

FINANCIAL NETTING IMPROVEMENTS ACT OF 2006

SEPTEMBER 12, 2006.—Ordered to be printed

Mr. OXLEY, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 5585]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 5585) to improve the netting process for financial contracts, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 5585 makes technical changes to the netting and financial contract provisions incorporated by Title IX of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, to update the language to reflect current market and regulatory practices, and help reduce systemic risk in the financial

markets by clarifying the treatment of certain financial products in cases of bankruptcy or insolvency.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 5585 makes technical changes to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109–8, by strengthening and clarifying the enforceability of early termination and close-out netting provisions and related collateral arrangements in U.S. insolvency proceedings. This bill will also help improve harmonization between U.S. insolvency laws and other jurisdictions. The netting provisions incorporated by Title IX of Pub. L. No. 109–8, as well as these technical changes, reflect years of work by the President’s Working Group on Financial Markets.

HEARINGS

There were no hearings on H.R. 5585 in the 109th Congress.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 14, 2006, and ordered H.R. 5585, the Financial Netting Improvements Act of 2006, reported to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken during the consideration of this legislation. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed to by a voice vote. During the consideration of the bill, the following amendment was offered:

An amendment by Mr. Watt, No. 1, striking section 7, had a point of order sustained against its consideration.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 5585 makes technical changes to the netting and financial contract provisions incorporated by Title IX of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109–8, to update the language to reflect current market and regulatory practices, and help reduce systemic risk in the financial markets by clarifying the treatment of certain financial products in cases of bankruptcy or insolvency.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

H.R. 5585—Financial Netting Improvements Act of 2006

Summary: H.R. 5585 would amend banking, bankruptcy, and securities laws related to the disposition of financial contracts in the event of insolvency. In such cases, certain types of financial contracts are processed on a net basis to reduce the risk—especially the systemic risk associated with activities in derivatives markets—that the failure of one entity will disrupt and endanger financial markets. That process, known as financial netting, involves settling mutual obligations at their net value as opposed to each obligation's gross dollar value. H.R. 5585 would update existing laws regarding netting to ensure that some of the newer forms of contractual arrangements are resolved in the same manner as other similar contracts. The bill also would increase the statutory filing fee paid by those filing for bankruptcy under Chapter 7 of the bankruptcy code in order to raise the compensation paid to private trustees appointed to manage a debtor's estate under such bankruptcy relief.

Enacting H.R. 5585 could affect direct spending, but CBO estimates that any such changes would not be significant. H.R. 5585 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: Most financial experts believe that the practice of netting financial transactions reduces the systemic risk that could result from the failure of banks, thrifts, or credit unions that hold derivative or other similar contracts. Thus, it is possible that clarifying the applicability of the netting requirement to some of the newer types of financial contracts could reduce the potential cost of some failures in the future. Based on information from federal regulatory agencies, CBO estimates that the impact of H.R. 5585 on the cost of resolving failed banks, thrifts, or credit unions would likely be small because the provisions in current law would cover most of the contracts used by insured institutions.

Increasing filing fees and trustee compensation under Chapter 7 of the bankruptcy code would have no budgetary impact. Under current law, \$45 of the \$245 fee paid by those filing for Chapter 7 relief is collected by the government on behalf of a private trustee, placed in a (nonbudgetary) deposit account, and paid to the private trustee. Those amounts are not owned by the Federal Government and are not recorded on the budget. H.R. 5585 would increase the Chapter 7 filing fee by \$55 and increase the trustee's compensation by a corresponding amount.

Intergovernmental and private-sector impact: H.R. 5585 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Kathleen Gramp and Gregory Waring; Impact on state, local, and tribal governments: Sarah Puro; Impact on the private sector: Fatimot Ladipo and Judy Ruud.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States), clause 3 (relating to the power to regulate interstate commerce), and clause 4 (relating to the power to establish uniform laws on the subject of Bankruptcies).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section sets forth the short title of this legislation—the “Financial Netting Improvements Act of 2006”.

Section 2. Treatment of certain agreements by conservators or receivers or depository institutions

This section amends the Federal Deposit Insurance Act's (FDIA) and Federal Credit Union Act's (FCUA) definitions of “securities contract”, “forward contract” and “swap agreement” to make a

number of technical and clarifying changes. It is intended that the legislative history and case law surrounding those terms, to the date of this amendment, be incorporated into the legislative history of the FDIA and FCUA.

The definition of “securities contract” and “forward contract”

The reference to “repurchase or reverse repurchase” transactions in section 2(a)(1)(A)(ii) is intended to confirm that a repurchase or reverse repurchase transaction included within the definitions of “securities contract” or “forward contract” is not limited by the definition of “repurchase agreement” contained in 12 U.S.C. section 1821(e)(8)(D)(v).

The definition of “securities contract”

The reference in sections 2(a)(1)(B) and 2(a)(2)(B) to guarantees “(including by novation)” by or to any securities clearing agency, together with the reference in the definition of “securities contract” (as amended by Pub. L. No. 109–8) to “any other agreement or transaction that is similar” is intended to confirm that the language covers other arrangements that have an effect similar to a guarantee or a novation.

The reference in sections 2(a)(1)(E) and 2(a)(2)(E) to the inclusion of “any extension of credit for the clearance or settlement of securities transactions” is intended to confirm that the definition encompasses credit extended for the execution, clearance and settlement of securities transactions, which provide important liquidity to the securities markets. Also, the inclusion of “any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction” is intended to confirm that similar agreements covered by the definition of securities contract include these transactions which are functionally similar to other enumerated transactions in the definition, even though their form might differ. The common thread of these transactions is that they involve financial intermediaries—stockbrokers, financial institutions, financial participants or securities clearing agencies—that often hedge their risk on these transactions through other market transactions, repledge securities collateral received under these transactions, or both. As such these transactions implicate the systemic risk concerns that are addressed by the safe harbors.

The definition of “swap agreement”

Section 2(c) amends the definition of “swap agreement” to include “weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement.” The inclusion of “weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement” is intended to confirm that “similar agreements” covered by the definition of “swap agreement” include these transactions.

Section 2(c) expands the definition of “swap agreement” to include “any agreement or transaction that is similar to any other agreement or transaction referred to in [section 11(e)(8)(D)(vi) of the FDIA/section 207(c)(8)(D)(vi) of the FCUA] and is of a type that

has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets * * * and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value.” The proposed amendments would change the reference to “swap markets” to “swap or other derivatives markets” in order to avoid any suggestion that new developments are limited to transactions that are technically swaps as opposed to other types of derivatives, such as options. The addition of “or spot transaction” in the provision regarding “similar agreements” is a technical correction intended to refer to spot transactions that are similar to the spot transactions already enumerated in the definition of “swap agreement.” However, the reference in the definition of “swap agreement” to spot transactions in commodities is not intended to encompass ordinary sales of goods contracts, but rather financial market transactions in commodities.

The term “swap agreement” includes transactions documented as “contracts for differences,” which is another way to document the enumerated transactions.

Section 3. Clarifying amendments relating to definition of person

This section expands the FDIA’s and FCUA’s definition of “person” for purposes of determining who is eligible for termination, netting and close out rights in the event of insolvency. The revised definition would include any governmental entity in addition to any entity included in the definition of “person” under Section 1 of Title 1 of the United States Code.

Section 4. Federal Deposit Insurance Corporation Improvement Act of 1991

This section amends sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 to clarify that both financial institutions and clearing organizations are subject to the limitations of the entire section 11(e) of the FDIA and section 207 of FCUA.

Section 5. Conforming amendments

This section amends the Federal Bankruptcy Code’s definitions of “swap agreement”, “forward contract” and “securities contract” to make a number of technical and clarifying changes. This section also makes certain changes to the automatic stay provisions of the Bankruptcy Code and to the avoidance powers of a trustee under the Bankruptcy Code. This section also amends the Securities Investor Protection Act and amends the savings clause included in Pub. L. No. 109–8.

The definition of “swap agreement”

Section 5(a)(1)(D) amends the definition of “swap agreement” to include a weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an infla-

tion swap, option, future, or forward agreement. The inclusion of “weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement” is intended to confirm that “similar agreements” covered by the definition of “swap agreement” include these transactions.

Section 5(a)(1)(D) expands the definition of “swap agreement” to include “any agreement or transaction that is similar to any other agreement or transaction referred to in [section 101(53B) of the Bankruptcy Code] and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets * * * and is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value.” The proposed amendments would change the reference to “swap markets” to “swap or other derivatives markets” in order to avoid any suggestion that new developments are limited to transactions that are technically swaps as opposed to other types of derivatives, such as options. The addition of “or spot transaction” in the provision regarding “similar agreements” is a technical correction intended to refer to spot transactions that are similar to the spot transactions already enumerated in the definition of “swap agreement.” However, the reference in the definition of “swap agreement” to spot transactions in commodities is not intended to encompass ordinary sales of goods contracts, but rather financial market transactions in commodities.

The term “swap agreement” includes transactions documented as “contracts for differences,” which is another way to document the enumerated transactions.

The automatic stay

Section 5(a)(2) amends section 362(b) of the Bankruptcy Code to protect enforcement, free from the automatic stay, of collateral, setoff or netting provisions in commodity contracts, forward contracts, securities contracts, repurchase agreements or swap agreements and in master netting agreements and security agreements or arrangements or other credit enhancements related to one or more swap agreements or master netting agreements. These changes conform the provisions of the Bankruptcy Code to the parallel provisions of the FDIA and FCUA to confirm that Sections 362(b)(6), (7) and (17) protect, free from the automatic stay, all rights previously protected by Sections 362(b)(6), (7) and (17), including self-help foreclosure-on-collateral rights, setoff rights and netting rights (including foreclosure on, and setoff against, cash and securities held to margin or secure claims for margin payments and settlement payments, title transfer arrangements and the right to offset obligations owed against collateral pledged to the debtor). The provisions protect the exercise of “contractual rights” as defined in Sections 555, 556, 559, or 560, as appropriate, which include not only rights evidenced by agreements between the parties, but other rights as set forth in those definitions.

The definition of “securities contract”

The reference in section 5(a)(3)(B) to guarantees “(including by novation)” by or to any securities clearing agency, together with the reference in the definition of “securities contract” (as amended by Pub. L. No. 109–8) to “any other agreement or transaction that is similar,” is intended to confirm that the language covers other arrangements that have an effect similar to a guarantee or a novation.

Under section 5(a)(3)(E), the inclusion of “any extension of credit for the clearance or settlement of securities transactions” is intended to confirm that the definition encompasses credit extended for the execution, clearance and settlement of securities transactions, which provide important liquidity to the securities markets. Also, the inclusion of “any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction” is intended to confirm that transactions which are functionally similar to other enumerated transactions in the definition are covered by the definition of “securities contract”, even though their form might differ. The common thread of these transactions is that they involve financial intermediaries—stockbrokers, financial institutions, financial participants or securities clearing agencies—that often hedge their risk on these transactions through other market transactions, repledge securities collateral received under these transactions, or both.

Trustee avoidance powers

Section 5(b) amends Sections 546(e) and 546(f) of the Bankruptcy Code, which protect margin payments and settlement payments, to also protect transfers made by or to a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, securities clearing agency, or repo participant, in connection with a securities contract, commodity contract, forward contract, or repurchase agreement. This amendment conforms the language of Sections 546(e) and 546(f) to the language in 546(g), regarding the protection of transfers in connection with swap agreements.

Section 6. Walkaway clauses

Section 5 amends the “walkaway clause” provision of the FDIA (Section 11(e)(8)(G) of the FDIA) and the FCUA (Section 207(c)(8)(G)), both of which were added by Title IX of S. 256, to clarify the ability of the receiver, to enforce contracts.

Section 7. Bankruptcy trustee compensation

Section 7 amends titles 11 and 28 of the United States Code to increase the compensation paid to a case trustee for administering a chapter 7 bankruptcy case from \$60 to \$100. Under current law, the trustee’s \$60 fee is paid out of the statutory and miscellaneous fees that a debtor must pay to commence a chapter 7 bankruptcy case, which currently total \$299. The provision effectuates the increase by: (1) reclassifying the trustee’s compensation to be entirely derived from the statutory filing fee; (2) increasing the statutory filing fee by \$40; and (3) adjusting the percentage of the statutory filing fee allocated to the United States Trustee System Fund and

the fund established pursuant to 28 U.S.C. §1931 to ensure that the respective amounts these funds and the Treasury receive remain the same. In addition, section 7 deletes section 10101(a)(2) of the Deficit Reduction Act of 2005, Pub. L. No. 109–171, which was intended to increase the statutory chapter 11 filing fee, but was incorrectly drafted.

In recognition of the fact that the statutory filing fees have been raised recently on two prior occasions, the Committee on the Judiciary urges the Judicial Conference of the United States to be sensitive to the impact these increases have on chapter 7 debtors should the Conference consider prescribing additional fees pursuant to 28 U.S.C. §1930(b).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL DEPOSIT INSURANCE ACT

* * * * *

SEC. 11. (a) * * *

* * * * *

(e) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(1) * * *

* * * * *

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) * * *

* * * * *

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—

For purposes of this subsection, the following definitions shall apply:

(i) * * *

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

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, [or] any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (*whether or not such repurchase or reverse repurchase transaction*

is a “repurchase agreement”, as defined in clause (v));

* * * * *

(IV) means the guarantee (*including by novation*) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (*whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II))*);

* * * * *

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

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

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

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

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

[(X)] (XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement

obligation in connection with any agreement or transaction referred to in this clause.

* * * * *

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

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase **[**transaction, reverse repurchase transaction**]** *or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v))*, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

* * * * *

(vi) SWAP AGREEMENT.—The term “swap agreement” means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange **[**or precious metals, *precious metals*, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; **[**or a weather swap, weather derivative, or weather option**]** *weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;*

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, **[**future, or option**]** *future, option, or spot transaction* on one or more rates, currencies, commodities, equity securities or other

equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

* * * * *

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including [the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000] *the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act.*

* * * * *

(ix) *PERSON.*—The term “person” includes any governmental entity in addition to any entity included in the definition of such term in section 1 of title 1, United States Code.

* * * * *

(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) * * *

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

(ii) *LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.*—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the receiver is appointed until the earlier of—

(I) *the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or*

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term “walkaway clause” means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party’s status as a non-defaulting party in connection with the insolvency of an insured depository institution that is a party to the contract or the appointment of or the exercise of rights or powers by a conservator or receiver of such depository institution, and not as a result of a party’s exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

* * * * *

SECTION 207 OF THE FEDERAL CREDIT UNION ACT

PAYMENT OF INSURANCE

SEC. 207. (a) * * *

* * * * *

(c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR LIQUIDATING AGENT.—

(1) * * *

* * * * *

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) * * *

* * * * *

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—

For purposes of this subsection, the following definitions shall apply:

(i) * * *

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

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, [or] any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (*whether or not such repurchase or reverse repurchase transaction*

is a “repurchase agreement”, as defined in clause (v));

* * * * *

(IV) means the guarantee (*including by novation*) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (*whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II))*);

* * * * *

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

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

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

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

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

[(X)] (XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement

obligation in connection with any agreement or transaction referred to in this clause.

* * * * *

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

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase **transaction, reverse repurchase transaction** *or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v))*, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

* * * * *

(vi) SWAP AGREEMENT.—The term “swap agreement” means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange **[or precious metals]**, *precious metals, or other commodity* agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; **[or a weather swap, weather derivative, or weather option]** *weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement*;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap *or other derivatives* markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, **[future, or option]** *future, option, or spot transaction* on one or more rates, currencies, commodities, equity securities or other

equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

* * * * *

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including [the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000] *the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act.*

* * * * *

(ix) *PERSON.*—The term “person” includes any governmental entity in addition to any entity included in the definition of such term in section 1 of title 1, United States Code.

* * * * *

(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) * * *

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

(ii) *LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.*—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the liquidating agent is appointed until the earlier of—

(I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent.

(iii) *WALKAWAY CLAUSE DEFINED.*—For purposes of this subparagraph, the term “walkaway clause” means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party’s status as a non-defaulting party in connection with the insolvency of an insured credit union or the appointment of or the exercise of rights or powers by a conservator or liquidating agent of such credit union, and not as a result of a party’s exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991

* * * * *

TITLE IV—MISCELLANEOUS PROVISIONS

Subtitle A—Payment System Risk Reduction

CHAPTER 1—BILATERAL AND CLEARING ORGANIZATION NETTING

* * * * *

SEC. 403. BILATERAL NETTING.

(a) **GENERAL RULE.**—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act, [paragraphs (8)(E), (8)(F), and (10)(B) of] section 207(c) of the Federal Credit Union Act, or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be *terminated, liquidated, accelerated, and* netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).

* * * * *

(f) **ENFORCEABILITY OF SECURITY AGREEMENTS.**—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms

(except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than [paragraphs (8)(E), (8)(F), and (10)(B) of] section 11(e) of the Federal Deposit Insurance Act, [paragraphs (8)(E), (8)(F), and (10)(B) of] section 207(c) of the Federal Credit Union Act, and section 5(b)(2) of the Securities Investor Protection Act of 1970).

SEC. 404. CLEARING ORGANIZATION NETTING.

(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act, [paragraphs (8)(E), (8)(F), and (10)(B) of] section 207(c) of the Federal Credit Union Act, and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be *terminated, liquidated, accelerated, and* netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).

* * * * *

(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than [paragraphs (8)(E), (8)(F), and (10)(B) of] section 11(e) of the Federal Deposit Insurance Act, [paragraphs (8)(E), (8)(F), and (10)(B) of] section 207(c) of the Federal Credit Union Act, and section 5(b)(2) of the Securities Investor Protection Act of 1970).

* * * * *

TITLE 11, UNITED STATES CODE

* * * * *

CHAPTER 1—GENERAL PROVISIONS

* * * * *

§ 101. Definitions

In this title the following definitions shall apply:

(1) * * *

* * * * *

(22) The term “financial institution” means—

(A) a Federal reserve bank, or an entity [(domestic or foreign)] that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, federally-insured credit union, or receiver, liquidating agent, or conservator for such entity and, when any such Federal reserve bank, receiver, liquidating agent, conser-

vator or entity is acting as agent or custodian for a customer (*whether or not a “customer”, as defined in section 741*) in connection with a securities contract (as defined in section 741) such customer; or

* * * * *

(22A) The term “financial participant” means—

(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than \$1,000,000,000 in notional or actual principal amount outstanding [on any day during the previous 15-month period](*aggregated across counterparties*) *at such time or on any day during the 15-month period preceding the date of the filing of the petition*, or has gross mark-to-market positions of not less than \$100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) [on any day during the previous 15-month period] *at such time or on any day during the 15-month period preceding the date of the filing of the petition*; or

* * * * *

(25) The term “forward contract” means—

(A) a contract (other than a commodity contract, *as defined in section 761*) for the purchase, sale, or transfer of a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a [repurchase transaction, reverse repurchase transaction,] *repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in this section)* consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

* * * * *

(53B) The term “swap agreement”—

(A) means—

(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

(I) * * *

* * * * *

(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange [or precious

metals], *precious metals, or other commodity agreement*;

* * * * *

(VII) a commodity index or a commodity swap, option, future, or forward agreement; [or]

(VIII) a weather swap, [weather derivative, or weather option] *option, future, or forward agreement*;

(IX) *an emissions swap, option, future, or forward agreement*; or

(X) *an inflation swap, option, future, or forward agreement*;

(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap *or other derivatives* markets (including terms and conditions incorporated by reference therein); and

(II) is a forward, swap, [future, or option] *future, option, or spot transaction* on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

* * * * *

(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including [the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000] *the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act.*

* * * * *

CHAPTER 3—CASE ADMINISTRATION

* * * * *

SUBCHAPTER II—OFFICERS

* * * * *

§ 330. Compensation of officers

(a) * * *

(b) [(1)] There shall be paid from the filing fee in a case under chapter 7 of this title ~~[\$45]~~ \$100 to the trustee serving in such case, after such trustee's services are rendered.

[(2) The Judicial Conference of the United States—

[(A) shall prescribe additional fees of the same kind as prescribed under section 1914(b) of title 28; and

[(B) may prescribe notice of appearance fees and fees charged against distributions in cases under this title; to pay \$15 to trustees serving in cases after such trustees' services are rendered. Beginning 1 year after the date of the enactment of the Bankruptcy Reform Act of 1994, such \$15 shall be paid in addition to the amount paid under paragraph (1).]

* * * * *

SUBCHAPTER IV—ADMINISTRATIVE POWERS

* * * * *

§ 362. Automatic stay

(a) * * *

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) * * *

* * * * *

[(6) under subsection (a) of this section, of the setoff by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any mutual debt and claim under or in connection with commodity contracts, as defined in section 761 of this title, forward contracts, or securities contracts, as defined in section 741 of this title, that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, arising out of commodity contracts, forward contracts, or securities contracts against cash, securities, or other property held by, pledged to, under the control of, or due from such commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency to margin, guarantee, secure, or settle commodity contracts, forward contracts, or securities contracts;

[(7) under subsection (a) of this section, of the setoff by a repo participant or financial participant, of any mutual debt and claim under or in connection with repurchase agreements that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, arising out of repurchase agreements against cash, securities, or other property held by, pledged to, under the control of, or due from such repo participant or financial participant to margin, guarantee, secure or settle repurchase agreements;]

(6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;

(7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

* * * * *

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

(17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

* * * * *

[(27) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with one or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any con-

tract or agreement subject to such agreements or against cash, securities, or other property held by, pledged to, under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent that such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and】

(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and

* * * * *

CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE

SUBCHAPTER III—THE ESTATE

* * * * *

§ 546. Limitations on avoiding powers

(a) * * *

* * * * *

(e) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, made by or to *(or for the benefit of)* a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, *or that is a transfer made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, in connection with a securities contract, as defined in section 741(7), commodity contract, as defined in section 761(4), or forward contract,* that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(f) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer 【that is a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title,】 made by or to *(or for the benefit of)* a repo participant or financial participant, in connection with a repurchase agreement and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(g) Notwithstanding sections 544, 545, 547, 548(a)(1)(B) and 548(b) of this title, the trustee may not avoid a transfer, made by or to (*or for the benefit of*) a swap participant or financial participant, under or in connection with any swap agreement and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

* * * * *

(j) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to (*or for the benefit of*) a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.

* * * * *

CHAPTER 7—LIQUIDATION

* * * * *

SUBCHAPTER III—STOCKBROKER LIQUIDATION

§ 741. Definitions for this subchapter

In this subchapter—

(1) * * *

* * * * *

(7) “securities contract”—

(A) means—

(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a [mortgage loan or] *mortgage loan*, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (*whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in section 101*);

* * * * *

(iii) the guarantee (*including by novation*) by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (*whether*

or not such settlement is in connection with any agreement or transaction referred to in clauses (i) through (xi));

* * * * *

(v) any extension of credit for the clearance or settlement of securities transactions;

(vi) any loan transaction coupled with a securities collar transaction, any prepaid forward securities transaction, or any total return swap transaction coupled with a securities sale transaction;

[(v)] (vii) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

[(vi)] (vvv) any combination of the agreements or transactions referred to in this subparagraph;

[(vii)] (ix) any option to enter into any agreement or transaction referred to in this subparagraph;

[(viii)] (x) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), [or (vii)] (vii), (viii), or (ix), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), [or (vii)] (vii), (viii), or (ix); or

[(ix)] (xi) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subparagraph, including any guarantee or reimbursement obligation by or to a stockbroker, securities clearing agency, financial institution, or financial participant in connection with any agreement or transaction referred to in this subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

* * * * *

SECTION 5 OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970

SEC. 5. PROTECTION OF CUSTOMERS.

(a) * * *

(b) COURT ACTION.—

(1) * * *

(2) JURISDICTION AND POWERS OF COURT.—

(A) * * *

* * * * *

(C) EXCEPTION FROM STAY.—

(i) * * *

* * * * *

(iii) As used in this subparagraph, the term “contractual right” includes a right set forth in a rule or bylaw of a *derivatives clearing organization (as defined in the Commodity Exchange Act)*, a *multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991)*, a national securities exchange, a national securities association, [or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market] *a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange 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, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.

* * * * *

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

* * * * *

TITLE IX—FINANCIAL CONTRACT PROVISIONS

* * * * *

SEC. 912. SAVINGS CLAUSE.

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

* * * * *

TITLE 28, UNITED STATES CODE

* * * * *

PART II—DEPARTMENT OF JUSTICE

* * * * *

CHAPTER 39—UNITED STATES TRUSTEES

* * * * *

§ 589a. United States trustee system fund

(a) * * *

(b) For the purpose of recovering the cost of services of the United States Trustee System, there shall be deposited as offsetting collections to the appropriation “United States Trustee System Fund”, to remain available until expended, the following—

(1)(A) **[40.46]** 29.67 percent of the fees collected under section 1930(a)(1)(A); and

* * * * *

PART V—PROCEDURE

* * * * *

CHAPTER 123—FEES AND COSTS

* * * * *

§ 1930. Bankruptcy fees

(a) The parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:

(1) For a case commenced under—

(A) chapter 7 of title 11, **[\$245]** \$300; and

* * * * *

SECTION 406 OF THE JUDICIARY APPROPRIATIONS ACT, 1990

SEC. 406. (a) * * *

(b) All fees as shall be hereafter collected for any service not of a kind described in any of the items enumerated as items 1 through 7 and as items 9 through 18, as in effect on November 21, 1989, of the bankruptcy miscellaneous fee schedule prescribed by the Judicial Conference of the United States under section 1930(b) of title 28, United States Code, **[28.87]** 21.17 percent of the fees collected under section 1930(a)(1)(A) of that title, 35.00 percent of the fees collected under section 1930(a)(1)(B) of that title, and 25 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title and shall remain available to the Judiciary until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the Courts of Appeals, District Courts, and other Judicial Services and the Administrative Office of the United States Courts. The Judicial Conference shall report to the Committees on Appropriations of the House of Representatives and the Senate on a quarterly basis be-

ginning on the first day of each fiscal year regarding the sums deposited in said fund.

* * * * *

SECTION 10101 OF DEFICIT REDUCTION ACT OF 2005

(Public Law 109–171)

SEC. 10101. BANKRUPTCY FEES.

(a) BANKRUPTCY FILING FEES.—Section 1930(a) of title 28, United States Code, is amended—

(1) * * *

[(2) in paragraph (2) by striking “\$1,000” and inserting “\$2,750”.]

* * * * *

