof) or option
25 on any of the foregoing, including any

1 option to purchase or sell any such se-
2 curity, certificate of deposit, loan, in-
3 terest, group or index or option;

4 “(V) means any margin loan;

5 “(VI) means any other agree-
6 ment or transaction that is similar to
7 any agreement or transaction referred
8 to in this clause;

9 “(VII) means any combination of
10 the agreements or transactions re-
11 ferred to in this clause;

12 “(VIII) means any option to
13 enter into any agreement or trans-
14 action referred to in this clause;

15 “(IX) means a master agreement
16 that provides for an agreement or
17 transaction referred to in subclause
18 (I), (II), (III), (IV), (V), (VI) or
19 (VII), together with all supplements
20 to any such master agreement, with-
21 out regard to whether the master
22 agreement provides for an agreement
23 or transaction that is not a securities
24 contract under this clause, except that
25 the master agreement shall be consid-

1 ered to be a securities contract under
2 this clause only with respect to each
3 agreement or transaction under the
4 master agreement that is referred to
5 in subclause (I), (II), (III), (IV), (V),
6 (VI) or (VII); and

7 “(X) means any security agree-
8 ment or arrangement or other credit
9 enhancement related to any agree-
10 ment or transaction referred to in this
11 clause.”.

12 (c) DEFINITION OF COMMODITY CONTRACT.—Sec-
13 tion 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act
14 (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as fol-
15 lows:

16 “(iii) COMMODITY CONTRACT.—The
17 term ‘commodity contract’ means—

18 “(I) with respect to a futures
19 commission merchant, a contract for
20 the purchase or sale of a commodity
21 for future delivery on, or subject to
22 the rules of, a contract market or
23 board of trade;

1 “(II) with respect to a foreign fu-
2 tures commission merchant, a foreign
3 future;

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

7 “(IV) with respect to a clearing
8 organization, a contract for the pur-
9 chase or sale of a commodity for fu-
10 ture delivery on, or subject to the
11 rules of, a contact market or board of
12 trade that is cleared by such clearing
13 organization, or commodity option
14 traded on, or subject to the rules of,
15 a contact market or board of trade
16 that is cleared by such clearing orga-
17 nization;

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

20 “(VI) any other agreement or
21 transaction that is similar to any
22 agreement or transaction referred to
23 in this clause;

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

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

7 “(IX) a master agreement that
8 provides for an agreement or trans-
9 action referred to in subclause (I),
10 (II), (III), (IV), (V), (VI), (VII) or
11 (VIII), together with supplements to
12 any such master agreement, without
13 regard to whether the master agree-
14 ment provides for an agreement or
15 transaction that is not a commodity
16 contract under this clause, except that
17 the master agreement shall be consid-
18 ered to be a commodity contract
19 under this clause only with respect to
20 each agreement or transaction under
21 the master agreement that is referred
22 to in subclause (I), (II), (III), (IV),
23 (V), (VI), (VII) or (VIII); or

24 “(X) a security agreement or ar-
25 rangement or other credit enhance-

1 ment related to any agreement or
2 transaction referred to in this
3 clause.”.

4 (d) DEFINITION OF FORWARD CONTRACT.—Section
5 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12
6 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

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

9 “(I) a contract (other than a
10 commodity contract) for the purchase,
11 sale, or transfer of a commodity or
12 any similar good, article, service,
13 right, or interest which is presently or
14 in the future becomes the subject of
15 dealing in the forward contract trade,
16 or product or byproduct thereof, with
17 a maturity date more than 2 days
18 after the date the contract is entered
19 into, including a repurchase agree-
20 ment, consignment, lease, swap, hedge
21 transaction, deposit, loan, option, allo-
22 cated transaction, unallocated trans-
23 action, or any other similar agree-
24 ment;

1 “(II) any combination of agree-
2 ments or transactions referred to in
3 subclauses (I) and (III);

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

7 “(IV) a master agreement that
8 provides for an agreement or trans-
9 action referred to in subclauses (I),
10 (II), or (III), together with all supple-
11 ments to any such master agreement,
12 without regard to whether the master
13 agreement provides for an agreement
14 or transaction that is not a forward
15 contract under this clause, except that
16 the master agreement shall be consid-
17 ered to be a forward contract under
18 this paragraph only with respect to
19 each agreement or transaction under
20 the master agreement that is referred
21 to in subclause (I), (II) or (III); or

22 “(V) a security agreement or ar-
23 rangement or other credit enhance-
24 ment related to any agreement or

1 transaction referred to in subclause
2 (I), (II), (III) or (IV).”.

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

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

11 “(I) means an agreement, includ-
12 ing related terms, that provides for
13 the transfer of certificates of deposit,
14 mortgage-related securities (as such
15 term is defined in section 3(a)(41) of
16 the Securities Exchange Act of 1934),
17 any mortgage loan, and any interest
18 in any mortgage loan, eligible bank-
19 ers’ acceptances, qualified foreign gov-
20 ernment securities or securities that
21 are direct obligations of, or that are
22 fully guaranteed as to principal and
23 interest by, the United States or any
24 agency of the United States against
25 the transfer of funds by the transferee

1 of such certificates of deposit, eligible
2 bankers' acceptances, or securities
3 with a simultaneous agreement by
4 such transferee to transfer to the
5 transferor thereof certificates of de-
6 posit, mortgage-related securities, and
7 mortgage loan, and any interest in
8 any mortgage loan, eligible bankers'
9 acceptances, or securities as described
10 above, at a date certain not later than
11 1 year after such transfers or on de-
12 mand, against the transfer of funds,
13 or any other similar agreement;

14 “(II) does not include any par-
15 ticipation in a commercial mortgage
16 loan unless the Corporation deter-
17 mines by regulation, resolution, or
18 order to include any such participa-
19 tion within the meaning of such term;

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

23 “(IV) means any option to enter
24 into any agreement or transaction re-
25 ferred to in subclause (I) or (II);

1 “(V) means a master agreement
2 that provides for an agreement or
3 transaction referred to in subclause
4 (I), (II) or (III), together with all
5 supplements, without regard to wheth-
6 er the master agreement provides for
7 an agreement or transaction that is
8 not a repurchase agreement under
9 this section, except that the master
10 agreement shall be considered to be a
11 repurchase agreement under this sub-
12 clause only with respect to each agree-
13 ment or transaction under the master
14 agreement that is referred to in sub-
15 clause (I), (II) or (III); and

16 “(VI) means a security agree-
17 ment or arrangement or other credit
18 enhancement related to any agree-
19 ment or transaction referred to in
20 subclause (I), (II), (III), or (IV).

21 For purposes of this clause, the term
22 ‘qualified foreign government security’
23 means a security that is a direct obligation
24 of, or that is fully guaranteed by, the cen-
25 tral government of a member of the Orga-

1 nization for Economic Cooperation and
2 Development (as determined by regulation
3 or order adopted by the appropriate Fed-
4 eral banking authority).”.

5 (f) DEFINITION OF SWAP AGREEMENT.—The Fed-
6 eral Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi))
7 is amended to read as follows:

8 “(vi) SWAP AGREEMENT.—The term
9 ‘swap agreement’ means—

10 “(I) any agreement, including the
11 terms and conditions incorporated by
12 reference in any such agreement,
13 which is an interest rate swap, option,
14 future, or forward agreement, includ-
15 ing a rate floor, rate cap, rate collar,
16 cross-currency rate swap, and basis
17 swap; a spot, same day-tomorrow, to-
18 morrow-next, forward or other foreign
19 exchange agreement; a currency swap,
20 option, future, or forward agreement;
21 an equity index or equity swap, op-
22 tion, future, or forward agreement; a
23 debt index or debt swap, option, fu-
24 ture, or forward agreement; a credit
25 swap, option, future, or forward

1 agreement; a commodity swap, option,
2 future, or forward agreement or any
3 other similar agreement;

4 “(II) an agreement or trans-
5 action similar to any other agreement
6 or transaction referred to in this
7 clause that is presently, or in the fu-
8 ture becomes, regularly entered into
9 in the swap agreement market (in-
10 cluding terms and conditions incor-
11 porated by reference in such agree-
12 ment) and that is a forward, swap, fu-
13 ture, or option on 1 or more rates,
14 currencies, commodities, equity securi-
15 ties or other equity instruments, debt
16 securities or other debt instruments,
17 or economic indices or measures of
18 economic risk or value;

19 “(III) any combination of agree-
20 ments or transactions referred to in
21 this clause;

22 “(IV) any option to enter into
23 any agreement or transaction referred
24 to in this clause;

1 “(V) a master agreement that
2 provides for an agreement or trans-
3 action referred to in subclause (I),
4 (II), (III), or (IV), together with all
5 supplements to such master agree-
6 ment, without regard to whether the
7 master agreement contains an agree-
8 ment or transaction that is described
9 in any of those subclauses, except that
10 the master agreement shall be consid-
11 ered to be a swap agreement only with
12 respect to each agreement or trans-
13 action under the master agreement
14 that is referred to in subclause (I),
15 (II), (III), or (IV); and

16 “(VI) any security agreement or
17 arrangement or other credit enhance-
18 ment related to any agreements or
19 transactions referred to in subpara-
20 graph (I), (II), (III), or (IV).

21 Such term shall not be construed or ap-
22 plied so as to challenge or affect the char-
23 acterization, definition, or treatment of any
24 swap agreement or any instrument defined
25 as a swap agreement herein, under any

1 other statute, regulation, or rule, including
2 the Securities Act of 1933, the Securities
3 Exchange Act of 1934, the Public Utility
4 Holding Company Act of 1935, the Trust
5 Indenture Act of 1939, the Investment
6 Company Act of 1940, the Investment Ad-
7 visers Act of 1940, the Securities Investor
8 Protection Act of 1970, the Commodity
9 Exchange Act, and the regulations promul-
10 gated by the Securities and Exchange
11 Commission or the Commodity Futures
12 Trading Commission.”.

13 (g) DEFINITION OF TRANSFER.—Section
14 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12
15 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

16 “(viii) TRANSFER.—The term ‘trans-
17 fer’ means every mode, direct or indirect,
18 absolute or conditional, voluntary or invol-
19 untary, of disposing of or parting with
20 property or with an interest in property,
21 including retention of title as a security in-
22 terest and foreclosure of the debtor’s eq-
23 uity of redemption.”.

1 (h) TREATMENT OF QUALIFIED FINANCIAL CON-
2 TRACTS.—Section 11(e)(8) of the Federal Deposit Insur-
3 ance Act (12 U.S.C. 1821(e)(8)) is amended—

4 (1) in subparagraph (A), by striking “para-
5 graph (10)” and inserting “paragraphs (9) and
6 (10)”;

7 (2) in subparagraph (A)(i), by striking “to
8 cause the termination or liquidation” and inserting
9 “such person has to cause the termination, liquida-
10 tion, or acceleration”;

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

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

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

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

1 (i) AVOIDANCE OF TRANSFERS.—Section
2 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12
3 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section
4 5242 of the Revised Statutes (12 U.S.C. 91) or any other
5 Federal or State law relating to the avoidance of pref-
6 erential or fraudulent transfers,” before “the Corpora-
7 tion”.

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

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

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

17 (2) by adding at the end the following new sub-
18 paragraphs:

19 “(F) CLARIFICATION.—No provision of law
20 shall be construed as limiting the right or
21 power of the Corporation, or authorizing any
22 court or agency to limit or delay, in any man-
23 ner, the right or power of the Corporation to
24 transfer any qualified financial contract in ac-
25 cordance with paragraphs (9) and (10) of this

1 subsection or to disaffirm or repudiate any such
2 contract in accordance with subsection (e)(1) of
3 this section.

4 “(G) WALKAWAY CLAUSES NOT EFFEC-
5 TIVE.—

6 “(i) IN GENERAL.—Notwithstanding
7 the provisions of subparagraphs (A) and
8 (E), and sections 403 and 404 of the Fed-
9 eral Deposit Insurance Corporation Im-
10 provement Act of 1991, no walkaway
11 clause shall be enforceable in a qualified fi-
12 nancial contract of an insured depository
13 institution in default.

14 “(ii) WALKAWAY CLAUSE DEFINED.—
15 For purposes of this subparagraph, the
16 term ‘walkaway clause’ means a provision
17 in a qualified financial contract that, after
18 calculation of a value of a party’s position
19 or an amount due to or from 1 of the par-
20 ties in accordance with its terms upon ter-
21 mination, liquidation, or acceleration of the
22 qualified financial contract, either does not
23 create a payment obligation of a party or
24 extinguishes a payment obligation of a
25 party in whole or in part solely because of

1 such party's status as a nondefaulting
2 party.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENT.—
4 Section 11(e)(12)(A) of the Federal Deposit Insurance
5 Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting
6 “or the exercise of rights or powers” after “the appoint-
7 ment”.

8 **SEC. 4. AMENDMENTS RELATING TO TRANSFERS OF QUALI-**
9 **FIED FINANCIAL CONTRACTS.**

10 (a) TRANSFERS OF QUALIFIED FINANCIAL CON-
11 TRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9)
12 of the Federal Deposit Insurance Act (12 U.S.C.
13 1821(e)(9)) is amended to read as follows:

14 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
15 TRACTS.—

16 “(A) IN GENERAL.—In making any trans-
17 fer of assets or liabilities of a depository institu-
18 tion in default which includes any qualified fi-
19 nancial contract, the conservator or receiver for
20 such depository institution shall either—

21 “(i) transfer to 1 financial institution,
22 other than a financial institution for which
23 a conservator, receiver, trustee in bank-
24 ruptcy, or other legal custodian has been

1 appointed or which is otherwise the subject
2 of a bankruptcy or insolvency proceeding—

3 “(I) all qualified financial con-
4 tracts between any person or any af-
5 filiate of such person and the deposi-
6 tory institution in default;

7 “(II) all claims of such person or
8 any affiliate of such person against
9 such depository institution under any
10 such contract (other than any claim
11 which, under the terms of any such
12 contract, is subordinated to the claims
13 of general unsecured creditors of such
14 institution);

15 “(III) all claims of such deposi-
16 tory institution against such person or
17 any affiliate of such person under any
18 such contract; and

19 “(IV) all property securing any
20 claim described in subclause (II) or
21 (III) under any such contract, or any
22 other credit enhancement for any con-
23 tract described in clause (I); or

24 “(ii) transfer none of the qualified fi-
25 nancial contracts, claims, or property re-

1 ferred to in clause (i) (with respect to such
2 person and any affiliate of such person).

3 “(B) TRANSFER TO FOREIGN BANK, FOR-
4 EIGN FINANCIAL INSTITUTION, OR BRANCH OR
5 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-
6 STITUTION.—In transferring any qualified fi-
7 nancial contracts and related claims and prop-
8 erty pursuant to subparagraph (A)(i), the con-
9 servator or receiver for such depository institu-
10 tion shall not make such transfer to a foreign
11 bank, financial institution organized under the
12 laws of a foreign country, or a branch or agency
13 of a foreign bank or financial institution unless,
14 under the law applicable to such bank, financial
15 institution, branch or agency, to the qualified
16 financial contracts, and to any netting contract,
17 the contractual rights of the parties to such
18 qualified financial contracts are enforceable
19 substantially to the same extent as permitted
20 under this section.

21 “(C) TRANSFER OF CONTRACTS SUBJECT
22 TO THE RULES OF A CLEARING ORGANIZA-
23 TION.—In the event that a conservator or re-
24 ceiver transfers any qualified financial contract
25 and related claims and property pursuant to

1 subparagraph (A)(i) and such contract is sub-
2 ject to the rules of a clearing organization, the
3 clearing organization shall not be required to
4 accept the transferee as a member by virtue of
5 the transfer.

6 “(D) DEFINITION.—For purposes of this
7 section, the term ‘financial institution’ means a
8 broker or dealer, a depository institution, a fu-
9 tures commission merchant, or any other insti-
10 tution as determined by the Corporation by reg-
11 ulation to be a financial institution.”.

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

22 (c) RIGHTS AGAINST RECEIVER AND TREATMENT OF
23 BRIDGE BANKS.—Section 11(e)(10) of the Federal De-
24 posit Insurance Act (12 U.S.C. 1821(e)(10)) is further
25 amended—

1 (1) by redesignating subparagraph (B) as sub-
2 paragraph (D); and

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

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

7 “(i) RECEIVERSHIP.—A person who is
8 a party to a qualified financial contract
9 with an insured depository institution may
10 not exercise any right such person has to
11 terminate, liquidate, or net such contract
12 under paragraph (8)(A) or section 403 or
13 404 of the Federal Deposit Insurance Cor-
14 poration Improvement Act of 1991 solely
15 by reason of or incidental to the appoint-
16 ment of a receiver for the depository insti-
17 tution (or the insolvency or financial condi-
18 tion of the depository institution for which
19 the receiver has been appointed)—

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

24 “(II) after the person has re-
25 ceived notice that the contract has

1 been transferred pursuant to para-
2 graph (9)(A).

3 “(ii) CONSERVATORSHIP.—A person
4 who is a party to a qualified financial con-
5 tract with an insured depository institution
6 may not exercise any right such person has
7 to terminate, liquidate, or net such con-
8 tract under paragraph (8)(E) or sections
9 403 or 404 of the Federal Deposit Insur-
10 ance Corporation Improvement Act of
11 1991, solely by reason of or incidental to
12 the appointment of a conservator for the
13 depository institution (or the insolvency or
14 financial condition of the depository insti-
15 tution for which the conservator has been
16 appointed).

17 “(iii) NOTICE.—For purposes of this
18 subsection, the Corporation as receiver or
19 conservator of an insured depository insti-
20 tution shall be deemed to have notified a
21 person who is a party to a qualified finan-
22 cial contract with such depository institu-
23 tion if the Corporation has taken steps
24 reasonably calculated to provide notice to

1 such person by the time specified in sub-
2 paragraph (A) of this subsection.

3 “(C) TREATMENT OF BRIDGE BANKS.—

4 The following institutions shall not be consid-
5 ered a financial institution for which a con-
6 servator, receiver, trustee in bankruptcy, or
7 other legal custodian has been appointed or
8 which is otherwise the subject of a bankruptcy
9 or insolvency proceeding for purposes of sub-
10 section (e)(9)—

11 “(i) a bridge bank; or

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

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

17 “(II) at the time of a purchase
18 and assumption transaction between
19 such institution and the Corporation
20 as receiver for a depository institution
21 in default.”.

1 **SEC. 5. AMENDMENTS RELATING TO DISAFFIRMANCE OR**
2 **REPUDIATION OF QUALIFIED FINANCIAL**
3 **CONTRACTS.**

4 Section 11(e) of the Federal Deposit Insurance Act
5 (12 U.S.C. 1821(e)) is further amended—

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

9 (2) by inserting after paragraph (10) the fol-
10 lowing new paragraph:

11 “(11) DISAFFIRMANCE OR REPUDIATION OF
12 QUALIFIED FINANCIAL CONTRACTS.—In exercising
13 the rights of disaffirmance or repudiation of a con-
14 servator or receiver with respect to any qualified fi-
15 nancial contract to which an insured depository in-
16 stitution is a party, the conservator or receiver for
17 such institution shall either—

18 “(A) disaffirm or repudiate all qualified fi-
19 nancial contracts between—

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

22 “(ii) the depository institution in de-
23 fault; or

24 “(B) disaffirm or repudiate none of the
25 qualified financial contracts referred to in sub-

1 paragraph (A) (with respect to such person or
2 any affiliate of such person).”.

3 **SEC. 6. CLARIFYING AMENDMENT RELATING TO MASTER**
4 **AGREEMENTS.**

5 Section 11(e)(8)(D)(vii) of the Federal Deposit In-
6 surance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to
7 read as follows:

8 “(vii) TREATMENT OF MASTER
9 AGREEMENT AS 1 AGREEMENT.—Any mas-
10 ter agreement for any contract or agree-
11 ment described in any preceding clause of
12 this subparagraph (or any master agree-
13 ment for such master agreement or agree-
14 ments), together with all supplements to
15 such master agreement, shall be treated as
16 a single agreement and a single qualified
17 financial contract. If a master agreement
18 contains provisions relating to agreements
19 or transactions that are not themselves
20 qualified financial contracts, the master
21 agreement shall be deemed to be a quali-
22 fied financial contract only with respect to
23 those transactions that are themselves
24 qualified financial contracts.”.

1 **SEC. 7. FEDERAL DEPOSIT INSURANCE CORPORATION IM-**
2 **PROVEMENT ACT OF 1991.**

3 (a) DEFINITIONS.—Section 402 of the Federal De-
4 posit Insurance Corporation Improvement Act of 1991 (12
5 U.S.C. 4402) is amended—

6 (1) in paragraph (6)—

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

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

12 “(B) an uninsured national bank or an un-
13 insured State bank that is a member of the
14 Federal Reserve System if the national bank or
15 State member bank is not eligible to make ap-
16 plication to become an insured bank under sec-
17 tion 5 of the Federal Deposit Insurance Act;”;
18 and

19 (C) by amending subparagraph (C) (as re-
20 designated) to read as follows:

21 “(C) a branch or agency of a foreign bank,
22 a foreign bank and any branch or agency of the
23 foreign bank, or the foreign bank that estab-
24 lished the branch or agency, as those terms are
25 defined in section 1(b) of the International
26 Banking Act of 1978;”;

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

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

6 “(i) means a contract or agreement
7 between 2 or more financial institutions,
8 clearing organizations, or members that
9 provides for netting present or future pay-
10 ment obligations or payment entitlements
11 (including liquidation or closeout values re-
12 lating to such obligations or entitlements)
13 among the parties to the agreement; and”;
14 and

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

17 “(15) PAYMENT.—The term ‘payment’ means a
18 payment of United States dollars, another currency,
19 or a composite currency, and a noncash delivery, in-
20 cluding a payment or delivery to liquidate an
21 unmatured obligation.”.

22 (b) ENFORCEABILITY OF BILATERAL NETTING CON-
23 TRACTS.—Section 403 of the Federal Deposit Insurance
24 Corporation Improvement Act of 1991 (12 U.S.C. 4403)
25 is amended—

1 (1) by amending subsection (a) to read as fol-
2 lows:

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

13 (2) by adding at the end the following new sub-
14 section:

15 “(f) ENFORCEABILITY OF SECURITY AGREE-
16 MENTS.—The provisions of any security agreement or ar-
17 rangement or other credit enhancement related to 1 or
18 more netting contracts between any 2 financial institu-
19 tions shall be enforceable in accordance with their terms
20 and shall not be stayed, avoided, or otherwise limited by
21 any State or Federal law (other than paragraphs (8)(E),
22 (8)(F), and (10)(B) of section 11(e) of the Federal De-
23 posit Insurance Act and section 5(b)(2) of the Securities
24 Investor Protection Act of 1971).”.

1 (c) ENFORCEABILITY OF CLEARING ORGANIZATION
2 NETTING CONTRACTS.—Section 404 of the Federal De-
3 posit Insurance Corporation Improvement Act of 1991 (12
4 U.S.C. 4404) is amended—

5 (1) by amending subsection (a) to read as fol-
6 lows:

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

18 (2) by adding at the end the following new sub-
19 section:

20 “(h) ENFORCEABILITY OF SECURITY AGREE-
21 MENTS.—The provisions of any security agreement or ar-
22 rangement or other credit enhancement related to 1 or
23 more netting contracts between any 2 members of a clear-
24 ing organization shall be enforceable in accordance with
25 their terms and shall not be stayed, avoided, or otherwise

1 limited by any State or Federal law other than paragraphs
2 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal
3 Deposit Insurance Act and section 5(b)(2) of the Securi-
4 ties Investor Protection Act of 1971.”.

5 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-
6 SURED NATIONAL BANKS AND UNINSURED FEDERAL
7 BRANCHES AND AGENCIES.—The Federal Deposit Insur-
8 ance Corporation Improvement Act of 1991 (12 U.S.C.
9 4401 et seq.) is amended—

10 (1) by redesignating section 407 as section 408;

11 and

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

14 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**
15 **NATIONAL BANKS AND UNINSURED FEDERAL**
16 **BRANCHES AND AGENCIES.**

17 “(a) IN GENERAL.—Notwithstanding any other pro-
18 vision of law, paragraphs (8), (9), and (11) of section
19 11(e) of the Federal Deposit Insurance Act shall apply
20 to an uninsured national bank or uninsured Federal
21 branch or Federal agency except—

22 “(1) any reference to the ‘Corporation as re-
23 ceiver’ or ‘the receiver or the Corporation’ shall refer
24 to the receiver of an uninsured national bank or un-

1 insured Federal branch or Federal agency appointed
2 by the Comptroller of the Currency;

3 “(2) any reference to the ‘Corporation’ (other
4 than in section 11(e)(8)(D) of such Act), the ‘Cor-
5 poration, whether acting as such or as conservator
6 or receiver’, a ‘receiver’, or a ‘conservator’ shall refer
7 to the receiver or conservator of an uninsured na-
8 tional bank or uninsured Federal branch or Federal
9 agency appointed by the Comptroller of the Cur-
10 rency; and

11 “(3) any reference to an ‘insured depository in-
12 stitution’ or ‘depository institution’ shall refer to an
13 uninsured national bank or an uninsured Federal
14 branch or Federal agency.

15 “(b) LIABILITY.—The liability of a receiver or con-
16 servator of an uninsured national bank or uninsured Fed-
17 eral branch or agency shall be determined in the same
18 manner and subject to the same limitations that apply to
19 receivers and conservators of insured depository institu-
20 tions under section 11(e) of the Federal Deposit Insurance
21 Act.

22 “(c) REGULATORY AUTHORITY.—

23 “(1) IN GENERAL.—The Comptroller of the
24 Currency, in consultation with the Federal Deposit

1 Insurance Corporation, may promulgate regulations
2 to implement this section.

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

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

14 **SEC. 8. BANKRUPTCY CODE AMENDMENTS.**

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

19 (1) in section 101—

20 (A) in paragraph (25)—

21 (i) by striking “means a contract”

22 and inserting “means—

23 “(A) a contract”;

1 (ii) by striking “, or any combination
2 thereof or option thereon;” and inserting
3 “, or any other similar agreement;”; and

4 (iii) by adding at the end the follow-
5 ing new subparagraphs:

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

9 “(C) any option to enter into any agree-
10 ment or transaction referred to in subparagraph
11 (A) or (B);

12 “(D) a master agreement that provides for
13 an agreement or transaction referred to in sub-
14 paragraph (A), (B) or (C), together with all
15 supplements to any such master agreement,
16 without regard to whether the master agree-
17 ment provides for an agreement or transaction
18 that is not a forward contract under this para-
19 graph, except that the master agreement shall
20 be considered to be a forward contract under
21 this paragraph only with respect to each agree-
22 ment or transaction under the master agree-
23 ment that is referred to in subparagraph (A),
24 (B) or (C); or

1 “(E) a security agreement or arrangement
2 or other credit enhancement related to any
3 agreement or transaction referred to in sub-
4 paragraph (A), (B), (C) or (D);”;

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

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

10 “(A) means—

11 “(i) an agreement, including related
12 terms, which provides for the transfer of 1
13 or more certificates of deposit, mortgage-
14 related securities (as such term is defined
15 in the Securities Exchange Act of 1934),
16 mortgage loans, interests in mortgage-re-
17 lated securities or mortgage loans, eligible
18 bankers’ acceptances, qualified foreign gov-
19 ernment securities or securities that are di-
20 rect obligations of, or that are fully guar-
21 anteed as to principal and interest by, the
22 United States or any agency of the United
23 States against the transfer of funds by the
24 transferee of such certificates of deposit,
25 eligible bankers’ acceptances, securities,

1 loans or interests with a simultaneous
2 agreement by such transferee to transfer
3 to the transferor thereof certificates of de-
4 posit, eligible bankers' acceptances, securi-
5 ties, loans, or interests as described above,
6 at a date certain not later than 1 year
7 after such transfers or on demand, against
8 the transfer of funds; or any other similar
9 agreement; and

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

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

16 “(iv) a master agreement that pro-
17 vides for an agreement or transaction re-
18 ferred to in clauses (i), (ii) or (iii), to-
19 gether with all supplements, without re-
20 gard to whether the master agreement pro-
21 vides for an agreement or transaction that
22 is not a repurchase agreement under this
23 subparagraph, except that the master
24 agreement shall be considered to be a re-
25 purchase agreement under this subpara-

1 graph only with respect to each agreement
2 or transaction under the master agreement
3 that is referred to in clause (i), (ii) or (iii);
4 or

5 “(v) a security agreement or arrange-
6 ment or other credit enhancement related
7 to any agreement or transaction referred
8 to in clauses (i), (ii), (iii) or (iv); and

9 “(B) does not include any repurchase obli-
10 gation under a participation in a commercial
11 mortgage loan,

12 and, for purposes of this paragraph, the term ‘quali-
13 fied foreign government security’ means a security
14 that is a direct obligation of, or that is fully guaran-
15 teed by, the central government of a member of the
16 Organization for Economic Cooperation and Devel-
17 opment.”; and

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

20 “(53B) the term ‘swap agreement’—

21 “(A) means—

22 “(i) any agreement, including the
23 terms and conditions incorporated by ref-
24 erence in any such agreement, which is an
25 interest rate swap, option, future, or for-

1 ward agreement, including a rate floor,
2 rate cap, rate collar, cross-currency rate
3 swap, and basis swap; a spot, same day-to-
4 morrow, tomorrow-next, forward, or other
5 foreign exchange or precious metals agree-
6 ment; a currency swap, option, future, or
7 forward agreement; an equity index or eq-
8 uity swap, option, future, or forward agree-
9 ment; a debt index or debt swap, option,
10 future, or forward agreement; a credit
11 spread or credit swap, option, future, or
12 forward agreement; a commodity index or
13 commodity swap, option, future, or forward
14 agreement;

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

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

23 “(II) is a forward, swap, future,
24 or option on 1 or more rates, cur-
25 rencies, commodities, equity securities

1 or other equity instruments, debt se-
2 curities or other debt instruments, or
3 economic indices or measures of eco-
4 nomic risk or value;

5 “(iii) any combination of agreements
6 or transactions referred to in this subpara-
7 graph;

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

11 “(v) a master agreement that provides
12 for an agreement or transaction referred to
13 in clause (i), (ii), (iii), or (iv), together
14 with all supplements to any such master
15 agreement, without regard to whether the
16 master agreement contains an agreement
17 or transaction that is described in any of
18 such clause, except that the master agree-
19 ment shall be considered to be a swap
20 agreement only with respect to each agree-
21 ment or transaction under the master
22 agreement that is referred to in clause (i),
23 (ii), (iii), or (iv); or

24 “(C) is applicable for purposes of this title
25 only and shall not be construed or applied to

1 challenge or affect the characterization, defini-
2 tion, or treatment of any swap agreement or
3 any instrument defined as a swap agreement
4 herein, under any other statute, regulation, or
5 rule, including the Securities Act of 1933, the
6 Securities Exchange Act of 1934, the Public
7 Utility Holding Company Act of 1935, the
8 Trust Indenture Act of 1939, the Investment
9 Company Act of 1940, the Investment Advisers
10 Act of 1940, the Securities Investor Protection
11 Act of 1970, the Commodity Exchange Act, and
12 the regulations prescribed by the Securities and
13 Exchange Commission or the Commodity Fu-
14 tures Trading Commission.”;

15 (2) by amending section 741(7) to read as fol-
16 lows:

17 “(7) the term ‘securities contract’—

18 “(A) means—

19 “(i) a contract for the purchase, sale,
20 or loan of a security, a certificate of de-
21 posit, a mortgage loan or any interest in a
22 mortgage loan, or a group or index of se-
23 curities, certificates of deposit, or mort-
24 gage loans or interests therein (including
25 any interest therein or based on the value

1 thereof) or option on any of the foregoing,
2 including any option to purchase or sell
3 any such security, certificate of deposit,
4 loan, interest, group or index or option;

5 “(ii) any option entered into on a na-
6 tional securities exchange relating to for-
7 eign currencies;

8 “(iii) the guarantee by or to any secu-
9 rities clearing agency of any settlement of
10 cash, securities, certificates of deposit,
11 mortgage loans or interest therein, or
12 group or index of securities, certificates of
13 deposit, or mortgage loans or interests
14 therein (including any interest therein or
15 based on the value thereof) or option on
16 any of the foregoing, including any option
17 to purchase or sell any such security, cer-
18 tificate of deposit, loan, interest, group or
19 index or option;

20 “(iv) any margin loan;

21 “(v) any other agreement or trans-
22 action that is similar to any agreement or
23 transaction referred to in this subpara-
24 graph;

1 “(vi) any combination of the agree-
2 ments or transactions referred to in this
3 subparagraph;

4 “(vii) any option to enter into any
5 agreement or transaction referred to in
6 this subparagraph;

7 “(viii) a master agreement that pro-
8 vides for an agreement or transaction re-
9 ferred to in clause (i), (ii), (iii), (iv), (v),
10 (vi), or (vii), together with all supplements
11 to any such master agreement, without re-
12 gard to whether the master agreement pro-
13 vides for an agreement or transaction that
14 is not a securities contract under this sub-
15 paragraph, except that the master agree-
16 ment shall be considered to be a securities
17 contract under this subparagraph only with
18 respect to each agreement or transaction
19 under the master agreement that is re-
20 ferred to in clause (i), (ii), (iii), (iv), (v),
21 (vi), or (vii); and

22 “(ix) any security agreement or ar-
23 rangement or other credit enhancement re-
24 lated to any agreement or transaction re-
25 ferred to in this subparagraph; and

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

5 (3) in section 761(4)—

6 (A) by striking “or” at the end of subpara-
7 graph (D); and

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

10 “(F) any other agreement or transaction
11 that is similar to any agreement or transaction
12 referred to in this paragraph;

13 “(G) any combination of the agreements or
14 transactions referred to in this paragraph;

15 “(H) any option to enter into any agree-
16 ment or transaction referred to in this para-
17 graph;

18 “(I) a master agreement that provides for
19 an agreement or transaction referred to in sub-
20 paragraph (A), (B), (C), (D), (E), (F), (G) or
21 (H), together with all supplements to any such
22 master agreement, without regard to whether
23 the master agreement provides for an agree-
24 ment or transaction that is not a commodity
25 contract under this paragraph, except that the

1 master agreement shall be considered to be a
2 commodity contract under this paragraph only
3 with respect to each agreement or transaction
4 under the master agreement that is referred to
5 in subparagraph (A), (B), (C), (D), (E), (F),
6 (G) or (H); or

7 “(J) a security agreement or arrangement
8 or other credit enhancement related to any
9 agreement or transaction referred to in this
10 paragraph;”.

11 (b) DEFINITIONS OF FINANCIAL INSTITUTION, FI-
12 NANCIAL PARTICIPANT, AND FORWARD CONTRACT MER-
13 CHANT.—Section 101 of title 11, United States Code, is
14 amended—

15 (1) by amending paragraph (22) to read as fol-
16 lows:

17 “(22) the term ‘financial institution’ means a
18 Federal reserve bank, or a person that is a commer-
19 cial or savings bank, industrial savings bank, savings
20 and loan association, trust company, or receiver or
21 conservator for such person and, when any such
22 Federal reserve bank, receiver, or conservator or
23 person acting as agent or custodian for a customer
24 in connection with a securities contract, as defined
25 in section 741(7) of this title, such customer;”;

1 (2) by inserting after paragraph (22) the fol-
2 lowing new paragraph:

3 “(22A) the term ‘financial participant’ means
4 any entity that, at the time it enters into a securities
5 contract, commodity contract or forward contract, or
6 at the time of the filing of the petition, has 1 or
7 more agreements or transactions that is described in
8 section 561(a)(2) with the debtor or any other entity
9 (other than an affiliate) of a total gross dollar value
10 of at least \$1,000,000,000 in notional or actual
11 principal amount outstanding on any day during the
12 previous 15-month period, or has gross mark-to-
13 market positions of at least \$100,000,000 (aggre-
14 gated across counterparties) in 1 or more such
15 agreements or transactions with the debtor or any
16 other entity (other than an affiliate) on any day dur-
17 ing the previous 15-month period;” and

18 (3) by amending paragraph (26) to read as fol-
19 lows:

20 “(26) the term ‘forward contract merchant’
21 means a Federal reserve bank, or a person whose
22 business consists in whole or in part of entering into
23 forward contracts as or with merchants or in a com-
24 modity, as defined or in section 761(8) of this title,
25 or any similar good, article, service, right, or interest

1 which is presently or in the future becomes the sub-
2 ject of dealing or in the forward contract trade;”.

3 (c) DEFINITION OF MASTER NETTING AGREEMENT
4 AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-
5 tion 101 of title 11, United States Code, is amended by
6 inserting after paragraph (38) the following new para-
7 graphs:

8 “(38A) the term ‘master netting agreement’
9 means an agreement providing for the exercise of
10 rights, including rights of netting, setoff, liquidation,
11 termination, acceleration, or closeout, under or in
12 connection with 1 or more contracts that are de-
13 scribed in any 1 or more of paragraphs (1) through
14 (5) of section 561(a), or any security agreement or
15 arrangement or other credit enhancement related to
16 1 or more of the foregoing. If a master netting
17 agreement contains provisions relating to agree-
18 ments or transactions that are not contracts de-
19 scribed in paragraphs (1) through (5) of section
20 561(a), the master netting agreement shall be
21 deemed to be a master netting agreement only with
22 respect to those agreements or transactions that are
23 described in any 1 or more of the paragraphs (1)
24 through (5) of section 561(a);

1 “(38B) the term ‘master netting agreement
2 participant’ means an entity that, at any time before
3 the filing of the petition, is a party to an outstand-
4 ing master netting agreement with the debtor;”.

5 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,
6 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-
7 CHASE AGREEMENTS, AND MASTER NETTING AGREE-
8 MENTS UNDER THE AUTOMATIC-STAY.—

9 (1) IN GENERAL.—Section 362(b) of title 11,
10 United States Code, is amended—

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

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

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

19 “(17) under subsection (a), of the setoff by a
20 swap participant of any mutual debt and claim
21 under or in connection with 1 or more swap agree-
22 ments that constitute the setoff of a claim against
23 the debtor for any payment due from the debtor
24 under or in connection with any swap agreement
25 against any payment due to the debtor from the

1 swap participant under or in connection with any
2 swap agreement or against cash, securities, or other
3 property of the debtor held by, pledged to, and
4 under the control of, or due from such swap partici-
5 pant to guarantee, secure, or settle any swap agree-
6 ment;”;

7 (D) in paragraph (18), by striking the pe-
8 riod and inserting “; or”; and

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

11 “(19) under subsection (a), of the setoff by a
12 master netting agreement participant of a mutual
13 debt and claim under or in connection with 1 or
14 more master netting agreements to the extent such
15 participant could offset the claim under paragraph
16 (6), (7), or (17) for each individual contract covered
17 by the master netting agreement in issue.”.

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

21 “(i) LIMITATION.—The exercise of rights not subject
22 to the stay arising under subsection (a) pursuant to para-
23 graph (6), (7), (17), or (19) of subsection (b) shall not
24 be stayed by any order of a court or administrative agency
25 in any proceeding under this title.”.

1 (e) LIMITATION OF AVOIDANCE POWERS UNDER
2 MASTER NETTING AGREEMENT.—Section 546 of title 11,
3 United States Code, is amended—

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

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

7 (B) by striking “in connection with a swap
8 agreement” and inserting “under or in connec-
9 tion with any swap agreement”;

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

13 (3) by inserting before subsection (i) (as redес-
14 igned) the following new subsection:

15 “(h) Notwithstanding sections 544, 545, 547,
16 548(a)(2), and 548(b) of this title, to the extent that
17 under subsection (e), (f), or (g), the trustee may not avoid
18 a transfer made by or to a master netting agreement par-
19 ticipant under or in connection with each individual con-
20 tract covered by any master netting agreement that is
21 made before the commencement of the case, the trustee
22 may not avoid a transfer made by or to such master net-
23 ting agreement participant under or in connection with the
24 master netting agreement in issue, except under section
25 548(a)(1) of this title.”.

1 (f) FRAUDULENT TRANSFERS OF MASTER NETTING
2 AGREEMENTS.—Section 548(d)(2) of title 11, United
3 States Code, is amended—

4 (1) in subparagraph (C), by striking “and”;

5 (2) in subparagraph (D), by striking the period
6 and inserting “; and”; and

7 (3) by adding at the end the following new sub-
8 paragraph:

9 “(E) a master netting agreement partici-
10 pant that receives a transfer in connection with
11 a master netting agreement takes for value to
12 the extent of such transfer, but only to the ex-
13 tent that such participant would take for value
14 under paragraph (B), (C), or (D) for each indi-
15 vidual contract covered by the master netting
16 agreement in issue.”.

17 (g) TERMINATION OR ACCELERATION OF SECURITIES
18 CONTRACTS.—Section 555 of title 11, United States Code,
19 is amended—

20 (1) by amending the section heading to read

21 **“Contractual right to liquidate, termi-
22 nate, or accelerate a securities contract”;**

23 and

1 (2) in the first sentence, by striking “liquida-
2 tion” and inserting “liquidation, termination, or ac-
3 celeration”.

4 (h) TERMINATION OR ACCELERATION OF COMMOD-
5 ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,
6 United States Code, is amended—

7 (1) by amending the section heading to read
8 **“Contractual right to liquidate, termi-
9 nate, or accelerate a commodities con-
10 tract or forward contract”**; and

11 (2) in the first sentence, by striking “liquida-
12 tion” and inserting “liquidation, termination, or ac-
13 celeration”.

14 (i) TERMINATION OR ACCELERATION OF REPUR-
15 CHASE AGREEMENTS.—Section 559 of title 11, United
16 States Code, is amended—

17 (1) by amending the section heading to read
18 **“Contractual right to liquidate, termi-
19 nate, or accelerate a repurchase agree-
20 ment”**; and

21 (2) in the first sentence, by striking “liquida-
22 tion” and inserting “liquidation, termination, or ac-
23 celeration”.

1 (j) LIQUIDATION, TERMINATION, OR ACCELERATION
2 OF SWAP AGREEMENTS.—Section 560 of title 11, United
3 States Code, is amended—

4 (1) by amending the section heading to read
5 **“Contractual right to liquidate, termi-**
6 **nate, or accelerate a swap agreement”**;
7 and

8 (2) in the first sentence, by striking “termi-
9 nation of a swap agreement” and inserting “liquida-
10 tion, termination, or acceleration of 1 or more swap
11 agreements”; and

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

16 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR
17 OFFSET UNDER A MASTER NETTING AGREEMENT AND
18 ACROSS CONTRACTS.—Title 11, United States Code, is
19 amended by inserting after section 560 the following new
20 section:

21 **“§ 561. Contractual right to terminate, liquidate, ac-**
22 **celerate, or offset under a master netting**
23 **agreement and across contracts**

24 “(a) IN GENERAL.—Subject to subsection (b), the ex-
25 ercise of any contractual right, because of a condition of

1 the kind specified in section 365(e)(1), to cause the termi-
2 nation, liquidation, or acceleration of or to offset, or net
3 termination values, payment amounts or other transfer ob-
4 ligations arising under or in connection with the termi-
5 nation, liquidation, or acceleration of 1 or more—

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

8 “(2) commodity contracts, as defined in section
9 761(4);

10 “(3) forward contracts;

11 “(4) repurchase agreements;

12 “(5) swap agreements; or

13 “(6) master netting agreements,

14 shall not be stayed, avoided, or otherwise limited by oper-
15 ation of any provision of this title or by any order of a
16 court or administrative agency in any proceeding under
17 this title.

18 “(b) EXCEPTION.—

19 “(1) A party may exercise a contractual right
20 described in subsection (a) to terminate, liquidate, or
21 accelerate only to the extent that such party could
22 exercise such a right under section 555, 556, 559,
23 or 560 for each individual contract covered by the
24 master netting agreement in issue.

1 “(2)(A) A party may not exercise a contractual
2 right described in subsection (a) to offset or to net
3 obligations arising under, or in connection with, a
4 commodity contract against obligations arising
5 under, or in connection with, any instrument listed
6 in subsection (a) if the obligations are not mutual.

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

16 “(c) DEFINITION.—As used in this section, the term
17 ‘contractual right’ includes a right set forth in a rule or
18 bylaw of a national securities exchange, a national securi-
19 ties association, or a securities clearing agency, a right
20 set forth in a bylaw of a clearing organization or contract
21 market or in a resolution of the governing board thereof,
22 and a right whether or not evidenced in writing arising
23 under common law, under law merchant, or by reason of
24 normal business practice.”.

1 (l) MUNICIPAL BANKRUPTCIES.—Section 901 of title
2 11, United States Code, is amended—

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

4 (2) by inserting “, 559, 560, 561, 562” after
5 “557”.

6 (m) ANCILLARY PROCEEDINGS.—Section 304 of title
7 11, United States Code, is amended by adding at the end
8 the following new subsection:

9 “(d) Any provisions of this title relating to securities
10 contracts, commodity contracts, forward contracts, repur-
11 chase agreements, swap agreements, or master netting
12 agreements shall apply in a case ancillary to a foreign pro-
13 ceeding under this section or any other section of this title
14 so that enforcement of contractual provisions of such con-
15 tracts and agreements in accordance with their terms will
16 not be stayed or otherwise limited by operation of any pro-
17 vision of this title or by order of a court in any proceeding
18 under this title, and to limit avoidance powers to the same
19 extent as in a proceeding under chapter 7 or 11 of this
20 title (such enforcement not to be limited based on the
21 presence or absence of assets of the debtor in the United
22 States).”.

23 (n) COMMODITY BROKER LIQUIDATIONS.—Title 11,
24 United States Code, is amended by inserting after section
25 766 the following new section:

1 **“§ 767. Commodity broker liquidation and forward**
2 **contract merchants, commodity brokers,**
3 **stockbrokers, financial institutions, secu-**
4 **rities clearing agencies, swap partici-**
5 **pants, repo participants, and master net-**
6 **ting agreement participants**

7 “Notwithstanding any other provision of this title,
8 the exercise of rights by a forward contract merchant,
9 commodity broker, stockbroker, financial institution, secu-
10 rities clearing agency, swap participant, repo participant,
11 or master netting agreement participant under this title
12 shall not affect the priority of any unsecured claim it may
13 have after the exercise of such rights or affect the provi-
14 sions of this subchapter IV regarding customer property
15 or distributions.”.

16 (o) STOCKBROKER LIQUIDATIONS.—Title 11, United
17 States Code, is amended by inserting after section 752 the
18 following new section:

19 **“§ 753. Stockbroker liquidation and forward contract**
20 **merchants, commodity brokers, stock-**
21 **brokers, financial institutions, securities**
22 **clearing agencies, swap participants,**
23 **repo participants, and master netting**
24 **agreement participants**

25 “Notwithstanding any other provision of this title,
26 the exercise of rights by a forward contract merchant,

1 commodity broker, stockbroker, financial institution, secu-
2 rities clearing agency, swap participant, repo participant,
3 or master netting agreement participant under this title
4 shall not affect the priority of any unsecured claim it may
5 have after the exercise of rights or affect the provisions
6 of this subchapter regarding customer property or dis-
7 tributions.”.

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

10 (1) in subsection (a)(3)(C), by inserting “(ex-
11 cept for a setoff of a kind described in section
12 362(b)(6), 362(b)(7), 362(b)(17), 555, 556, 559,
13 560, or 561 of this title)” before the period; and

14 (2) in subsection (b)(1), by striking
15 “362(b)(14),” and inserting “362(b)(17), 555, 556,
16 559, 560, 561”.

17 (q) SECURITIES CONTRACTS, COMMODITY CON-
18 TRACTS, AND FORWARD CONTRACTS.—Title 11, United
19 States Code, is amended—

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

23 (2) in section 546(e), by inserting “financial
24 participant” after “financial institution,”;

1 (3) in section 548(d)(2)(B), by inserting “fi-
2 nancial participant” after “financial institution,”;

3 (4) in section 555—

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

6 (B) by inserting before the period “, a
7 right set forth in a bylaw of a clearing organi-
8 zation or contract market or in a resolution of
9 the governing board thereof, and a right,
10 whether or not in writing, arising under com-
11 mon law, under law merchant, or by reason of
12 normal business practice”; and

13 (5) in section 556, by inserting “, financial par-
14 ticipant” after “commodity broker”.

15 (r) **TECHNICAL AND CONFORMING AMENDMENT.**—

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

18 “(c) **EXCEPTION FOR CERTAIN DEFINED TERMS.**—

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

22 **SEC. 9. RECORDKEEPING REQUIREMENTS.**

23 Section 11(e)(8) of the Federal Deposit Insurance
24 Act (12 U.S.C. 1821(e)(8)) is amended by adding at the
25 end the following new subparagraph:

1 “(H) RECORDKEEPING REQUIREMENTS.—
2 The Corporation, in consultation with the ap-
3 propriate Federal banking agencies, may pre-
4 scribe regulations requiring more detailed rec-
5 ordkeeping with respect to qualified financial
6 contracts (including market valuations) by in-
7 sured depository institutions.”.

8 **SEC. 10. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-**
9 **TION REQUIREMENT.**

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

12 “(2) EXEMPTIONS FROM CONTEMPORANEOUS
13 EXECUTION REQUIREMENT.—An agreement to pro-
14 vide for the lawful collateralization of—

15 “(A) deposits of, or other credit extension
16 by, a Federal, State, or local governmental en-
17 tity, or of any depositor referred to in section
18 11(a)(2), including an agreement to provide col-
19 lateral in lieu of a surety bond;

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

23 “(C) extensions of credit, including any
24 overdraft, from a Federal reserve bank or Fed-
25 eral home loan bank; or

1 “(D) 1 or more qualified financial con-
2 tracts, as defined in section 11(e)(8)(D),
3 shall not be deemed invalid pursuant to paragraph
4 (1)(B) solely because such agreement was not exe-
5 cuted contemporaneously with the acquisition of the
6 collateral or because of pledges, delivery, or substi-
7 tution of the collateral made in accordance with such
8 agreement.”.

9 **SEC. 11. DAMAGE MEASURE.**

10 (a) Title 11, United States Code, is amended by in-
11 serting after section 561 (as added by section 7(k)) the
12 following new section:

13 **“§ 562. Damage measure in connection with swap**
14 **agreements, securities contracts, forward**
15 **contracts, commodity contracts, repur-**
16 **chase agreements, or master netting**
17 **agreements**

18 “If the trustee rejects a swap agreement, securities
19 contract as defined in section 741 of this title, forward
20 contract, repurchase agreement, or master netting agree-
21 ment pursuant to section 365(a) of this title, or if a for-
22 ward contract merchant, stockbroker, financial institution,
23 securities clearing agency, repo participant, master net-
24 ting agreement participant, or swap participant liquidates,

1 terminates, or accelerates any such contract or agreement,
2 damages shall be measured as of the earlier of—

3 “(1) the date of such rejection; or

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

6 (b) CLAIMS ARISING FROM REJECTION.—Section
7 502(g) of title 11, United States Code, is amended—

8 (1) by designating the existing text as para-
9 graph (1); and

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

12 “(2) A claim for damages calculated in accord-
13 ance with section 562 of this title shall be allowed
14 under subsection (a),(b), or (c) of this section or dis-
15 allowed under subsection (d) or (e) of this section as
16 if such claim had arisen before the date of the filing
17 of the petition.”.

18 **SEC. 12. ASSET-BACKED SECURITIZATIONS.**

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

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

23 (2) by redesignating paragraph (5) of sub-
24 section (b) as paragraph (6);

1 (3) by inserting after paragraph (4) of sub-
2 section (b) the following new paragraph:

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

11 (4) by adding at the end the following new sub-
12 section:

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

15 “(1) ASSET-BACKED SECURITIZATION.—The
16 term ‘asset-backed securitization’ means a trans-
17 action in which eligible assets transferred to an eligi-
18 ble entity are used as the source of payment on se-
19 curities, the most senior of which are rated invest-
20 ment grade by 1 or more nationally recognized secu-
21 rities rating organizations, issued by an issuer;

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

24 “(A) financial assets (including interests
25 therein and proceeds thereof), either fixed or re-

1 volving, including residential and commercial
2 mortgage loans, consumer receivables, trade re-
3 ceivables, and lease receivables, that, by their
4 terms, convert into cash within a finite time pe-
5 riod, plus any rights or other assets designed to
6 assure the servicing or timely distribution of
7 proceeds to security holders;

8 “(B) cash; and

9 “(C) securities.

10 “(3) ELIGIBLE ENTITY.—The term ‘eligible en-
11 tity’ means—

12 “(A) an issuer; or

13 “(B) a trust, corporation, partnership, or
14 other entity engaged exclusively in the business
15 of acquiring and transferring eligible assets di-
16 rectly or indirectly to an issuer and taking ac-
17 tions ancillary thereto;

18 “(4) ISSUER.—The term ‘issuer’ means a trust,
19 corporation, partnership, or other entity engaged ex-
20 clusively in the business of acquiring and holding eli-
21 gible assets, issuing securities backed by eligible as-
22 sets, and taking actions ancillary thereto.

23 “(5) TRANSFERRED.—The term ‘transferred’
24 means the debtor, pursuant to a written agreement,
25 represented and warranted that eligible assets were

1 sold, contributed, or otherwise conveyed with the in-
2 tention of removing them from the estate of the
3 debtor pursuant to subsection (b)(5), irrespective,
4 without limitation of—

5 “(A) whether the debtor directly or indi-
6 rectly obtained or held an interest in the issuer
7 or in any securities issued by the issuer;

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

12 “(C) the characterization of such sale, con-
13 tribution, or other conveyance for tax, account-
14 ing, regulatory reporting, or other purposes.”.

15 **SEC. 13. SIPC STAY.**

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

19 “(C) EXCEPTION FROM STAY.—

20 “(i) Notwithstanding section 362 of
21 title 11, neither the filing of an application
22 under subsection (a)(3) nor any order or
23 decree obtained by Securities Investor Pro-
24 tection Corporation from the court shall
25 operate as a stay of any contractual rights

1 of a creditor to liquidate, terminate, or ac-
2 celerate a securities contract, commodity
3 contract, forward contract, repurchase
4 agreement, swap agreement, or master net-
5 ting agreement, each as defined in title 11,
6 to offset or net termination values, pay-
7 ment amounts, or other transfer obliga-
8 tions arising under or in connection with 1
9 or more of such contracts or agreements,
10 or to foreclose on any cash collateral
11 pledged by the debtor whether or not with
12 respect to 1 or more of such contracts or
13 agreements.

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

22 “(iii) As used in this section, the term
23 ‘contractual right’ includes a right set
24 forth in a rule or bylaw of a national secu-
25 rities exchange, a national securities asso-

1 ciation, or a securities clearing agency, a
2 right set forth in a bylaw of a clearing or-
3 ganization or contract market or in a reso-
4 lution of the governing board thereof, and
5 a right, whether or not in writing, arising
6 under common law, under law merchant,
7 or by reason of normal business practice.”.

8 **SEC. 14. FEDERAL RESERVE COLLATERAL REQUIREMENTS.**

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

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

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

23 (b) EFFECTIVE DATE.—This Act shall take effect on
24 the date of the enactment of this Act.

1 (c) APPLICATION OF AMENDMENTS.—The amend-
2 ments made by this Act shall apply with respect to cases
3 commenced or appointments made under any Federal or
4 State law after the date of enactment of this Act, but shall
5 not apply with respect to cases commenced or appoint-
6 ments made under any Federal or State law before the
7 date of enactment of this Act.

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