

108TH CONGRESS
1ST SESSION

H. R. 2120

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

MAY 15, 2003

Mr. TOOMEY (for himself, Mr. OXLEY, Mr. KANJORSKI, Mr. LEACH, Mr. BAKER, Mr. BACHUS, Mr. SHERMAN, Mrs. MALONEY, Mr. SHAYS, Mrs. BIGGERT, Ms. HART, Mrs. KELLY, Mr. NEY, Mr. ACKERMAN, Mr. CROWLEY, Mr. MURPHY, Mr. SESSIONS, Mr. FOSSELLA, Mr. EMANUEL, and Mr. ISRAEL) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on the Judiciary, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Financial Contracts Bankruptcy Reform Act of 2003”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Treatment of certain agreements by conservators or receivers of insured depository institutions.
- Sec. 3. Authority of the corporation with respect to failed and failing institutions.
- Sec. 4. Amendments relating to transfers of qualified financial contracts.
- Sec. 5. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
- Sec. 6. Clarifying amendment relating to master agreements.
- Sec. 7. Federal Deposit Insurance Corporation Improvement Act of 1991.
- Sec. 8. Bankruptcy code amendments.
- Sec. 9. Recordkeeping requirements.
- Sec. 10. Exemptions from contemporaneous execution requirement.
- Sec. 11. Damage measure.
- Sec. 12. SIPC stay.
- Sec. 13. Applicability of other sections to chapter 9.
- Sec. 14. Effective date; application of amendments.
- Sec. 15. Savings clause.

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

6 (a) DEFINITION OF QUALIFIED FINANCIAL CON-
7 TRACT.—

8 (1) FDIC-INSURED DEPOSITORY INSTITU-
9 TIONS.—Section 11(e)(8)(D) of the Federal Deposit
10 Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amend-
11 ed—

12 (A) by striking “subsection—” and insert-
13 ing “subsection, the following definitions shall
14 apply:”; and

15 (B) in clause (i), by inserting “, resolution,
16 or order” after “any similar agreement that the
17 Corporation determines by regulation”.

1 (2) INSURED CREDIT UNIONS.—Section
2 207(c)(8)(D) of the Federal Credit Union Act (12
3 U.S.C. 1787(c)(8)(D)) is amended—

4 (A) by striking “subsection—” and insert-
5 ing “subsection, the following definitions shall
6 apply:”; and

7 (B) in clause (i), by inserting “, resolution,
8 or order” after “any similar agreement that the
9 Board determines by regulation”.

10 (b) DEFINITION OF SECURITIES CONTRACT.—

11 (1) FDIC-INSURED DEPOSITORY INSTITU-
12 TIONS.—Section 11(e)(8)(D)(ii) of the Federal De-
13 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is
14 amended to read as follows:

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

17 “(I) means a contract for the
18 purchase, sale, or loan of a security, a
19 certificate of deposit, a mortgage loan,
20 or any interest in a mortgage loan, a
21 group or index of securities, certifi-
22 cates of deposit, or mortgage loans or
23 interests therein (including any inter-
24 est therein or based on the value
25 thereof) or any option on any of the

1 foregoing, including any option to
2 purchase or sell any such security,
3 certificate of deposit, mortgage loan,
4 interest, group or index, or option,
5 and including any repurchase or re-
6 verse repurchase transaction on any
7 such security, certificate of deposit,
8 mortgage loan, interest, group or
9 index, or option;

10 “(II) does not include any pur-
11 chase, sale, or repurchase obligation
12 under a participation in a commercial
13 mortgage loan unless the Corporation
14 determines by regulation, resolution,
15 or order to include any such agree-
16 ment within the meaning of such
17 term;

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

21 “(IV) means the guarantee by or
22 to any securities clearing agency of
23 any settlement of cash, securities, cer-
24 tificates of deposit, mortgage loans or
25 interests therein, group or index of se-

1 securities, certificates of deposit, or
2 mortgage loans or interests therein
3 (including any interest therein or
4 based on the value thereof) or option
5 on any of the foregoing, including any
6 option to purchase or sell any such se-
7 curity, certificate of deposit, mortgage
8 loan, interest, group or index, or op-
9 tion;

10 “(V) means any margin loan;

11 “(VI) means any other agree-
12 ment or transaction that is similar to
13 any agreement or transaction referred
14 to in this clause;

15 “(VII) means any combination of
16 the agreements or transactions re-
17 ferred to in this clause;

18 “(VIII) means any option to
19 enter into any agreement or trans-
20 action referred to in this clause;

21 “(IX) means a master agreement
22 that provides for an agreement or
23 transaction referred to in subclause
24 (I), (III), (IV), (V), (VI), (VII), or
25 (VIII), together with all supplements

1 to any such master agreement, with-
2 out regard to whether the master
3 agreement provides for an agreement
4 or transaction that is not a securities
5 contract under this clause, except that
6 the master agreement shall be consid-
7 ered to be a securities contract under
8 this clause only with respect to each
9 agreement or transaction under the
10 master agreement that is referred to
11 in subclause (I), (III), (IV), (V), (VI),
12 (VII), or (VIII); and

13 “(X) means any security agree-
14 ment or arrangement or other credit
15 enhancement related to any agree-
16 ment or transaction referred to in this
17 clause, including any guarantee or re-
18 imbursement obligation in connection
19 with any agreement or transaction re-
20 ferred to in this clause.”.

21 (2) INSURED CREDIT UNIONS.—Section
22 207(c)(8)(D)(ii) of the Federal Credit Union Act
23 (12 U.S.C. 1787(c)(8)(D)(ii)) is amended to read as
24 follows:

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

3 “(I) means a contract for the
4 purchase, sale, or loan of a security, a
5 certificate of deposit, a mortgage loan,
6 or any interest in a mortgage loan, a
7 group or index of securities, certifi-
8 cates of deposit, or mortgage loans or
9 interests therein (including any inter-
10 est therein or based on the value
11 thereof) or any option on any of the
12 foregoing, including any option to
13 purchase or sell any such security,
14 certificate of deposit, mortgage loan,
15 interest, group or index, or option,
16 and including any repurchase or re-
17 verse repurchase transaction on any
18 such security, certificate of deposit,
19 mortgage loan, interest, group or
20 index, or option;

21 “(II) does not include any pur-
22 chase, sale, or repurchase obligation
23 under a participation in a commercial
24 mortgage loan unless the Board deter-
25 mines by regulation, resolution, or

1 order to include any such agreement
2 within the meaning of such term;

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

6 “(IV) means the guarantee by or
7 to any securities clearing agency of
8 any settlement of cash, securities, cer-
9 tificates of deposit, mortgage loans or
10 interests therein, group or index of se-
11 curities, certificates of deposit, or
12 mortgage loans or interests therein
13 (including any interest therein or
14 based on the value thereof) or option
15 on any of the foregoing, including any
16 option to purchase or sell any such se-
17 curity, certificate of deposit, mortgage
18 loan, interest, group or index, or op-
19 tion;

20 “(V) means any margin loan;

21 “(VI) means any other agree-
22 ment or transaction that is similar to
23 any agreement or transaction referred
24 to in this clause;

1 “(VII) means any combination of
2 the agreements or transactions re-
3 ferred to in this clause;

4 “(VIII) means any option to
5 enter into any agreement or trans-
6 action referred to in this clause;

7 “(IX) means a master agreement
8 that provides for an agreement or
9 transaction referred to in subclause
10 (I), (III), (IV), (V), (VI), (VII), or
11 (VIII), together with all supplements
12 to any such master agreement, with-
13 out regard to whether the master
14 agreement provides for an agreement
15 or transaction that is not a securities
16 contract under this clause, except that
17 the master agreement shall be consid-
18 ered to be a securities contract under
19 this clause only with respect to each
20 agreement or transaction under the
21 master agreement that is referred to
22 in subclause (I), (III), (IV), (V), (VI),
23 (VII), or (VIII); and

24 “(X) means any security agree-
25 ment or arrangement or other credit

1 enhancement related to any agree-
2 ment or transaction referred to in this
3 clause, including any guarantee or re-
4 imbursement obligation in connection
5 with any agreement or transaction re-
6 ferred to in this clause.”.

7 (c) DEFINITION OF COMMODITY CONTRACT.—

8 (1) FDIC-INSURED DEPOSITORY INSTITU-
9 TIONS.—Section 11(e)(8)(D)(iii) of the Federal De-
10 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is
11 amended to read as follows:

12 “(iii) COMMODITY CONTRACT.—The
13 term ‘commodity contract’ means—

14 “(I) with respect to a futures
15 commission merchant, a contract for
16 the purchase or sale of a commodity
17 for future delivery on, or subject to
18 the rules of, a contract market or
19 board of trade;

20 “(II) with respect to a foreign fu-
21 tures commission merchant, a foreign
22 future;

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

1 “(IV) with respect to a clearing
2 organization, a contract for the pur-
3 chase or sale of a commodity for fu-
4 ture delivery on, or subject to the
5 rules of, a contract market or board
6 of trade that is cleared by such clear-
7 ing organization, or commodity option
8 traded on, or subject to the rules of,
9 a contract market or board of trade
10 that is cleared by such clearing orga-
11 nization;

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

14 “(VI) any other agreement or
15 transaction that is similar to any
16 agreement or transaction referred to
17 in this clause;

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

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

24 “(IX) a master agreement that
25 provides for an agreement or trans-

1 action referred to in subclause (I),
2 (II), (III), (IV), (V), (VI), (VII), or
3 (VIII), together with all supplements
4 to any such master agreement, with-
5 out regard to whether the master
6 agreement provides for an agreement
7 or transaction that is not a com-
8 modity contract under this clause, ex-
9 cept that the master agreement shall
10 be considered to be a commodity con-
11 tract under this clause only with re-
12 spect to each agreement or trans-
13 action under the master agreement
14 that is referred to in subclause (I),
15 (II), (III), (IV), (V), (VI), (VII), or
16 (VIII); or

17 “(X) any security agreement or
18 arrangement or other credit enhance-
19 ment related to any agreement or
20 transaction referred to in this clause,
21 including any guarantee or reimburse-
22 ment obligation in connection with
23 any agreement or transaction referred
24 to in this clause.”.

1 (2) INSURED CREDIT UNIONS.—Section
2 207(c)(8)(D)(iii) of the Federal Credit Union Act
3 (12 U.S.C. 1787(c)(8)(D)(iii)) is amended to read as
4 follows:

5 “(iii) COMMODITY CONTRACT.—The
6 term ‘commodity contract’ means—

7 “(I) with respect to a futures
8 commission merchant, a contract for
9 the purchase or sale of a commodity
10 for future delivery on, or subject to
11 the rules of, a contract market or
12 board of trade;

13 “(II) with respect to a foreign fu-
14 tures commission merchant, a foreign
15 future;

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

19 “(IV) with respect to a clearing
20 organization, a contract for the pur-
21 chase or sale of a commodity for fu-
22 ture delivery on, or subject to the
23 rules of, a contract market or board
24 of trade that is cleared by such clear-
25 ing organization, or commodity option

1 traded on, or subject to the rules of,
2 a contract market or board of trade
3 that is cleared by such clearing orga-
4 nization;

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

7 “(VI) any other agreement or
8 transaction that is similar to any
9 agreement or transaction referred to
10 in this clause;

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

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

17 “(IX) a master agreement that
18 provides for an agreement or trans-
19 action referred to in subclause (I),
20 (II), (III), (IV), (V), (VI), (VII), or
21 (VIII), together with all supplements
22 to any such master agreement, with-
23 out regard to whether the master
24 agreement provides for an agreement
25 or transaction that is not a com-

1 commodity contract under this clause, ex-
2 cept that the master agreement shall
3 be considered to be a commodity con-
4 tract under this clause only with re-
5 spect to each agreement or trans-
6 action under the master agreement
7 that is referred to in subclause (I),
8 (II), (III), (IV), (V), (VI), (VII), or
9 (VIII); or

10 “(X) any security agreement or
11 arrangement or other credit enhance-
12 ment related to any agreement or
13 transaction referred to in this clause,
14 including any guarantee or reimburse-
15 ment obligation in connection with
16 any agreement or transaction referred
17 to in this clause.”.

18 (d) DEFINITION OF FORWARD CONTRACT.—

19 (1) FDIC-INSURED DEPOSITORY INSTITU-
20 TIONS.—Section 11(e)(8)(D)(iv) of the Federal De-
21 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is
22 amended to read as follows:

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

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

18 “(II) any combination of agree-
19 ments or transactions referred to in
20 subclauses (I) and (III);

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

24 “(IV) a master agreement that
25 provides for an agreement or trans-

1 action referred to in subclauses (I),
2 (II), or (III), together with all supple-
3 ments to any such master agreement,
4 without regard to whether the master
5 agreement provides for an agreement
6 or transaction that is not a forward
7 contract under this clause, except that
8 the master agreement shall be consid-
9 ered to be a forward contract under
10 this clause only with respect to each
11 agreement or transaction under the
12 master agreement that is referred to
13 in subclause (I), (II), or (III); or

14 “(V) any security agreement or
15 arrangement or other credit enhance-
16 ment related to any agreement or
17 transaction referred to in subclause
18 (I), (II), (III), or (IV), including any
19 guarantee or reimbursement obliga-
20 tion in connection with any agreement
21 or transaction referred to in any such
22 subclause.”.

23 (2) INSURED CREDIT UNIONS.—Section
24 207(c)(8)(D)(iv) of the Federal Credit Union Act

1 (12 U.S.C. 1787(c)(8)(D)(iv)) is amended to read as
2 follows:

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

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

22 “(II) any combination of agree-
23 ments or transactions referred to in
24 subclauses (I) and (III);

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

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

19 “(V) any security agreement or
20 arrangement or other credit enhance-
21 ment related to any agreement or
22 transaction referred to in subclause
23 (I), (II), (III), or (IV), including any
24 guarantee or reimbursement obliga-
25 tion in connection with any agreement

1 or transaction referred to in any such
2 subclause.”.

3 (e) DEFINITION OF REPURCHASE AGREEMENT.—

4 (1) FDIC-INSURED DEPOSITORY INSTITU-
5 TIONS.—Section 11(e)(8)(D)(v) of the Federal De-
6 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is
7 amended to read as follows:

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

12 “(I) means an agreement, includ-
13 ing related terms, which provides for
14 the transfer of one or more certifi-
15 cates of deposit, mortgage-related se-
16 curities (as such term is defined in
17 the Securities Exchange Act of 1934),
18 mortgage loans, interests in mortgage-
19 related securities or mortgage loans,
20 eligible bankers’ acceptances, qualified
21 foreign government securities or secu-
22 rities that are direct obligations of, or
23 that are fully guaranteed by, the
24 United States or any agency of the
25 United States against the transfer of

1 funds by the transferee of such certifi-
2 cates of deposit, eligible bankers' ac-
3 ceptances, securities, mortgage loans,
4 or interests with a simultaneous
5 agreement by such transferee to
6 transfer to the transferor thereof cer-
7 tificates of deposit, eligible bankers'
8 acceptances, securities, mortgage
9 loans, or interests as described above,
10 at a date certain not later than 1 year
11 after such transfers or on demand,
12 against the transfer of funds, or any
13 other similar agreement;

14 “(II) does not include any repur-
15 chase obligation under a participation
16 in a commercial mortgage loan unless
17 the Corporation determines by regula-
18 tion, resolution, or order to include
19 any such participation within the
20 meaning of such term;

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

1 “(IV) means any option to enter
2 into any agreement or transaction re-
3 ferred to in subclause (I) or (III);

4 “(V) means a master agreement
5 that provides for an agreement or
6 transaction referred to in subclause
7 (I), (III), or (IV), together with all
8 supplements to any such master
9 agreement, without regard to whether
10 the master agreement provides for an
11 agreement or transaction that is not a
12 repurchase agreement under this
13 clause, except that the master agree-
14 ment shall be considered to be a re-
15 purchase agreement under this sub-
16 clause only with respect to each agree-
17 ment or transaction under the master
18 agreement that is referred to in sub-
19 clause (I), (III), or (IV); and

20 “(VI) means any security agree-
21 ment or arrangement or other credit
22 enhancement related to any agree-
23 ment or transaction referred to in
24 subclause (I), (III), (IV), or (V), in-
25 cluding any guarantee or reimburse-

1 ment obligation in connection with
2 any agreement or transaction referred
3 to in any such subclause.

4 For purposes of this clause, the term
5 ‘qualified foreign government security’
6 means a security that is a direct obligation
7 of, or that is fully guaranteed by, the cen-
8 tral government of a member of the Orga-
9 nization for Economic Cooperation and
10 Development (as determined by regulation
11 or order adopted by the appropriate Fed-
12 eral banking authority).”.

13 (2) INSURED CREDIT UNIONS.—Section
14 207(c)(8)(D)(v) of the Federal Credit Union Act (12
15 U.S.C. 1787(c)(8)(D)(v)) is amended to read as fol-
16 lows:

17 “(v) REPURCHASE AGREEMENT.—The
18 term ‘repurchase agreement’ (which defini-
19 tion also applies to a reverse repurchase
20 agreement)—

21 “(I) means an agreement, includ-
22 ing related terms, which provides for
23 the transfer of one or more certifi-
24 cates of deposit, mortgage-related se-
25 curities (as such term is defined in

1 the Securities Exchange Act of 1934),
2 mortgage loans, interests in mortgage-
3 related securities or mortgage loans,
4 eligible bankers' acceptances, qualified
5 foreign government securities or secu-
6 rities that are direct obligations of, or
7 that are fully guaranteed by, the
8 United States or any agency of the
9 United States against the transfer of
10 funds by the transferee of such certifi-
11 cates of deposit, eligible bankers' ac-
12 ceptances, securities, mortgage loans,
13 or interests with a simultaneous
14 agreement by such transferee to
15 transfer to the transferor thereof cer-
16 tificates of deposit, eligible bankers'
17 acceptances, securities, mortgage
18 loans, or interests as described above,
19 at a date certain not later than 1 year
20 after such transfers or on demand,
21 against the transfer of funds, or any
22 other similar agreement;

23 “(II) does not include any repur-
24 chase obligation under a participation
25 in a commercial mortgage loan unless

1 the Board determines by regulation,
2 resolution, or order to include any
3 such participation within the meaning
4 of such term;

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

8 “(IV) means any option to enter
9 into any agreement or transaction re-
10 ferred to in subclause (I) or (III);

11 “(V) means a master agreement
12 that provides for an agreement or
13 transaction referred to in subclause
14 (I), (III), or (IV), together with all
15 supplements to any such master
16 agreement, without regard to whether
17 the master agreement provides for an
18 agreement or transaction that is not a
19 repurchase agreement under this
20 clause, except that the master agree-
21 ment shall be considered to be a re-
22 purchase agreement under this sub-
23 clause only with respect to each agree-
24 ment or transaction under the master

1 agreement that is referred to in sub-
2 clause (I), (III), or (IV); and

3 “(VI) means any security agree-
4 ment or arrangement or other credit
5 enhancement related to any agree-
6 ment or transaction referred to in
7 subclause (I), (III), (IV), or (V), in-
8 cluding any guarantee or reimburse-
9 ment obligation in connection with
10 any agreement or transaction referred
11 to in any such subclause.

12 For purposes of this clause, the term
13 ‘qualified foreign government security’
14 means a security that is a direct obligation
15 of, or that is fully guaranteed by, the cen-
16 tral government of a member of the Orga-
17 nization for Economic Cooperation and
18 Development (as determined by regulation
19 or order adopted by the appropriate Fed-
20 eral banking authority).”.

21 (f) DEFINITION OF SWAP AGREEMENT.—

22 (1) FDIC-INSURED DEPOSITORY INSTITU-
23 TIONS.—Section 11(e)(8)(D)(vi) of the Federal De-
24 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is
25 amended to read as follows:

1 “(vi) SWAP AGREEMENT.—The term
2 ‘swap agreement’ means—

3 “(I) any agreement, including the
4 terms and conditions incorporated by
5 reference in any such agreement,
6 which is an interest rate swap, option,
7 future, or forward agreement, includ-
8 ing a rate floor, rate cap, rate collar,
9 cross-currency rate swap, and basis
10 swap; a spot, same day-tomorrow, to-
11 morrow-next, forward, or other for-
12 eign exchange or precious metals
13 agreement; a currency swap, option,
14 future, or forward agreement; an eq-
15 uity index or equity swap, option, fu-
16 ture, or forward agreement; a debt
17 index or debt swap, option, future, or
18 forward agreement; a total return,
19 credit spread or credit swap, option,
20 future, or forward agreement; a com-
21 modity index or commodity swap, op-
22 tion, future, or forward agreement; or
23 a weather swap, weather derivative, or
24 weather option;

1 “(II) any agreement or trans-
2 action that is similar to any other
3 agreement or transaction referred to
4 in this clause and that is of a type
5 that has been, is presently, or in the
6 future becomes, the subject of recur-
7 rent dealings in the swap markets (in-
8 cluding terms and conditions incor-
9 porated by reference in such agree-
10 ment) and that is a forward, swap, fu-
11 ture, or option on one or more rates,
12 currencies, commodities, equity securi-
13 ties or other equity instruments, debt
14 securities or other debt instruments,
15 quantitative measures associated with
16 an occurrence, extent of an occur-
17 rence, or contingency associated with
18 a financial, commercial, or economic
19 consequence, or economic or financial
20 indices or measures of economic or fi-
21 nancial risk or value;

22 “(III) any combination of agree-
23 ments or transactions referred to in
24 this clause;

1 “(IV) any option to enter into
2 any agreement or transaction referred
3 to in this clause;

4 “(V) a master agreement that
5 provides for an agreement or trans-
6 action referred to in subclause (I),
7 (II), (III), or (IV), together with all
8 supplements to any such master
9 agreement, without regard to whether
10 the master agreement contains an
11 agreement or transaction that is not a
12 swap agreement under this clause, ex-
13 cept that the master agreement shall
14 be considered to be a swap agreement
15 under this clause only with respect to
16 each agreement or transaction under
17 the master agreement that is referred
18 to in subclause (I), (II), (III), or (IV);
19 and

20 “(VI) any security agreement or
21 arrangement or other credit enhance-
22 ment related to any agreements or
23 transactions referred to in subclause
24 (I), (II), (III), (IV), or (V), including
25 any guarantee or reimbursement obli-

1 gation in connection with any agree-
2 ment or transaction referred to in any
3 such subclause.

4 Such term is applicable for purposes of
5 this subsection only and shall not be con-
6 strued or applied so as to challenge or af-
7 fect the characterization, definition, or
8 treatment of any swap agreement under
9 any other statute, regulation, or rule, in-
10 cluding the Securities Act of 1933, the Se-
11 curities Exchange Act of 1934, the Public
12 Utility Holding Company Act of 1935, the
13 Trust Indenture Act of 1939, the Invest-
14 ment Company Act of 1940, the Invest-
15 ment Advisers Act of 1940, the Securities
16 Investor Protection Act of 1970, the Com-
17 modity Exchange Act, the Gramm-Leach-
18 Bliley Act, and the Legal Certainty for
19 Bank Products Act of 2000.”.

20 (2) INSURED CREDIT UNIONS.—Section
21 207(c)(8)(D) of the Federal Credit Union Act (12
22 U.S.C. 1787(c)(8)(D)) is amended by adding at the
23 end the following new clause:

24 “(vi) SWAP AGREEMENT.—The term
25 ‘swap agreement’ means—

1 “(I) any agreement, including the
2 terms and conditions incorporated by
3 reference in any such agreement,
4 which is an interest rate swap, option,
5 future, or forward agreement, includ-
6 ing a rate floor, rate cap, rate collar,
7 cross-currency rate swap, and basis
8 swap; a spot, same day-tomorrow, to-
9 morrow-next, forward, or other for-
10 eign exchange or precious metals
11 agreement; a currency swap, option,
12 future, or forward agreement; an eq-
13 uity index or equity swap, option, fu-
14 ture, or forward agreement; a debt
15 index or debt swap, option, future, or
16 forward agreement; a total return,
17 credit spread or credit swap, option,
18 future, or forward agreement; a com-
19 modity index or commodity swap, op-
20 tion, future, or forward agreement; or
21 a weather swap, weather derivative, or
22 weather option;

23 “(II) any agreement or trans-
24 action that is similar to any other
25 agreement or transaction referred to

1 in this clause and that is of a type
2 that has been, is presently, or in the
3 future becomes, the subject of recur-
4 rent dealings in the swap markets (in-
5 cluding terms and conditions incor-
6 porated by reference in such agree-
7 ment) and that is a forward, swap, fu-
8 ture, or option on one or more rates,
9 currencies, commodities, equity securi-
10 ties or other equity instruments, debt
11 securities or other debt instruments,
12 quantitative measures associated with
13 an occurrence, extent of an occur-
14 rence, or contingency associated with
15 a financial, commercial, or economic
16 consequence, or economic or financial
17 indices or measures of economic or fi-
18 nancial 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 any such master
6 agreement, without regard to whether
7 the master agreement contains an
8 agreement or transaction that is not a
9 swap agreement under this clause, ex-
10 cept that the master agreement shall
11 be considered to be a swap agreement
12 under this clause only with respect to
13 each agreement or transaction under
14 the master agreement that is referred
15 to in subclause (I), (II), (III), or (IV);
16 and

17 “(VI) any security agreement or
18 arrangement or other credit enhance-
19 ment related to any agreements or
20 transactions referred to in subclause
21 (I), (II), (III), (IV), or (V), including
22 any guarantee or reimbursement obli-
23 gation in connection with any agree-
24 ment or transaction referred to in any
25 such subclause.

1 Such term is applicable for purposes of
2 this subsection only and shall not be con-
3 strued or applied so as to challenge or af-
4 fect the characterization, definition, or
5 treatment of any swap agreement under
6 any other statute, regulation, or rule, in-
7 cluding the Securities Act of 1933, the Se-
8 curities Exchange Act of 1934, the Public
9 Utility Holding Company Act of 1935, the
10 Trust Indenture Act of 1939, the Invest-
11 ment Company Act of 1940, the Invest-
12 ment Advisers Act of 1940, the Securities
13 Investor Protection Act of 1970, the Com-
14 modity Exchange Act, the Gramm-Leach-
15 Bliley Act, and the Legal Certainty for
16 Bank Products Act of 2000.”.

17 (g) DEFINITION OF TRANSFER.—

18 (1) FDIC-INSURED DEPOSITORY INSTITU-
19 TIONS.—Section 11(e)(8)(D)(viii) of the Federal De-
20 posit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii))
21 is amended to read as follows:

22 “(viii) TRANSFER.—The term ‘trans-
23 fer’ means every mode, direct or indirect,
24 absolute or conditional, voluntary or invol-
25 untary, of disposing of or parting with

1 property or with an interest in property,
 2 including retention of title as a security in-
 3 terest and foreclosure of the depository in-
 4 stitution’s equity of redemption.”.

5 (2) INSURED CREDIT UNIONS.—Section
 6 207(c)(8)(D) of the Federal Credit Union Act (12
 7 U.S.C. 1787(c)(8)(D)) (as amended by subsection
 8 (f) of this section) is amended by adding at the end
 9 the following new clause:

10 “(viii) TRANSFER.—The term ‘trans-
 11 fer’ means every mode, direct or indirect,
 12 absolute or conditional, voluntary or invol-
 13 untary, of disposing of or parting with
 14 property or with an interest in property,
 15 including retention of title as a security in-
 16 terest and foreclosure of the depository in-
 17 stitution’s equity of redemption.”.

18 (h) TREATMENT OF QUALIFIED FINANCIAL CON-
 19 TRACTS.—

20 (1) FDIC-INSURED DEPOSITORY INSTITU-
 21 TIONS.—Section 11(e)(8) of the Federal Deposit In-
 22 surance Act (12 U.S.C. 1821(e)(8)) is amended—

23 (A) in subparagraph (A)—

24 (i) by striking “paragraph (10)” and
 25 inserting “paragraphs (9) and (10)”;

1 (ii) in clause (i), by striking “to cause
2 the termination or liquidation” and insert-
3 ing “such person has to cause the termi-
4 nation, liquidation, or acceleration”; and

5 (iii) by striking clause (ii) and insert-
6 ing the following new clause:

7 “(ii) any right under any security
8 agreement or arrangement or other credit
9 enhancement related to one or more quali-
10 fied financial contracts described in clause
11 (i);” and

12 (B) in subparagraph (E), by striking
13 clause (ii) and inserting the following:

14 “(ii) any right under any security
15 agreement or arrangement or other credit
16 enhancement related to one or more quali-
17 fied financial contracts described in clause
18 (i);”.

19 (2) INSURED CREDIT UNIONS.—Section
20 207(c)(8) of the Federal Credit Union Act (12
21 U.S.C. 1787(c)(8)) is amended—

22 (A) in subparagraph (A)—

23 (i) by striking “paragraph (12)” and
24 inserting “paragraphs (9) and (10)”;

1 (ii) in clause (i), by striking “to cause
2 the termination or liquidation” and insert-
3 ing “such person has to cause the termi-
4 nation, liquidation, or acceleration”; and

5 (iii) by striking clause (ii) and insert-
6 ing the following new clause:

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

12 (B) in subparagraph (E), by striking
13 clause (ii) and inserting the following new
14 clause:

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

20 (i) AVOIDANCE OF TRANSFERS.—

21 (1) FDIC-INSURED DEPOSITORY INSTITU-
22 TIONS.—Section 11(e)(8)(C)(i) of the Federal De-
23 posit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is
24 amended by inserting “section 5242 of the Revised
25 Statutes of the United States or any other Federal

1 or State law relating to the avoidance of preferential
2 or fraudulent transfers,” before “the Corporation”.

3 (2) INSURED CREDIT UNIONS.—Section
4 207(c)(8)(C)(i) of the Federal Credit Union Act (12
5 U.S.C. 1787(c)(8)(C)(i)) is amended by inserting
6 “section 5242 of the Revised Statutes of the United
7 States or any other Federal or State law relating to
8 the avoidance of preferential or fraudulent trans-
9 fers,” before “the Board”.

10 **SEC. 3. AUTHORITY OF THE FDIC AND NCUAB WITH RE-**
11 **SPECT TO FAILED AND FAILING INSTITU-**
12 **TIONS.**

13 (a) FEDERAL DEPOSIT INSURANCE CORPORATION.—

14 (1) IN GENERAL.—Section 11(e)(8) of the Fed-
15 eral Deposit Insurance Act (12 U.S.C. 1821(e)(8))
16 is amended—

17 (A) in subparagraph (E), by striking
18 “other than paragraph (12) of this subsection,
19 subsection (d)(9)” and inserting “other than
20 subsections (d)(9) and (e)(10)”; and

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

23 “(F) CLARIFICATION.—No provision of law
24 shall be construed as limiting the right or
25 power of the Corporation, or authorizing any

1 court or agency to limit or delay, in any man-
2 ner, the right or power of the Corporation to
3 transfer any qualified financial contract in ac-
4 cordance with paragraphs (9) and (10) of this
5 subsection or to disaffirm or repudiate any such
6 contract in accordance with subsection (e)(1) of
7 this section.

8 “(G) WALKAWAY CLAUSES NOT EFFEC-
9 TIVE.—

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

18 “(ii) WALKAWAY CLAUSE DEFINED.—
19 For purposes of this subparagraph, the
20 term ‘walkaway clause’ means a provision
21 in a qualified financial contract that, after
22 calculation of a value of a party’s position
23 or an amount due to or from 1 of the par-
24 ties in accordance with its terms upon ter-
25 mination, liquidation, or acceleration of the

1 qualified financial contract, either does not
2 create a payment obligation of a party or
3 extinguishes a payment obligation of a
4 party in whole or in part solely because of
5 such party's status as a nondefaulting
6 party.”.

7 (2) TECHNICAL AND CONFORMING AMEND-
8 MENT.—Section 11(e)(12)(A) of the Federal Deposit
9 Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amend-
10 ed by inserting “or the exercise of rights or powers
11 by” after “the appointment of”.

12 (b) NATIONAL CREDIT UNION ADMINISTRATION
13 BOARD.—

14 (1) IN GENERAL.—Section 207(c)(8) of the
15 Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is
16 amended—

17 (A) in subparagraph (E) (as amended by
18 section 2(h)), by striking “other than para-
19 graph (12) of this subsection, subsection
20 (b)(9)” and inserting “other than subsections
21 (b)(9) and (c)(10)”; and

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

24 “(F) CLARIFICATION.—No provision of law
25 shall be construed as limiting the right or

1 power of the Board, or authorizing any court or
2 agency to limit or delay, in any manner, the
3 right or power of the Board to transfer any
4 qualified financial contract in accordance with
5 paragraphs (9) and (10) of this subsection or to
6 disaffirm or repudiate any such contract in ac-
7 cordance with subsection (c)(1) of this section.

8 “(G) WALKAWAY CLAUSES NOT EFFEC-
9 TIVE.—

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

18 “(ii) WALKAWAY CLAUSE DEFINED.—
19 For purposes of this subparagraph, the
20 term ‘walkaway clause’ means a provision
21 in a qualified financial contract that, after
22 calculation of a value of a party’s position
23 or an amount due to or from 1 of the par-
24 ties in accordance with its terms upon ter-
25 mination, liquidation, or acceleration of the

1 qualified financial contract, either does not
2 create a payment obligation of a party or
3 extinguishes a payment obligation of a
4 party in whole or in part solely because of
5 such party's status as a nondefaulting
6 party.”.

7 (2) TECHNICAL AND CONFORMING AMEND-
8 MENT.—Section 207(c)(12)(A) of the Federal Credit
9 Union Act (12 U.S.C. 1787(c)(12)(A)) is amended
10 by inserting “or the exercise of rights or powers by”
11 after “the appointment of”.

12 **SEC. 4. AMENDMENTS RELATING TO TRANSFERS OF QUALI-**
13 **FIED FINANCIAL CONTRACTS.**

14 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—

15 (1) TRANSFERS OF QUALIFIED FINANCIAL
16 CONTRACTS TO FINANCIAL INSTITUTIONS.—Section
17 11(e)(9) of the Federal Deposit Insurance Act (12
18 U.S.C. 1821(e)(9)) is amended to read as follows:

19 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
20 TRACTS.—

21 “(A) IN GENERAL.—In making any trans-
22 fer of assets or liabilities of a depository institu-
23 tion in default which includes any qualified fi-
24 nancial contract, the conservator or receiver for
25 such depository institution shall either—

1 “(i) transfer to one financial institu-
2 tion, other than a financial institution for
3 which a conservator, receiver, trustee in
4 bankruptcy, or other legal custodian has
5 been appointed or which is otherwise the
6 subject of a bankruptcy or insolvency pro-
7 ceeding—

8 “(I) all qualified financial con-
9 tracts between any person or any af-
10 filiate of such person and the deposi-
11 tory institution in default;

12 “(II) all claims of such person or
13 any affiliate of such person against
14 such depository institution under any
15 such contract (other than any claim
16 which, under the terms of any such
17 contract, is subordinated to the claims
18 of general unsecured creditors of such
19 institution);

20 “(III) all claims of such deposi-
21 tory institution against such person or
22 any affiliate of such person under any
23 such contract; and

24 “(IV) all property securing or
25 any other credit enhancement for any

1 contract described in subclause (I) or
2 any claim described in subclause (II)
3 or (III) under any such contract; or

4 “(ii) transfer none of the qualified fi-
5 nancial contracts, claims, property or other
6 credit enhancement referred to in clause (i)
7 (with respect to such person and any affil-
8 iate of such person).

9 “(B) TRANSFER TO FOREIGN BANK, FOR-
10 EIGN FINANCIAL INSTITUTION, OR BRANCH OR
11 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-
12 STITUTION.—In transferring any qualified fi-
13 nancial contracts and related claims and prop-
14 erty under subparagraph (A)(i), the conservator
15 or receiver for the depository institution shall
16 not make such transfer to a foreign bank, fi-
17 nancial institution organized under the laws of
18 a foreign country, or a branch or agency of a
19 foreign bank or financial institution unless,
20 under the law applicable to such bank, financial
21 institution, branch or agency, to the qualified
22 financial contracts, and to any netting contract,
23 any security agreement or arrangement or other
24 credit enhancement related to one or more
25 qualified financial contracts, the contractual

1 rights of the parties to such qualified financial
2 contracts, netting contracts, security agree-
3 ments or arrangements, or other credit en-
4 hancements are enforceable substantially to the
5 same extent as permitted under this section.

6 “(C) TRANSFER OF CONTRACTS SUBJECT
7 TO THE RULES OF A CLEARING ORGANIZA-
8 TION.—In the event that a conservator or re-
9 ceiver transfers any qualified financial contract
10 and related claims, property, and credit en-
11 hancements pursuant to subparagraph (A)(i)
12 and such contract is cleared by or subject to the
13 rules of a clearing organization, the clearing or-
14 ganization shall not be required to accept the
15 transferee as a member by virtue of the trans-
16 fer.

17 “(D) DEFINITIONS.—For purposes of this
18 paragraph, the term ‘financial institution’
19 means a broker or dealer, a depository institu-
20 tion, a futures commission merchant, or any
21 other institution, as determined by the Corpora-
22 tion by regulation to be a financial institution,
23 and the term ‘clearing organization’ has the
24 same meaning as in section 402 of the Federal

1 Deposit Insurance Corporation Improvement
2 Act of 1991.”.

3 (2) NOTICE TO QUALIFIED FINANCIAL CON-
4 TRACT COUNTERPARTIES.—Section 11(e)(10)(A) of
5 the Federal Deposit Insurance Act (12 U.S.C.
6 1821(e)(10)(A)) is amended in the material imme-
7 diately following clause (ii) by striking “the conser-
8 vator” and all that follows through the period and
9 inserting the following: “the conservator or receiver
10 shall notify any person who is a party to any such
11 contract of such transfer by 5:00 p.m. (eastern time)
12 on the business day following the date of the ap-
13 pointment of the receiver in the case of a receiver-
14 ship, or the business day following such transfer in
15 the case of a conservatorship.”.

16 (3) RIGHTS AGAINST RECEIVER AND CONSER-
17 VATOR AND TREATMENT OF BRIDGE BANKS.—Sec-
18 tion 11(e)(10) of the Federal Deposit Insurance Act
19 (12 U.S.C. 1821(e)(10)) is amended—

20 (A) by redesignating subparagraph (B) as
21 subparagraph (D); and

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

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

1 “(i) RECEIVERSHIP.—A person who is
2 a party to a qualified financial contract
3 with an insured depository institution may
4 not exercise any right that such person has
5 to terminate, liquidate, or net such con-
6 tract under paragraph (8)(A) of this sub-
7 section or section 403 or 404 of the Fed-
8 eral Deposit Insurance Corporation Im-
9 provement Act of 1991, solely by reason of
10 or incidental to the appointment of a re-
11 ceiver for the depository institution (or the
12 insolvency or financial condition of the de-
13 pository institution for which the receiver
14 has been appointed)—

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

19 “(II) after the person has re-
20 ceived notice that the contract has
21 been transferred pursuant to para-
22 graph (9)(A).

23 “(ii) CONSERVATORSHIP.—A person
24 who is a party to a qualified financial con-
25 tract with an insured depository institution

1 may not exercise any right that such per-
2 son has to terminate, liquidate, or net such
3 contract under paragraph (8)(E) of this
4 subsection or section 403 or 404 of the
5 Federal Deposit Insurance Corporation
6 Improvement Act of 1991, solely by reason
7 of or incidental to the appointment of a
8 conservator for the depository institution
9 (or the insolvency or financial condition of
10 the depository institution for which the
11 conservator has been appointed).

12 “(iii) NOTICE.—For purposes of this
13 paragraph, the Corporation as receiver or
14 conservator of an insured depository insti-
15 tution shall be deemed to have notified a
16 person who is a party to a qualified finan-
17 cial contract with such depository institu-
18 tion if the Corporation has taken steps
19 reasonably calculated to provide notice to
20 such person by the time specified in sub-
21 paragraph (A).

22 “(C) TREATMENT OF BRIDGE BANKS.—

23 The following institutions shall not be consid-
24 ered to be a financial institution for which a
25 conservator, receiver, trustee in bankruptcy, or

1 other legal custodian has been appointed or
2 which is otherwise the subject of a bankruptcy
3 or insolvency proceeding for purposes of para-
4 graph (9):

5 “(i) A bridge bank.

6 “(ii) A depository institution orga-
7 nized by the Corporation, for which a con-
8 servator is appointed either—

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

11 “(II) at the time of a purchase
12 and assumption transaction between
13 the depository institution and the Cor-
14 poration as receiver for a depository
15 institution in default.”.

16 (b) INSURED CREDIT UNIONS.—

17 (1) TRANSFERS OF QUALIFIED FINANCIAL CON-
18 TRACTS TO FINANCIAL INSTITUTIONS.—Section
19 207(c)(9) of the Federal Credit Union Act (12
20 U.S.C. 1787(c)(9)) is amended to read as follows:

21 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
22 TRACTS.—

23 “(A) IN GENERAL.—In making any trans-
24 fer of assets or liabilities of a credit union in
25 default which includes any qualified financial

1 contract, the conservator or liquidating agent
2 for such credit union shall either—

3 “(i) transfer to 1 financial institution,
4 other than a financial institution for which
5 a conservator, receiver, trustee in bank-
6 ruptcy, or other legal custodian has been
7 appointed or which is otherwise the subject
8 of a bankruptcy or insolvency proceeding—

9 “(I) all qualified financial con-
10 tracts between any person or any af-
11 filiate of such person and the credit
12 union in default;

13 “(II) all claims of such person or
14 any affiliate of such person against
15 such credit union under any such con-
16 tract (other than any claim which,
17 under the terms of any such contract,
18 is subordinated to the claims of gen-
19 eral unsecured creditors of such credit
20 union);

21 “(III) all claims of such credit
22 union against such person or any af-
23 filiate of such person under any such
24 contract; and

1 “(IV) all property securing or
2 any other credit enhancement for any
3 contract described in subclause (I) or
4 any claim described in subclause (II)
5 or (III) under any such contract; or

6 “(ii) transfer none of the qualified fi-
7 nancial contracts, claims, property or other
8 credit enhancement referred to in clause (i)
9 (with respect to such person and any affil-
10 iate of such person).

11 “(B) TRANSFER TO FOREIGN BANK, FOR-
12 EIGN FINANCIAL INSTITUTION, OR BRANCH OR
13 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-
14 STITUTION.—In transferring any qualified fi-
15 nancial contracts and related claims and prop-
16 erty under subparagraph (A)(i), the conservator
17 or liquidating agent for the credit union shall
18 not make such transfer to a foreign bank, fi-
19 nancial institution organized under the laws of
20 a foreign country, or a branch or agency of a
21 foreign bank or financial institution unless,
22 under the law applicable to such bank, financial
23 institution, branch or agency, to the qualified
24 financial contracts, and to any netting contract,
25 any security agreement or arrangement or other

1 credit enhancement related to 1 or more quali-
2 fied financial contracts, the contractual rights
3 of the parties to such qualified financial con-
4 tracts, netting contracts, security agreements or
5 arrangements, or other credit enhancements are
6 enforceable substantially to the same extent as
7 permitted under this section.

8 “(C) TRANSFER OF CONTRACTS SUBJECT
9 TO THE RULES OF A CLEARING ORGANIZA-
10 TION.—In the event that a conservator or liqui-
11 dating agent transfers any qualified financial
12 contract and related claims, property, and cred-
13 it enhancements pursuant to subparagraph
14 (A)(i) and such contract is cleared by or subject
15 to the rules of a clearing organization, the
16 clearing organization shall not be required to
17 accept the transferee as a member by virtue of
18 the transfer.

19 “(D) DEFINITIONS.—For purposes of this
20 paragraph—

21 “(i) the term ‘financial institution’
22 means a broker or dealer, a depository in-
23 stitution, a futures commission merchant,
24 a credit union, or any other institution, as

1 determined by the Board by regulation to
2 be a financial institution; and

3 “(ii) the term ‘clearing organization’
4 has the same meaning as in section 402 of
5 the Federal Deposit Insurance Corporation
6 Improvement Act of 1991.”.

7 (2) NOTICE TO QUALIFIED FINANCIAL CON-
8 TRACT COUNTERPARTIES.—Section 207(c)(10)(A) of
9 the Federal Credit Union Act (12 U.S.C.
10 1787(c)(10)(A)) is amended in the material imme-
11 diately following clause (ii) by striking “the conser-
12 vator” and all that follows through the period and
13 inserting the following: “the conservator or liqui-
14 dating agent shall notify any person who is a party
15 to any such contract of such transfer by 5:00 p.m.
16 (eastern time) on the business day following the date
17 of the appointment of the liquidating agent in the
18 case of a liquidation, or the business day following
19 such transfer in the case of a conservatorship.”.

20 (3) RIGHTS AGAINST LIQUIDATING AGENT AND
21 CONSERVATOR AND TREATMENT OF BRIDGE
22 BANKS.—Section 207(c)(10) of the Federal Credit
23 Union Act (12 U.S.C. 1787(c)(10)) is amended—

24 (A) by redesignating subparagraph (B) as
25 subparagraph (D); and

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

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

5 “(i) LIQUIDATION.—A person who is
6 a party to a qualified financial contract
7 with an insured credit union may not exer-
8 cise any right that such person has to ter-
9 minate, liquidate, or net such contract
10 under paragraph (8)(A) of this subsection
11 or section 403 or 404 of the Federal De-
12 posit Insurance Corporation Improvement
13 Act of 1991, solely by reason of or inci-
14 dental to the appointment of a liquidating
15 agent for the credit union institution (or
16 the insolvency or financial condition of the
17 credit union for which the liquidating
18 agent has been appointed)—

19 “(I) until 5:00 p.m. (eastern
20 time) on the business day following
21 the date of the appointment of the liq-
22 uidating agent; or

23 “(II) after the person has re-
24 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 credit union may not
6 exercise any right that such person has to
7 terminate, liquidate, or net such contract
8 under paragraph (8)(E) of this subsection
9 or section 403 or 404 of the Federal De-
10 posit Insurance Corporation Improvement
11 Act of 1991, solely by reason of or inci-
12 dental to the appointment of a conservator
13 for the credit union or the insolvency or fi-
14 nancial condition of the credit union for
15 which the conservator has been appointed).

16 “(iii) NOTICE.—For purposes of this
17 paragraph, the Board as conservator or
18 liquidating agent of an insured credit
19 union shall be deemed to have notified a
20 person who is a party to a qualified finan-
21 cial contract with such credit union if the
22 Board has taken steps reasonably cal-
23 culated to provide notice to such person by
24 the time specified in subparagraph (A).

1 “(C) TREATMENT OF BRIDGE BANKS.—
2 The following institutions shall not be consid-
3 ered to be a financial institution for which a
4 conservator, receiver, trustee in bankruptcy, or
5 other legal custodian has been appointed or
6 which is otherwise the subject of a bankruptcy
7 or insolvency proceeding for purposes of para-
8 graph (9):

9 “(i) A bridge bank.

10 “(ii) A credit union organized by the
11 Board, for which a conservator is ap-
12 pointed either—

13 “(I) immediately upon the orga-
14 nization of the credit union; or

15 “(II) at the time of a purchase
16 and assumption transaction between
17 the credit union and the Board as re-
18 ceiver for a credit union in default.”.

19 **SEC. 5. AMENDMENTS RELATING TO DISAFFIRMANCE OR**
20 **REPUDIATION OF QUALIFIED FINANCIAL**
21 **CONTRACTS.**

22 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—
23 Section 11(e) of the Federal Deposit Insurance Act (12
24 U.S.C. 1821(e)) is amended—

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

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

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

12 “(A) disaffirm or repudiate all qualified fi-
13 nancial contracts between—

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

16 “(ii) the depository institution in de-
17 fault; or

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

22 (3) by adding at the end the following new
23 paragraph:

24 “(17) SAVINGS CLAUSE.—The meanings of
25 terms used in this subsection are applicable for pur-

1 poses of this subsection only, and shall not be con-
2 strued or applied so as to challenge or affect the
3 characterization, definition, or treatment of any
4 similar terms under any other statute, regulation, or
5 rule, including the Gramm-Leach-Bliley Act, the
6 Legal Certainty for Bank Products Act of 2000, the
7 securities laws (as that term is defined in section
8 3(a)(47) of the Securities Exchange Act of 1934),
9 and the Commodity Exchange Act.”.

10 (b) INSURED CREDIT UNIONS.—Section 207(c) of
11 the Federal Credit Union Act (12 U.S.C. 1787(c)) is
12 amended—

13 (1) by redesignating paragraphs (11), (12), and
14 (13) as paragraphs (12), (13), and (14), respec-
15 tively;

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

18 “(11) DISAFFIRMANCE OR REPUDIATION OF
19 QUALIFIED FINANCIAL CONTRACTS.—In exercising
20 the rights of disaffirmance or repudiation of a con-
21 servator or liquidating agent with respect to any
22 qualified financial contract to which an insured cred-
23 it union is a party, the conservator or liquidating
24 agent for such credit union shall either—

1 “(A) disaffirm or repudiate all qualified fi-
2 nancial contracts between—

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

5 “(ii) the credit union in default; or

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

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

12 “(15) SAVINGS CLAUSE.—The meanings of
13 terms used in this subsection are applicable for pur-
14 poses of this subsection only, and shall not be con-
15 strued or applied so as to challenge or affect the
16 characterization, definition, or treatment of any
17 similar terms under any other statute, regulation, or
18 rule, including the Gramm-Leach-Bliley Act, the
19 Legal Certainty for Bank Products Act of 2000, the
20 securities laws (as that term is defined in section
21 (a)(47) of the Securities Exchange Act of 1934),
22 and the Commodity Exchange Act.”.

1 **SEC. 6. CLARIFYING AMENDMENT RELATING TO MASTER**
2 **AGREEMENTS.**

3 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—
4 Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance
5 Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as
6 follows:

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

24 (b) INSURED CREDIT UNIONS.—Section
25 207(e)(8)(D) of the Federal Credit Union Act (12 U.S.C.

1 1787(c)(8)(D)) is amended by inserting after clause (vi)
2 (as added by section 2(f)) the following new clause:

3 “(vii) TREATMENT OF MASTER
4 AGREEMENT AS ONE AGREEMENT.—Any
5 master agreement for any contract or
6 agreement described in any preceding
7 clause of this subparagraph (or any master
8 agreement for such master agreement or
9 agreements), together with all supplements
10 to such master agreement, shall be treated
11 as a single agreement and a single quali-
12 fied financial contract. If a master agree-
13 ment contains provisions relating to agree-
14 ments or transactions that are not them-
15 selves qualified financial contracts, the
16 master agreement shall be deemed to be a
17 qualified financial contract only with re-
18 spect to those transactions that are them-
19 selves qualified financial contracts.”.

20 **SEC. 7. FEDERAL DEPOSIT INSURANCE CORPORATION IM-**
21 **PROVEMENT ACT OF 1991.**

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

25 (1) in paragraph (2)—

1 (A) in subparagraph (A)(ii), by inserting
2 before the semicolon “, or is exempt from such
3 registration by order of the Securities and Ex-
4 change Commission”; and

5 (B) in subparagraph (B), by inserting be-
6 fore the period “, that has been granted an ex-
7 emption under section 4(c)(1) of the Com-
8 modity Exchange Act, or that is a multilateral
9 clearing organization (as defined in section 408
10 of this Act)”;

11 (2) in paragraph (6)—

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

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

17 “(B) an uninsured national bank or an un-
18 insured State bank that is a member of the
19 Federal Reserve System, if the national bank or
20 State member bank is not eligible to make ap-
21 plication to become an insured bank under sec-
22 tion 5 of the Federal Deposit Insurance Act;”;
23 and

24 (C) by amending subparagraph (C) (as re-
25 designated) to read as follows:

1 “(C) a branch or agency of a foreign bank,
2 a foreign bank and any branch or agency of the
3 foreign bank, or the foreign bank that estab-
4 lished the branch or agency, as those terms are
5 defined in section 1(b) of the International
6 Banking Act of 1978;”;

7 (3) in paragraph (11), by inserting before the
8 period “and any other clearing organization with
9 which such clearing organization has a netting con-
10 tract”;

11 (4) by amending paragraph (14)(A)(i) to read
12 as follows:

13 “(i) means a contract or agreement
14 between 2 or more financial institutions,
15 clearing organizations, or members that
16 provides for netting present or future pay-
17 ment obligations or payment entitlements
18 (including liquidation or close out values
19 relating to such obligations or entitle-
20 ments) among the parties to the agree-
21 ment; and”;

22 (5) by adding at the end the following new
23 paragraph:

24 “(15) PAYMENT.—The term ‘payment’ means a
25 payment of United States dollars, another currency,

1 or a composite currency, and a noncash delivery, in-
2 cluding a payment or delivery to liquidate an
3 unmatured obligation.”.

4 (b) ENFORCEABILITY OF BILATERAL NETTING CON-
5 TRACTS.—Section 403 of the Federal Deposit Insurance
6 Corporation Improvement Act of 1991 (12 U.S.C. 4403)
7 is amended—

8 (1) by striking subsection (a) and inserting the
9 following:

10 “(a) GENERAL RULE.—Notwithstanding any other
11 provision of State or Federal law (other than paragraphs
12 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal
13 Deposit Insurance Act, paragraphs (8)(E), (8)(F), and
14 (10)(B) of section 207(c) of the Federal Credit Union Act,
15 or any order authorized under section 5(b)(2) of the Secu-
16 rities Investor Protection Act of 1970), the covered con-
17 tractual payment obligations and the covered contractual
18 payment entitlements between any 2 financial institutions
19 shall be netted in accordance with, and subject to the con-
20 ditions of, the terms of any applicable netting contract (ex-
21 cept as provided in section 561(b)(2) of title 11, United
22 States Code).”; and

23 (2) by adding at the end the following new sub-
24 section:

1 “(f) ENFORCEABILITY OF SECURITY AGREE-
2 MENTS.—The provisions of any security agreement or ar-
3 rangement or other credit enhancement related to one or
4 more netting contracts between any 2 financial institu-
5 tions shall be enforceable in accordance with their terms
6 (except as provided in section 561(b)(2) of title 11, United
7 States Code), and shall not be stayed, avoided, or other-
8 wise limited by any State or Federal law (other than para-
9 graphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the
10 Federal Deposit Insurance Act, paragraphs (8)(E),
11 (8)(F), and (10)(B) of section 207(c) of the Federal Cred-
12 it Union Act, and section 5(b)(2) of the Securities Investor
13 Protection Act of 1970).”.

14 (c) ENFORCEABILITY OF CLEARING ORGANIZATION
15 NETTING CONTRACTS.—Section 404 of the Federal De-
16 posit Insurance Corporation Improvement Act of 1991 (12
17 U.S.C. 4404) is amended—

18 (1) by striking subsection (a) and inserting the
19 following:

20 “(a) GENERAL RULE.—Notwithstanding any other
21 provision of State or Federal law (other than paragraphs
22 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal
23 Deposit Insurance Act, paragraphs (8)(E), (8)(F), and
24 (10)(B) of section 207(c) of the Federal Credit Union Act,
25 and any order authorized under section 5(b)(2) of the Se-

1 curities Investor Protection Act of 1970), the covered con-
2 tractual payment obligations and the covered contractual
3 payment entitlements of a member of a clearing organiza-
4 tion to and from all other members of a clearing organiza-
5 tion shall be netted in accordance with and subject to the
6 conditions of any applicable netting contract (except as
7 provided in section 561(b)(2) of title 11, United States
8 Code).”; and

9 (2) by adding at the end the following new sub-
10 section:

11 “(h) ENFORCEABILITY OF SECURITY AGREE-
12 MENTS.—The provisions of any security agreement or ar-
13 rangement or other credit enhancement related to one or
14 more netting contracts between any 2 members of a clear-
15 ing organization shall be enforceable in accordance with
16 their terms (except as provided in section 561(b)(2) of
17 title 11, United States Code), and shall not be stayed,
18 avoided, or otherwise limited by any State or Federal law
19 (other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-
20 tion 11(e) of the Federal Deposit Insurance Act, para-
21 graphs (8)(E), (8)(F), and (10)(B) of section 207(c) of
22 the Federal Credit Union Act, and section 5(b)(2) of the
23 Securities Investor Protection Act of 1970).”.

24 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-
25 SURED NATIONAL BANKS, UNINSURED FEDERAL

1 BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE
2 MEMBER BANKS, AND EDGE ACT CORPORATIONS.—The
3 Federal Deposit Insurance Corporation Improvement Act
4 of 1991 (12 U.S.C. 4401 et seq.) is amended—

5 (1) by redesignating section 407 as section
6 407A; and

7 (2) by inserting after section 406 the following
8 new section:

9 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**
10 **NATIONAL BANKS, UNINSURED FEDERAL**
11 **BRANCHES AND AGENCIES, CERTAIN UNIN-**
12 **SURED STATE MEMBER BANKS, AND EDGE**
13 **ACT CORPORATIONS.**

14 “(a) IN GENERAL.—Notwithstanding any other pro-
15 vision of law, paragraphs (8), (9), (10), and (11) of section
16 11(e) of the Federal Deposit Insurance Act shall apply
17 to an uninsured national bank or uninsured Federal
18 branch or Federal agency, a corporation chartered under
19 section 25A of the Federal Reserve Act, or an uninsured
20 State member bank which operates, or operates as, a mul-
21 tilateral clearing organization pursuant to section 409 of
22 this Act, except that for such purpose—

23 “(1) any reference to the ‘Corporation as re-
24 ceiver’ or ‘the receiver or the Corporation’ shall refer
25 to the receiver appointed by the Comptroller of the

1 Currency in the case of an uninsured national bank
2 or uninsured Federal branch or agency, or to the
3 receiver appointed by the Board of Governors of the
4 Federal Reserve System in the case of a corporation
5 chartered under section 25A of the Federal Reserve
6 Act or an uninsured State member bank;

7 “(2) any reference to the ‘Corporation’ (other
8 than in section 11(e)(8)(D) of such Act), the ‘Cor-
9 poration, whether acting as such or as conservator
10 or receiver’, a ‘receiver’, or a ‘conservator’ shall refer
11 to the receiver or conservator appointed by the
12 Comptroller of the Currency in the case of an unin-
13 sured national bank or uninsured Federal branch or
14 agency, or to the receiver or conservator appointed
15 by the Board of Governors of the Federal Reserve
16 System in the case of a corporation chartered under
17 section 25A of the Federal Reserve Act or an unin-
18 sured State member bank; and

19 “(3) any reference to an ‘insured depository in-
20 stitution’ or ‘depository institution’ shall refer to an
21 uninsured national bank, an uninsured Federal
22 branch or Federal agency, a corporation chartered
23 under section 25A of the Federal Reserve Act, or an
24 uninsured State member bank which operates, or op-

1 erates as, a multilateral clearing organization pursu-
2 ant to section 409 of this Act.

3 “(b) LIABILITY.—The liability of a receiver or conser-
4 vator of an uninsured national bank, uninsured Federal
5 branch or agency, a corporation chartered under section
6 25A of the Federal Reserve Act, or an uninsured State
7 member bank which operates, or operates as, a multilat-
8 eral clearing organization pursuant to section 409 of this
9 Act, shall be determined in the same manner and subject
10 to the same limitations that apply to receivers and con-
11 servators of insured depository institutions under section
12 11(e) of the Federal Deposit Insurance Act.

13 “(c) REGULATORY AUTHORITY.—

14 “(1) IN GENERAL.—The Comptroller of the
15 Currency in the case of an uninsured national bank
16 or uninsured Federal branch or agency and the
17 Board of Governors of the Federal Reserve System
18 in the case of a corporation chartered under section
19 25A of the Federal Reserve Act, or an uninsured
20 State member bank that operates, or operates as, a
21 multilateral clearing organization pursuant to sec-
22 tion 409 of this Act, in consultation with the Fed-
23 eral Deposit Insurance Corporation, may each pro-
24 mulgate regulations solely to implement this section.

1 “(2) SPECIFIC REQUIREMENT.—In promul-
2 gating regulations, limited solely to implementing
3 paragraphs (8), (9), (10), and (11) of section 11(e)
4 of the Federal Deposit Insurance Act, the Comp-
5 troller of the Currency and the Board of Governors
6 of the Federal Reserve System each shall ensure
7 that the regulations generally are consistent with the
8 regulations and policies of the Federal Deposit In-
9 surance Corporation adopted pursuant to the Fed-
10 eral Deposit Insurance Act.

11 “(d) DEFINITIONS.—For purposes of this section, the
12 terms ‘Federal branch’, ‘Federal agency’, and ‘foreign
13 bank’ have the same meanings as in section 1(b) of the
14 International Banking Act of 1978.”.

15 **SEC. 8. BANKRUPTCY CODE AMENDMENTS.**

16 (a) DEFINITIONS OF FORWARD CONTRACT, REPUR-
17 CHASE AGREEMENT, SECURITIES CLEARING AGENCY,
18 SWAP AGREEMENT, COMMODITY CONTRACT, AND SECU-
19 RITIES CONTRACT.—Title 11, United States Code, is
20 amended—

21 (1) in section 101—

22 (A) in paragraph (25)—

23 (i) by striking “means a contract”

24 and inserting “means—

25 “(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 fol-
5 lowing:

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

9 “(C) any option to enter into an agreement
10 or transaction referred to in subparagraph (A)
11 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 such master agree-
17 ment provides for an agreement or transaction
18 that is not a forward contract under this para-
19 graph, except that such 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 such master agree-
23 ment that is referred to in subparagraph (A),
24 (B), or (C); or

1 “(E) any security agreement or arrange-
2 ment, or other credit enhancement related to
3 any agreement or transaction referred to in
4 subparagraph (A), (B), (C), or (D), including
5 any guarantee or reimbursement obligation by
6 or to a forward contract merchant or financial
7 participant in connection with any agreement or
8 transaction referred to in any such subpara-
9 graph, but not to exceed the damages in con-
10 nection with any such agreement or transaction,
11 measured in accordance with section 562 of this
12 title;”;

13 (B) in paragraph (46), by striking “on any
14 day during the period beginning 90 days before
15 the date of” and inserting “at any time before”;

16 (C) by amending paragraph (47) to read
17 as follows:

18 “(47) ‘repurchase agreement’ (which definition
19 also applies to a reverse repurchase agreement)—

20 “(A) means—

21 “(i) an agreement, including related
22 terms, which provides for the transfer of
23 one or more certificates of deposit, mort-
24 gage related securities (as defined in sec-
25 tion 3 of the Securities Exchange Act of

1 1934), mortgage loans, interests in mort-
2 gage related securities or mortgage loans,
3 eligible bankers' acceptances, qualified for-
4 eign government securities (defined as a
5 security that is a direct obligation of, or
6 that is fully guaranteed by, the central
7 government of a member of the Organiza-
8 tion for Economic Cooperation and Devel-
9 opment), or securities that are direct obli-
10 gations of, or that are fully guaranteed by,
11 the United States or any agency of the
12 United States against the transfer of funds
13 by the transferee of such certificates of de-
14 posit, eligible bankers' acceptances, securi-
15 ties, mortgage loans, or interests, with a
16 simultaneous agreement by such transferee
17 to transfer to the transferor thereof certifi-
18 cates of deposit, eligible bankers' accept-
19 ance, securities, mortgage loans, or inter-
20 ests of the kind described in this clause,
21 at a date certain not later than 1 year
22 after such transfer or on demand, against
23 the transfer of funds;

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

4 “(iii) an option to enter into an agree-
5 ment or transaction referred to in clause
6 (i) or (ii);

7 “(iv) a master agreement that pro-
8 vides for an agreement or transaction re-
9 ferred to in clause (i), (ii), or (iii), together
10 with all supplements to any such master
11 agreement, without regard to whether such
12 master agreement provides for an agree-
13 ment or transaction that is not a repur-
14 chase agreement under this paragraph, ex-
15 cept that such master agreement shall be
16 considered to be a repurchase agreement
17 under this paragraph only with respect to
18 each agreement or transaction under the
19 master agreement that is referred to in
20 clause (i), (ii), or (iii); or

21 “(v) any security agreement or ar-
22 rangement or other credit enhancement re-
23 lated to any agreement or transaction re-
24 ferred to in clause (i), (ii), (iii), or (iv), in-
25 cluding any guarantee or reimbursement

1 obligation by or to a repo participant or
2 financial participant in connection with
3 any agreement or transaction referred to
4 in any such clause, but not to exceed the
5 damages in connection with any such
6 agreement or transaction, measured in ac-
7 cordance with section 562 of this title; and

8 “(B) does not include a repurchase obliga-
9 tion under a participation in a commercial
10 mortgage loan;”;

11 (D) in paragraph (48), by inserting “, or
12 exempt from such registration under such sec-
13 tion pursuant to an order of the Securities and
14 Exchange Commission,” after “1934”; and

15 (E) by amending paragraph (53B) to read
16 as follows:

17 “(53B) ‘swap agreement’—

18 “(A) means—

19 “(i) any agreement, including the
20 terms and conditions incorporated by ref-
21 erence in such agreement, which is—

22 “(I) an interest rate swap, op-
23 tion, future, or forward agreement, in-
24 cluding a rate floor, rate cap, rate col-

1 lar, cross-currency rate swap, and
2 basis swap;

3 “(II) a spot, same day-tomorrow,
4 tomorrow-next, forward, or other for-
5 eign exchange or precious metals
6 agreement;

7 “(III) a currency swap, option,
8 future, or forward agreement;

9 “(IV) an equity index or equity
10 swap, option, future, or forward
11 agreement;

12 “(V) a debt index or debt swap,
13 option, future, or forward agreement;

14 “(VI) a total return, credit
15 spread or credit swap, option, future,
16 or forward agreement;

17 “(VII) a commodity index or a
18 commodity swap, option, future, or
19 forward agreement; or

20 “(VIII) a weather swap, weather
21 derivative, or weather option;

22 “(ii) any agreement or transaction
23 that is similar to any other agreement or
24 transaction referred to in this paragraph
25 and that—

1 “(I) is of a type that has been, is
2 presently, or in the future becomes,
3 the subject of recurrent dealings in
4 the swap markets (including terms
5 and conditions incorporated by ref-
6 erence therein); and

7 “(II) is a forward, swap, future,
8 or option on one or more rates, cur-
9 rencies, commodities, equity securities,
10 or other equity instruments, debt se-
11 curities or other debt instruments,
12 quantitative measures associated with
13 an occurrence, extent of an occur-
14 rence, or contingency associated with
15 a financial, commercial, or economic
16 consequence, or economic or financial
17 indices or measures of economic or fi-
18 nancial risk or value;

19 “(iii) any combination of agreements
20 or transactions referred to in this subpara-
21 graph;

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

1 “(v) a master agreement that provides
2 for an agreement or transaction referred to
3 in clause (i), (ii), (iii), or (iv), together
4 with all supplements to any such master
5 agreement, and without regard to whether
6 the master agreement contains an agree-
7 ment or transaction that is not a swap
8 agreement under this paragraph, except
9 that the master agreement shall be consid-
10 ered to be a swap agreement under this
11 paragraph only with respect to each agree-
12 ment or transaction under the master
13 agreement that is referred to in clause (i),
14 (ii), (iii), or (iv); or

15 “(vi) any security agreement or ar-
16 rangement or other credit enhancement re-
17 lated to any agreements or transactions re-
18 ferred to in clause (i) through (v), includ-
19 ing any guarantee or reimbursement obli-
20 gation by or to a swap participant or fi-
21 nancial participant in connection with any
22 agreement or transaction referred to in
23 any such clause, but not to exceed the
24 damages in connection with any such

1 agreement or transaction, measured in ac-
2 cordance with section 562 of this title; and

3 “(B) is applicable for purposes of this title
4 only, and shall not be construed or applied so
5 as to challenge or affect the characterization,
6 definition, or treatment of any swap agreement
7 under any other statute, regulation, or rule, in-
8 cluding the Securities Act of 1933, the Securi-
9 ties Exchange Act of 1934, the Public Utility
10 Holding Company Act of 1935, the Trust In-
11 denture Act of 1939, the Investment Company
12 Act of 1940, the Investment Advisers Act of
13 1940, the Securities Investor Protection Act of
14 1970, the Commodity Exchange Act, the
15 Gramm-Leach-Bliley Act, and the Legal Cer-
16 tainty for Bank Products Act of 2000;”;

17 (2) in section 741(7), by striking paragraph (7)
18 and inserting the following:

19 “(7) ‘securities contract’—

20 “(A) means—

21 “(i) a contract for the purchase, sale,
22 or loan of a security, a certificate of de-
23 posit, a mortgage loan or any interest in a
24 mortgage loan, a group or index of securi-
25 ties, certificates of deposit, or mortgage

1 loans or interests therein (including an in-
2 terest therein or based on the value there-
3 of), or option on any of the foregoing, in-
4 cluding an option to purchase or sell any
5 such security, certificate of deposit, mort-
6 gage loan, interest, group or index, or op-
7 tion, and including any repurchase or re-
8 verse repurchase transaction on any such
9 security, certificate of deposit, mortgage
10 loan, interest, group or index, or option;

11 “(ii) any option entered into on a na-
12 tional securities exchange relating to for-
13 eign currencies;

14 “(iii) the guarantee by or to any secu-
15 rities clearing agency of a settlement of
16 cash, securities, certificates of deposit,
17 mortgage loans or interests therein, group
18 or index of securities, or mortgage loans or
19 interests therein (including any interest
20 therein or based on the value thereof), or
21 option on any of the foregoing, including
22 an option to purchase or sell any such se-
23 curity, certificate of deposit, mortgage
24 loan, interest, group or index, or option;

25 “(iv) any margin loan;

1 “(v) any other agreement or trans-
2 action that is similar to an agreement or
3 transaction referred to in this subpara-
4 graph;

5 “(vi) any combination of the agree-
6 ments or transactions referred to in this
7 subparagraph;

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

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

1 “(ix) any security agreement or ar-
2 rangement or other credit enhancement re-
3 lated to any agreement or transaction re-
4 ferred to in this subparagraph, including
5 any guarantee or reimbursement obligation
6 by or to a stockbroker, securities clearing
7 agency, financial institution, or financial
8 participant in connection with any agree-
9 ment or transaction referred to in this sub-
10 paragraph, but not to exceed the damages
11 in connection with any such agreement or
12 transaction, measured in accordance with
13 section 562 of this title; and

14 “(B) does not include any purchase, sale,
15 or repurchase obligation under a participation
16 in a commercial mortgage loan;”;

17 (3) in section 761(4)—

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

20 (B) by adding at the end the following:

21 “(F) any other agreement or transaction
22 that is similar to an agreement or transaction
23 referred to in this paragraph;

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

1 “(H) any option to enter into an agree-
2 ment or transaction referred to in this para-
3 graph;

4 “(I) a master agreement that provides for
5 an agreement or transaction referred to in sub-
6 paragraph (A), (B), (C), (D), (E), (F), (G), or
7 (H), together with all supplements to such mas-
8 ter agreement, without regard to whether the
9 master agreement provides for an agreement or
10 transaction that is not a commodity contract
11 under this paragraph, except that the master
12 agreement shall be considered to be a com-
13 modity contract under this paragraph only with
14 respect to each agreement or transaction under
15 the master agreement that is referred to in sub-
16 paragraph (A), (B), (C), (D), (E), (F), (G), or
17 (H); or

18 “(J) any security agreement or arrange-
19 ment or other credit enhancement related to
20 any agreement or transaction referred to in this
21 paragraph, including any guarantee or reim-
22 bursement obligation by or to a commodity
23 broker or financial participant in connection
24 with any agreement or transaction referred to
25 in this paragraph, but not to exceed the dam-

1 ages in connection with any such agreement or
2 transaction, measured in accordance with sec-
3 tion 562 of this title;”.

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

8 (1) by striking paragraph (22) and inserting
9 the following:

10 “(22) ‘financial institution’ means—

11 “(A) a Federal reserve bank, or an entity
12 (domestic or foreign) that is a commercial or
13 savings bank, industrial savings bank, savings
14 and loan association, trust company, federally-
15 insured credit union, or receiver or conservator
16 for such entity and, when any such Federal re-
17 serve bank, receiver, conservator or entity is
18 acting as agent or custodian for a customer in
19 connection with a securities contract (as defined
20 in section 741) such customer; or

21 “(B) in connection with a securities con-
22 tract (as defined in section 741) an investment
23 company registered under the Investment Com-
24 pany Act of 1940;”;

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

3 “(22A) ‘financial participant’ means—

4 “(A) an entity that, at the time it enters
5 into a securities contract, commodity contract,
6 swap agreement, repurchase agreement, or for-
7 ward contract, or at the time of the filing of the
8 petition, has one or more agreements or trans-
9 actions described in paragraph (1), (2), (3), (4),
10 (5), or (6) of section 561(a) with the debtor or
11 any other entity (other than an affiliate) of a
12 total gross dollar value of not less than
13 \$1,000,000,000 in notional or actual principal
14 amount outstanding on any day during the pre-
15 vious 15-month period, or has gross mark-to-
16 market positions of not less than \$100,000,000
17 (aggregated across counterparties) in one or
18 more such agreements or transactions with the
19 debtor or any other entity (other than an affil-
20 iate) on any day during the previous 15-month
21 period; or

22 “(B) a clearing organization (as defined in
23 section 402 of the Federal Deposit Insurance
24 Corporation Improvement Act of 1991);” and

1 (3) by striking paragraph (26) and inserting
2 the following:

3 “(26) ‘forward contract merchant’ means a
4 Federal reserve bank, or an entity the business of
5 which consists in whole or in part of entering into
6 forward contracts as or with merchants in a com-
7 modity (as defined in section 761) or any similar
8 good, article, service, right, or interest which is pres-
9 ently or in the future becomes the subject of dealing
10 in the forward contract trade;”.

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

16 “(38A) ‘master netting agreement’—

17 “(A) means an agreement providing for
18 the exercise of rights, including rights of net-
19 ting, setoff, liquidation, termination, accelera-
20 tion, or close out, under or in connection with
21 one or more contracts that are described in any
22 one or more of paragraphs (1) through (5) of
23 section 561(a), or any security agreement or ar-
24 rangement or other credit enhancement related
25 to one or more of the foregoing, including any

1 guarantee or reimbursement obligation related
2 to 1 or more of the foregoing; and

3 “(B) if the agreement contains provisions
4 relating to agreements or transactions that are
5 not contracts described in paragraphs (1)
6 through (5) of section 561(a), shall be deemed
7 to be a master netting agreement only with re-
8 spect to those agreements or transactions that
9 are described in any one or more of paragraphs
10 (1) through (5) of section 561(a);

11 “(38B) ‘master netting agreement participant’
12 means an entity that, at any time before the filing
13 of the petition, is a party to an outstanding master
14 netting agreement with the debtor;”.

15 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,
16 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-
17 CHASE AGREEMENTS, AND MASTER NETTING AGREE-
18 MENTS UNDER THE AUTOMATIC-STAY.—

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

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

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

4 (C) by striking paragraph (17) and insert-
5 ing the following:

6 “(17) under subsection (a), of the setoff by a
7 swap participant or financial participant of a mutual
8 debt and claim under or in connection with one or
9 more swap agreements that constitutes the setoff of
10 a claim against the debtor for any payment or other
11 transfer of property due from the debtor under or in
12 connection with any swap agreement against any
13 payment due to the debtor from the swap partici-
14 pant or financial participant under or in connection
15 with any swap agreement or against cash, securities,
16 or other property held by, pledged to, under the con-
17 trol of, or due from such swap participant or finan-
18 cial participant to margin, guarantee, secure, or set-
19 tle any swap agreement;”;

20 (D) in paragraph (18) by striking the pe-
21 riod at the end and inserting “; or”; and

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

24 “(19) under subsection (a), of the setoff by a
25 master netting agreement participant of a mutual

1 debt and claim under or in connection with one or
2 more master netting agreements or any contract or
3 agreement subject to such agreements that con-
4 stitutes the setoff of a claim against the debtor for
5 any payment or other transfer of property due from
6 the debtor under or in connection with such agree-
7 ments or any contract or agreement subject to such
8 agreements against any payment due to the debtor
9 from such master netting agreement participant
10 under or in connection with such agreements or any
11 contract or agreement subject to such agreements or
12 against cash, securities, or other property held by,
13 pledged to, under the control of, or due from such
14 master netting agreement participant to margin,
15 guarantee, secure, or settle such agreements or any
16 contract or agreement subject to such agreements,
17 to the extent that such participant is eligible to exer-
18 cise such offset rights under paragraph (6), (7), or
19 (17) for each individual contract covered by the mas-
20 ter netting agreement in issue.”.

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

24 “(i) The exercise of rights not subject to the stay
25 arising under subsection (a) pursuant to paragraph (6),

1 (7), (17), or (19) of subsection (b) shall not be stayed
2 by any order of a court or administrative agency in any
3 proceeding under this title.”.

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

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

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

10 (B) by striking “in connection with a swap
11 agreement” and inserting “under or in connec-
12 tion with any swap agreement”; and

13 (C) by inserting “or financial participant”
14 after “swap participant” each place such term
15 appears; and

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

17 “(j) Notwithstanding sections 544, 545, 547,
18 548(a)(1)(B), and 548(b) the trustee may not avoid a
19 transfer made by or to a master netting agreement partici-
20 pant under or in connection with any master netting
21 agreement or any individual contract covered thereby that
22 is made before the commencement of the case, except
23 under section 548(a)(1)(A) and except to the extent that
24 the trustee could otherwise avoid such a transfer made

1 under an individual contract covered by such master net-
2 ting agreement.”.

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

6 (1) in subparagraph (C), by striking “and” at
7 the end;

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

10 (3) by adding at the end the following new sub-
11 paragraph:

12 “(E) a master netting agreement participant
13 that receives a transfer in connection with a master
14 netting agreement or any individual contract covered
15 thereby takes for value to the extent of such trans-
16 fer, except that, with respect to a transfer under any
17 individual contract covered thereby, to the extent
18 that such master netting agreement participant oth-
19 erwise did not take (or is otherwise not deemed to
20 have taken) such transfer for value.”.

21 (g) TERMINATION OR ACCELERATION OF SECURITIES
22 CONTRACTS.—Section 555 of title 11, United States Code,
23 is amended—

24 (1) by amending the section heading to read as
25 follows:

1 **“§ 555. Contractual right to liquidate, terminate, or**
2 **accelerate a securities contract”;**

3 and

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

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

10 (1) by amending the section heading to read as
11 follows:

12 **“§ 556. Contractual right to liquidate, terminate, or**
13 **accelerate a commodities contract or for-**
14 **ward contract”;**

15 (2) in the first sentence, by striking “liquida-
16 tion” and inserting “liquidation, termination, or ac-
17 celeration”; and

18 (3) in the second sentence, by striking “As
19 used” and all that follows through “right,” and in-
20 sserting “As used in this section, the term ‘contract-
21 tual right’ includes a right set forth in a rule or
22 bylaw of a derivatives clearing organization (as de-
23 fined in the Commodity Exchange Act), a multilat-
24 eral clearing organization (as defined in the Federal
25 Deposit Insurance Corporation Improvement Act of
26 1991), a national securities exchange, a national se-

1 securities association, a securities clearing agency, a
2 contract market designated under the Commodity
3 Exchange Act, a derivatives transaction execution
4 facility registered under the Commodity Exchange
5 Act, or a board of trade (as defined in the Com-
6modity Exchange Act) or in a resolution of the gov-
7erning board thereof and a right,”.

8 (i) TERMINATION OR ACCELERATION OF REPUR-
9CHASE AGREEMENTS.—Section 559 of title 11, United
10 States Code, is amended—

11 (1) by amending the section heading to read as
12 follows:

13 **“§559. Contractual right to liquidate, terminate, or**
14 **accelerate a repurchase agreement”;**

15 (2) in the first sentence, by striking “liquida-
16tion” and inserting “liquidation, termination, or ac-
17celeration”; and

18 (3) in the third sentence, by striking “As used”
19 and all that follows through “right,” and inserting
20 “As used in this section, the term ‘contractual right’
21 includes a right set forth in a rule or bylaw of a de-
22rivatives clearing organization (as defined in the
23Commodity Exchange Act), a multilateral clearing
24organization (as defined in the Federal Deposit In-
25surance Corporation Improvement Act of 1991), a

1 national securities exchange, a national securities as-
2 sociation, a securities clearing agency, a contract
3 market designated under the Commodity Exchange
4 Act, a derivatives transaction execution facility reg-
5 istered under the Commodity Exchange Act, or a
6 board of trade (as defined in the Commodity Ex-
7 change Act) or in a resolution of the governing
8 board thereof and a right,”.

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

12 (1) by amending the section heading to read as
13 follows:

14 **“§ 560. Contractual right to liquidate, terminate, or**
15 **accelerate a swap agreement”;**

16 (2) in the first sentence, by striking “termi-
17 nation of a swap agreement” and inserting “liquida-
18 tion, termination, or acceleration of one or more
19 swap agreements”;

20 (3) by striking “in connection with any swap
21 agreement” and inserting “in connection with the
22 termination, liquidation, or acceleration of one or
23 more swap agreements”; and

24 (4) in the second sentence, by striking “As
25 used” and all that follows through “right,” and in-

1 serting “As used in this section, the term ‘contractual right’ includes a right set forth in a rule or
2 bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal
3 Deposit Insurance Corporation Improvement Act of
4 1991), a national securities exchange, a national securities association, a securities clearing agency, a
5 contract market designated under the Commodity
6 Exchange Act, a derivatives transaction execution
7 facility registered under the Commodity Exchange
8 Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,”.

9 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR
10 OFFSET UNDER A MASTER NETTING AGREEMENT AND
11 ACROSS CONTRACTS.—

12 (1) IN GENERAL.—Title 11, United States
13 Code, is amended by inserting after section 560 the
14 following:
15

1 **“§ 561. Contractual right to terminate, liquidate, ac-**
2 **celerate, or offset under a master netting**
3 **agreement and across contracts; pro-**
4 **ceedings under section 304**

5 “(a) Subject to subsection (b), the exercise of any
6 contractual right, because of a condition of the kind speci-
7 fied in section 365(e)(1), to cause the termination, liquida-
8 tion, or acceleration of or to offset or net termination val-
9 ues, payment amounts, or other transfer obligations aris-
10 ing under or in connection with one or more (or the termi-
11 nation, liquidation, or acceleration of one or more)—

12 “(1) securities contracts, as defined in section
13 741(7);

14 “(2) commodity contracts, as defined in section
15 761(4);

16 “(3) forward contracts;

17 “(4) repurchase agreements;

18 “(5) swap agreements; or

19 “(6) master netting agreements,

20 shall not be stayed, avoided, or otherwise limited by oper-
21 ation of any provision of this title or by any order of a
22 court or administrative agency in any proceeding under
23 this title.

24 “(b)(1) A party may exercise a contractual right de-
25 scribed in subsection (a) to terminate, liquidate, or accel-
26 erate only to the extent that such party could exercise such

1 a right under section 555, 556, 559, or 560 for each indi-
2 vidual contract covered by the master netting agreement
3 in issue.

4 “(2) If a debtor is a commodity broker subject to sub-
5 chapter IV of chapter 7—

6 “(A) a party may not net or offset an obligation
7 to the debtor arising under, or in connection with,
8 a commodity contract traded on or subject to the
9 rules of a contract market designated under the
10 Commodity Exchange Act or a derivatives trans-
11 action execution facility registered under the Com-
12modity Exchange Act against any claim arising
13 under, or in connection with, other instruments, con-
14 tracts, or agreements listed in subsection (a) except
15 to the extent that the party has positive net equity
16 in the commodity accounts at the debtor, as cal-
17 culated under such subchapter; and

18 “(B) another commodity broker may not net or
19 offset an obligation to the debtor arising under, or
20 in connection with, a commodity contract entered
21 into or held on behalf of a customer of the debtor
22 and traded on or subject to the rules of a contract
23 market designated under the Commodity Exchange
24 Act or a derivatives transaction execution facility
25 registered under the Commodity Exchange Act

1 against any claim arising under, or in connection
2 with, other instruments, contracts, or agreements
3 listed in subsection (a).

4 “(3) No provision of subparagraph (A) or (B) of
5 paragraph (2) shall prohibit the offset of claims and obli-
6 gations that arise under—

7 “(A) a cross-margining agreement or similar
8 arrangement that has been approved by the Com-
9modity Futures Trading Commission or submitted
10 to the Commodity Futures Trading Commission
11 under paragraph (1) or (2) of section 5c(e) of the
12 Commodity Exchange Act and has not been abro-
13 gated or rendered ineffective by the Commodity Fu-
14 tures Trading Commission; or

15 “(B) any other netting agreement between a
16 clearing organization (as defined in section 761) and
17 another entity that has been approved by the Com-
18modity Futures Trading Commission.

19 “(c) As used in this section, the term ‘contractual
20 right’ includes a right set forth in a rule or bylaw of a
21 derivatives clearing organization (as defined in the Com-
22modity Exchange Act), a multilateral clearing organiza-
23 tion (as defined in the Federal Deposit Insurance Cor-
24 poration Improvement Act of 1991), a national securities
25 exchange, a national securities association, a securities

1 clearing agency, a contract market designated under the
2 Commodity Exchange Act, a derivatives transaction execu-
3 tion facility registered under the Commodity Exchange
4 Act, or a board of trade (as defined in the Commodity
5 Exchange Act) or in a resolution of the governing board
6 thereof, and a right, whether or not evidenced in writing,
7 arising under common law, under law merchant, or by rea-
8 son of normal business practice.

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 under section 304, so
13 that enforcement of contractual provisions of such con-
14 tracts and agreements in accordance with their terms will
15 not be stayed or otherwise limited by operation of any pro-
16 vision of this title or by order of a court in any case under
17 this title, and to limit avoidance powers to the same extent
18 as in a proceeding under chapter 7 or 11 of this title (such
19 enforcement not to be limited based on the presence or
20 absence of assets of the debtor in the United States).”.

21 (2) CONFORMING AMENDMENT.—The table of
22 sections for chapter 5 of title 11, United States
23 Code, is amended by inserting after the item relating
24 to section 560 the following:

“561. Contractual right to terminate, liquidate, accelerate, or offset under a
master netting agreement and across contracts; proceedings
under section 304.”.

1 (l) COMMODITY BROKER LIQUIDATIONS.—Title 11,
2 United States Code, is amended by inserting after section
3 766 the following:

4 **“§ 767. Commodity broker liquidation and forward**
5 **contract merchants, commodity brokers,**
6 **stockbrokers, financial institutions, fi-**
7 **ancial participants, securities clearing**
8 **agencies, swap participants, repo partici-**
9 **pants, and master netting agreement par-**
10 **ticipants**

11 “Notwithstanding any other provision of this title,
12 the exercise of rights by a forward contract merchant,
13 commodity broker, stockbroker, financial institution, fi-
14 nancial participant, securities clearing agency, swap par-
15 ticipant, repo participant, or master netting agreement
16 participant under this title shall not affect the priority of
17 any unsecured claim it may have after the exercise of such
18 rights.”.

19 (m) STOCKBROKER LIQUIDATIONS.—Title 11,
20 United States Code, is amended by inserting after section
21 752 the following:

1 **“§ 753. Stockbroker liquidation and forward contract**
2 **merchants, commodity brokers, stock-**
3 **brokers, financial institutions, financial**
4 **participants, securities clearing agencies,**
5 **swap participants, repo participants, and**
6 **master netting 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 financial participant, or master netting agreement partici-
12 pant under this title shall not affect the priority of any
13 unsecured claim it may have after the exercise of such
14 rights.”.

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

17 (1) in subsection (a)(2)(B)(ii), by inserting be-
18 fore the semicolon the following: “(except for a
19 setoff of a kind described in section 362(b)(6),
20 362(b)(7), 362(b)(17), 362(b)(19), 555, 556, 559,
21 560, or 561)”;

22 (2) in subsection (a)(3)(C), by inserting before
23 the period the following: “(except for a setoff of a
24 kind described in section 362(b)(6), 362(b)(7),
25 362(b)(17), 362(b)(19), 555, 556, 559, 560, or 561
26 of this title)”;

1 (3) in subsection (b)(1), by striking
2 “362(b)(14),” and inserting “362(b)(17),
3 362(b)(19), 555, 556, 559, 560, 561,”.

4 (o) SECURITIES CONTRACTS, COMMODITY CON-
5 TRACTS, AND FORWARD CONTRACTS.—Title 11, United
6 States Code, is amended—

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

10 (2) in sections 362(b)(7) and 546(f), by insert-
11 ing “or financial participant” after “repo partici-
12 pant” each place such term appears;

13 (3) in section 546(e), by inserting “financial
14 participant,” after “financial institution,”;

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

17 (5) in section 548(d)(2)(C), by inserting “or fi-
18 nancial participant” after “repo participant”;

19 (6) in section 548(d)(2)(D), by inserting “or fi-
20 nancial participant” after “swap participant”;

21 (7) in section 555—

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

24 (B) by striking the second sentence and in-
25 serting the following: “As used in this section,

1 the term ‘contractual right’ includes a right set
2 forth in a rule or bylaw of a derivatives clearing
3 organization (as defined in the Commodity Ex-
4 change Act), a multilateral clearing organiza-
5 tion (as defined in the Federal Deposit Insur-
6 ance Corporation Improvement Act of 1991), a
7 national securities exchange, a national securi-
8 ties association, a securities clearing agency, a
9 contract market designated under the Com-
10 modity Exchange Act, a derivatives transaction
11 execution facility registered under the Com-
12 modity Exchange Act, or a board of trade (as
13 defined in the Commodity Exchange Act), or in
14 a resolution of the governing board thereof, and
15 a right, whether or not in writing, arising under
16 common law, under law merchant, or by reason
17 of normal business practice”;

18 (8) in section 556, by inserting “, financial par-
19 ticipant,” after “commodity broker”;

20 (9) in section 559, by inserting “or financial
21 participant” after “repo participant” each place
22 such term appears; and

23 (10) in section 560, by inserting “or financial
24 participant” after “swap participant”.

1 (p) CONFORMING AMENDMENTS.—Title 11, United
2 States Code, is amended—

3 (1) in the table of sections for chapter 5—

4 (A) by amending the items relating to sec-
5 tions 555 and 556 to read as follows:

“555. Contractual right to liquidate, terminate, or accelerate a securities con-
tract.

“556. Contractual right to liquidate, terminate, or accelerate a commodities con-
tract or forward contract.”;

6 and

7 (B) by amending the items relating to sec-
8 tions 559 and 560 to read as follows:

“559. Contractual right to liquidate, terminate, or accelerate a repurchase
agreement.

“560. Contractual right to liquidate, terminate, or accelerate a swap agree-
ment.”;

9 and

10 (2) in the table of sections for chapter 7—

11 (A) by inserting after the item relating to
12 section 766 the following:

“767. Commodity broker liquidation and forward contract merchants, com-
modity brokers, stockbrokers, financial institutions, financial
participants, securities clearing agencies, swap participants,
repo participants, and master netting agreement participants.”;

13 and

14 (B) by inserting after the item relating to
15 section 752 the following:

“753. Stockbroker liquidation and forward contract merchants, commodity bro-
kers, stockbrokers, financial institutions, financial participants,
securities clearing agencies, swap participants, repo partici-
pants, and master netting agreement participants.”.

1 **SEC. 9. RECORDKEEPING REQUIREMENTS.**

2 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—
3 Section 11(e)(8) of the Federal Deposit Insurance Act (12
4 U.S.C. 1821(e)(8)) is amended by adding at the end the
5 following new subparagraph:

6 “(H) RECORDKEEPING REQUIREMENTS.—
7 The Corporation, in consultation with the ap-
8 propriate Federal banking agencies and the Na-
9 tional Credit Union Administration Board, may
10 prescribe regulations requiring more detailed
11 recordkeeping by any insured depository institu-
12 tion with respect to qualified financial contracts
13 (including market valuations) only if such in-
14 sured depository institution is in a troubled
15 condition (as such term is defined by the Cor-
16 poration pursuant to section 32).”

17 (b) INSURED CREDIT UNIONS.—Section 207(c)(8) of
18 the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is
19 amended by adding at the end the following new subpara-
20 graph:

21 “(H) RECORDKEEPING REQUIREMENTS.—
22 The Board, in consultation with the appropriate
23 Federal banking agencies, may prescribe regula-
24 tions requiring more detailed recordkeeping by
25 any insured credit union with respect to quali-
26 fied financial contracts (including market valu-

1 ations) only if such insured credit union is in
2 a troubled condition (as such term is defined by
3 the Board pursuant to section 212).”.

4 **SEC. 10. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-**
5 **TION REQUIREMENT.**

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

8 “(2) EXEMPTIONS FROM CONTEMPORANEOUS
9 EXECUTION REQUIREMENT.—An agreement to pro-
10 vide for the lawful collateralization of—

11 “(A) deposits of, or other credit extension
12 by, a Federal, State, or local governmental enti-
13 ty, or of any depositor referred to in section
14 11(a)(2), including an agreement to provide col-
15 lateral in lieu of a surety bond;

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

19 “(C) extensions of credit, including any
20 overdraft, from a Federal reserve bank or Fed-
21 eral home loan bank; or

22 “(D) one or more qualified financial con-
23 tracts, as defined in section 11(e)(8)(D),

24 shall not be deemed invalid pursuant to paragraph
25 (1)(B) solely because such agreement was not exe-

1 cuted contemporaneously with the acquisition of the
2 collateral or because of pledges, delivery, or substi-
3 tution of the collateral made in accordance with such
4 agreement.”.

5 **SEC. 11. DAMAGE MEASURE.**

6 (a) IN GENERAL.—Title 11, United States Code, is
7 amended—

8 (1) by inserting after section 561, as added by
9 section 8(k) of this Act, the following:

10 **“§ 562. Timing of damage measurement in connection**
11 **with swap agreements, securities con-**
12 **tracts, forward contracts, commodity con-**
13 **tracts, repurchase agreements, and mas-**
14 **ter netting agreements**

15 “(a) If the trustee rejects a swap agreement, securi-
16 ties contract (as defined in section 741), forward contract,
17 commodity contract (as defined in section 761), repur-
18 chase agreement, or master netting agreement pursuant
19 to section 365(a), or if a forward contract merchant,
20 stockbroker, financial institution, securities clearing agen-
21 cy, repo participant, financial participant, master netting
22 agreement participant, or swap participant liquidates, ter-
23 minates, or accelerates such contract or agreement, dam-
24 ages shall be measured as of the earlier of—

25 “(1) the date of such rejection; or

1 “(2) the date or dates of such liquidation, ter-
2 mination, or acceleration.

3 “(b) If there are not any commercially reasonable de-
4 terminants of value as of any date referred to in para-
5 graph (1) or (2) of subsection (a), damages shall be meas-
6 ured as of the earliest subsequent date or dates on which
7 there are commercially reasonable determinants of value.

8 “(c) For the purposes of subsection (b), if damages
9 are not measured as of the date or dates of rejection, liq-
10 uidation, termination, or acceleration, and the forward
11 contract merchant, stockbroker, financial institution, secu-
12 rities clearing agency, repo participant, financial partici-
13 pant, master netting agreement participant, or swap par-
14 ticipant or the trustee objects to the timing of the meas-
15 urement of damages—

16 “(1) the trustee, in the case of an objection by
17 a forward contract merchant, stockbroker, financial
18 institution, securities clearing agency, repo partici-
19 pant, financial participant, master netting agree-
20 ment participant, or swap participant; or

21 “(2) the forward contract merchant, stock-
22 broker, financial institution, securities clearing agen-
23 cy, repo participant, financial participant, master
24 netting agreement participant, or swap participant,
25 in the case of an objection by the trustee,

1 has the burden of proving that there were no commercially
2 reasonable determinants of value as of such date or
3 dates.”; and

4 (2) in the table of sections for chapter 5, by in-
5 serting after the item relating to section 561 (as
6 added by section 8(k)(2) of this Act) the following
7 new item:

“562. Timing of damage measure in connection with swap agreements, securities
contracts, forward contracts, commodity contracts, repurchase
agreements, or master netting agreements.”.

8 (b) CLAIMS ARISING FROM REJECTION.—Section
9 502(g) of title 11, United States Code, is amended—

10 (1) by inserting “(1)” after “(g)”; and

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

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

17 **SEC. 12. SIPC STAY.**

18 Section 5(b)(2) of the Securities Investor Protection
19 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding
20 at the end the following new subparagraph:

21 “(C) EXCEPTION FROM STAY.—

22 “(i) Notwithstanding section 362 of
23 title 11, United States Code, neither the
24 filing of an application under subsection

1 (a)(3) nor any order or decree obtained by
2 SIPC from the court shall operate as a
3 stay of any contractual rights of a creditor
4 to liquidate, terminate, or accelerate a se-
5 curities contract, commodity contract, for-
6 ward contract, repurchase agreement, swap
7 agreement, or master netting agreement,
8 as those terms are defined in sections 101,
9 741, and 761 of title 11, United States
10 Code, to offset or net termination values,
11 payment amounts, or other transfer obliga-
12 tions arising under or in connection with
13 one or more of such contracts or agree-
14 ments, or to foreclose on any cash collat-
15 eral pledged by the debtor, whether or not
16 with respect to one or more of such con-
17 tracts or agreements.

18 “(ii) Notwithstanding clause (i), such
19 application, order, or decree may operate
20 as a stay of the foreclosure on, or disposi-
21 tion of, securities collateral pledged by the
22 debtor, whether or not with respect to one
23 or more of such contracts or agreements,
24 securities sold by the debtor under a repur-

1 chase agreement, or securities lent under a
2 securities lending agreement.

3 “(iii) As used in this subparagraph,
4 the term ‘contractual right’ includes a
5 right set forth in a rule or bylaw of a na-
6 tional securities exchange, a national secu-
7 rities association, or a securities clearing
8 agency, a right set forth in a bylaw of a
9 clearing organization or contract market or
10 in a resolution of the governing board
11 thereof, and a right, whether or not in
12 writing, arising under common law, under
13 law merchant, or by reason of normal busi-
14 ness practice.”.

15 **SEC. 13. APPLICABILITY OF OTHER SECTIONS TO**
16 **CHAPTER 9.**

17 Section 901(a) of title 11, United States Code, is
18 amended—

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

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

21 “557,”.

22 **SEC. 14. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

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

1 (b) 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 on or after the date of enactment of this Act,
5 but shall not apply with respect to cases commenced or
6 appointments made under any Federal or State law before
7 the date of enactment of this Act.

8 **SEC. 15. SAVINGS CLAUSE.**

9 The meanings of terms used in this Act are applicable
10 for purposes of this Act only, and shall not be construed
11 or applied so as to challenge or affect the characterization,
12 definition, or treatment of any similar terms under any
13 other statute, regulation, or rule, including the Gramm-
14 Leach-Bliley Act, the Legal Certainty for Bank Products
15 Act of 2000, the securities laws (as that term is defined
16 in section 3(a)(47) of the Securities Exchange Act of
17 1934), and the Commodity Exchange Act.

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