

ment Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

### § 4312. Effect on State law

The provisions of this chapter do not supersede any provisions of the law of any State relating to the disclosure of yields payable or terms for accounts to the extent such State law requires the disclosure of such yields or terms for accounts, except to the extent that those laws are inconsistent with the provisions of this chapter, and then only to the extent of the inconsistency. The Board may determine whether such inconsistencies exist.

(Pub. L. 102-242, title II, §273, Dec. 19, 1991, 105 Stat. 2342; Pub. L. 102-550, title XVI, §1604(e)(2)(R), Oct. 28, 1992, 106 Stat. 4084.)

#### AMENDMENTS

1992—Pub. L. 102-550 made technical amendment to references to “this chapter” wherever appearing to reflect correction of corresponding provision of original act.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

### § 4313. Definitions

For the purposes of this chapter—

#### (1) Account

The term “account” means any account intended for use by and generally used by consumers primarily for personal, family, or household purposes that is offered by a depository institution into which a consumer deposits funds, including demand accounts, time accounts, negotiable order of withdrawal accounts, and share draft accounts.

#### (2) Annual percentage yield

The term “annual percentage yield” means the total amount of interest that would be received on a \$100 deposit, based on the annual rate of simple interest and the frequency of compounding for a 365-day period, expressed as a percentage calculated by a method which shall be prescribed by the Board in regulations.

#### (3) Annual rate of simple interest

The term “annual rate of simple interest”—

(A) means the annualized rate of interest paid with respect to each compounding period, expressed as a percentage; and

(B) may be referred to as the “annual percentage rate”.

#### (4) Board

The term “Board” means the Board of Governors of the Federal Reserve System.

#### (5) Deposit broker

The term “deposit broker”—

(A) has the meaning given to such term in section 1831f(1)<sup>1</sup> of this title; and

(B) includes any person who solicits any amount from any other person for deposit in an insured depository institution.

#### (6) Depository institution

The term “depository institution” has the meaning given such term in clauses (i) through (vi) of section 461(b)(1)(A) of this title, but does not include any nonautomated credit union that was not required to comply with the requirements of this chapter<sup>1</sup> as of September 30, 1996, pursuant to the determination of the National Credit Union Administration Board.

#### (7) Interest

The term “interest” includes dividends paid with respect to share draft accounts which are accounts within the meaning of paragraph (3).

#### (8) Multiple rate account

The term “multiple rate account” means any account that has 2 or more annual rates of simple interest which take effect at the same time or in succeeding periods and which are known at the time of disclosure.

(Pub. L. 102-242, title II, §274, Dec. 19, 1991, 105 Stat. 2342; Pub. L. 102-550, title XVI, §1604(e)(2)(S), Oct. 28, 1992, 106 Stat. 4084; Pub. L. 103-325, title III, §332, Sept. 23, 1994, 108 Stat. 2232; Pub. L. 104-208, div. A, title II, §2604(c), Sept. 30, 1996, 110 Stat. 3009-471.)

#### REFERENCES IN TEXT

Section 1831f(f)(1) of this title, referred to in par. (5)(A), was redesignated section 1831f(g)(1) of this title by Pub. L. 102-242, title III, §301(a)(4), Dec. 19, 1991, 105 Stat. 2344.

This chapter, referred to in par. (6), was in the original “this title”, and was translated as meaning “this subtitle”, which is subtitle F of title II of Pub. L. 102-242, Dec. 19, 1991, 105 Stat. 2334, which enacted this chapter, to reflect the probable intent of Congress.

#### AMENDMENTS

1996—Par. (6). Pub. L. 104-208 inserted before period at end “, but does not include any nonautomated credit union that was not required to comply with the requirements of this chapter as of September 30, 1996, pursuant to the determination of the National Credit Union Administration Board”.

1994—Par. (1). Pub. L. 103-325 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “The term ‘account’ means any account offered to 1 or more individuals or an unincorporated nonbusiness association of individuals by a depository institution into which a customer deposits funds, including demand accounts, time accounts, negotiable order of withdrawal accounts, and share draft accounts.”

1992—Pub. L. 102-550 made technical amendment to reference to “this chapter” in introductory provisions to reflect correction of corresponding provision of original act.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

## CHAPTER 45—PAYMENT SYSTEM RISK REDUCTION

### SUBCHAPTER I—BILATERAL AND CLEARING ORGANIZATION NETTING

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<sup>1</sup> See References in Text note below.

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SUBCHAPTER I—BILATERAL AND CLEARING ORGANIZATION NETTING

**§ 4401. Findings and purpose**

The Congress finds that—

- (1) many financial institutions engage daily in thousands of transactions with other financial institutions directly and through clearing organizations;
- (2) the efficient processing of such transactions is essential to a smoothly functioning economy;
- (3) such transactions can be processed most efficiently if, consistent with applicable contractual terms, obligations among financial institutions are netted;
- (4) such netting procedures would reduce the systemic risk within the banking system and financial markets; and
- (5) the effectiveness of such netting procedures can be assured only if they are recognized as valid and legally binding in the event of the closing of a financial institution participating in the netting procedures.

(Pub. L. 102-242, title IV, § 401, Dec. 19, 1991, 105 Stat. 2371.)

SEPARABILITY

If any provision of Pub. L. 102-242 or any application of any provision thereof to any person or circumstance is held invalid, the remainder of Pub. L. 102-242 and the application of any remaining provision of such Act to any other person or circumstance not to be affected by such holding, see section 481 of Pub. L. 102-242, set out as a note under section 1811 of this title.

**§ 4402. Definitions**

For purposes of this subchapter—

**(1) Broker or dealer**

The term “broker or dealer” means—

(A) any company that is registered or licensed under Federal or State law to engage in the business of brokering, underwriting, or dealing in securities in the United States; and

(B) to the extent consistent with this title,<sup>1</sup> as determined by the Board of Governors of the Federal Reserve System, any company that is an affiliate of a company described in subparagraph (A) and that is engaged in the business of entering into netting contracts.

**(2) Clearing organization**

The term “clearing organization” means a clearinghouse, clearing association, clearing corporation, or similar organization—

(A) that provides clearing, netting, or settlement services for its members and—

(i) in which all members other than the clearing organization itself are financial institutions or other clearing organizations; or

(ii) which is registered as a clearing agency under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.]; or

(B) that is registered as a derivatives clearing organization under section 7a-1 of title 7.

**(3) Covered clearing obligation**

The term “covered clearing obligation” means an obligation of a member of a clearing organization to make payment to another member of a clearing organization, subject to a netting contract.

**(4) Covered contractual payment entitlement**

The term “covered contractual payment entitlement” means—

(A) an entitlement of a financial institution to receive a payment, subject to a netting contract from another financial institution; and

(B) an entitlement of a member of a clearing organization to receive payment, subject to a netting contract, from another member of a clearing organization of a covered clearing obligation.

**(5) Covered contractual payment obligation**

The term “covered contractual payment obligation” means—

(A) an obligation of a financial institution to make payment, subject to a netting contract to another financial institution; and

(B) a covered clearing obligation.

**(6) Depository institution**

The term “depository institution” means—

(A) a depository institution as defined in section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)] (other than clause (vii));

(B) a branch or agency as defined in section 1(b) of the International Banking Act of 1978 [12 U.S.C. 3101];

(C) a corporation chartered under section 25(a)<sup>1</sup> of the Federal Reserve Act [12 U.S.C. 611 et seq.]; or

<sup>1</sup> See References in Text note below.

(D) a corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.].

**(7) Failed financial institution**

The term “failed financial institution” means a financial institution that—

(A) fails to satisfy a covered contractual payment obligation when due;

(B) has commenced or had commenced against it insolvency, liquidation, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings; or

(C) has generally ceased to meet its obligations when due.

**(8) Failed member**

The term “failed member” means any member that—

(A) fails to satisfy a covered clearing obligation when due,

(B) has commenced or had commenced against it insolvency, liquidation, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings, or

(C) has generally ceased to meet its obligations when due.

**(9) Financial institution**

The term “financial institution” means a broker or dealer, a depository institution, a futures commission merchant, or any other institution as determined by the Board of Governors of the Federal Reserve System.

**(10) Futures commission merchant**

The term “futures commission merchant” means a company that is registered or licensed under Federal law to engage in the business of selling futures and options in commodities.

**(11) Member**

The term “member” means a member of or participant in a clearing organization, and includes the clearing organization.

**(12) Net entitlement**

The term “net entitlement” means the amount by which the covered contractual payment entitlements of a financial institution or member exceed the covered contractual payment obligations of the institution or member after netting under a netting contract.

**(13) Net obligation**

The term “net obligation” means the amount by which the covered contractual payment obligations of a financial institution or member exceed the covered contractual payment entitlements of the institution or member after netting under a netting contract.

**(14) Netting contract**

**(A) In general**

The term “netting contract”—

(i) means a contract or agreement between 2 or more financial institutions or members, that—

(I) is governed by the laws of the United States, any State, or any political subdivision of any State, and

(II) provides for netting present or future payment obligations or payment entitlements (including liquidation or close-out values relating to the obligations or entitlements) among the parties to the agreement; and

(ii) includes the rules of a clearing organization.

**(B) Invalid contracts not included**

The term “netting contract” does not include any contract or agreement that is invalid under or precluded by Federal law.

(Pub. L. 102-242, title IV, § 402, Dec. 19, 1991, 105 Stat. 2372; Pub. L. 102-550, title XVI, § 1606(a), Oct. 28, 1992, 106 Stat. 4087; Pub. L. 106-554, § 1(a)(5) [title I, §§ 112(a)(2), 123(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-391, 2763A-411.)

REFERENCES IN TEXT

This title, referred to in par. (1)(B), means title IV of Pub. L. 102-242, Dec. 19, 1991, 105 Stat. 2371. For complete classification of title IV to the Code, see Tables.

The Securities Exchange Act of 1934, referred to in par. (2)(A)(ii), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Section 25(a) of the Federal Reserve Act, referred to in par. (6), which is classified to subchapter II (§ 611 et seq.) of chapter 6 of this title, was renumbered section 25A of that act by Pub. L. 102-242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§ 601 et seq.) of chapter 6 of this title.

AMENDMENTS

2000—Pub. L. 106-554, § 1(a)(5) [title I, § 112(a)(2)], substituted “this subchapter” for “this chapter” in introductory provisions.

Par. (2)(B). Pub. L. 106-554, § 1(a)(5) [title I, § 123(b)], added subpar. (B) and struck out former subpar. (B) which read as follows: “that performs clearing functions for a contract market designated pursuant to the Commodity Exchange Act.”

1992—Par. (14)(B). Pub. L. 102-550 substituted “Federal law” for “Federal commodities law”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

**§ 4403. Bilateral netting**

**(a) General rule**

Notwithstanding any other provision of law, the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract.

**(b) Limitation on obligation to make payment**

The only obligation, if any, of a financial institution to make payment with respect to covered contractual payment obligations to another financial institution shall be equal to its

net obligation to such other financial institution, and no such obligation shall exist if there is no net obligation.

**(c) Limitation on right to receive payment**

The only right, if any, of a financial institution to receive payments with respect to covered contractual payment entitlements from another financial institution shall be equal to its net entitlement with respect to such other financial institution, and no such right shall exist if there is no net entitlement.

**(d) Payment of net entitlement of failed financial institution**

The net entitlement of any failed financial institution, if any, shall be paid to the failed financial institution in accordance with, and subject to the conditions of, the applicable netting contract.

**(e) Effectiveness notwithstanding status as financial institution**

This section shall be given effect notwithstanding that a financial institution is a failed financial institution.

(Pub. L. 102-242, title IV, § 403, Dec. 19, 1991, 105 Stat. 2374.)

**§ 4404. Clearing organization netting**

**(a) General netting rule**

Notwithstanding any other provision of law, the covered contractual payment obligations and covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract.

**(b) Limitation of obligation to make payment**

The only obligation, if any, of a member of a clearing organization to make payment with respect to covered contractual payment obligations arising under a single netting contract to any other member of a clearing organization shall be equal to its net obligation arising under that netting contract, and no such obligation shall exist if there is no net obligation.

**(c) Limitation on right to receive payment**

The only right, if any, of a member of a clearing organization to receive payment with respect to a covered contractual payment entitlement arising under a single netting contract from other members of a clearing organization shall be equal to its net entitlement arising under that netting contract, and no such right shall exist if there is no net entitlement.

**(d) Entitlement of failed members**

The net entitlement, if any, of any failed member of a clearing organization shall be paid to the failed member in accordance with, and subject to the conditions of, the applicable netting contract.

**(e) Obligations of failed members**

The net obligation, if any, of any failed member of a clearing organization shall be determined in accordance with, and subject to the conditions of, the applicable netting contract.

**(f) Limitation on claims for entitlement**

A failed member of a clearing organization shall have no recognizable claim against any member of a clearing organization for any amount based on such covered contractual payment entitlements other than its net entitlement.

**(g) Effectiveness notwithstanding status as member**

This section shall be given effect notwithstanding that a member is a failed member.

(Pub. L. 102-242, title IV, § 404, Dec. 19, 1991, 105 Stat. 2374.)

**§ 4405. Preemption**

No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative agency, or otherwise, shall limit or delay application of otherwise enforceable netting contracts in accordance with sections 4403 and 4404 of this title.

(Pub. L. 102-242, title IV, § 405, Dec. 19, 1991, 105 Stat. 2375.)

**§ 4406. Relationship to other payments systems**

This chapter shall have no effect by implication or otherwise on the validity or legal enforceability of a netting arrangement of any payment system which is not subject to this chapter.

(Pub. L. 102-242, title IV, § 406, Dec. 19, 1991, 105 Stat. 2375.)

**§ 4407. National emergencies**

The provisions of this chapter may not be construed to limit the authority of the President under the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.) or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(Pub. L. 102-242, title IV, § 407, Dec. 19, 1991, 105 Stat. 2375.)

REFERENCES IN TEXT

The Trading With the Enemy Act, referred to in text, is act Oct. 6, 1917, ch. 106, 40 Stat. 411, as amended, which is classified to sections 1 to 6, 7 to 39 and 41 to 44 of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in text, is Pub. L. 95-223, title II, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

SUBCHAPTER II—MULTILATERAL  
CLEARING ORGANIZATIONS

**§ 4421. Definitions**

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

**(1) Multilateral clearing organization**

The term “multilateral clearing organization” means a system utilized by more than two participants in which the bilateral credit

exposures of participants arising from the transactions cleared are effectively eliminated and replaced by a system of guarantees, insurance, or mutualized risk of loss.

**(2) Over-the-counter derivative instrument**

The term “over-the-counter derivative instrument” includes—

(A) any agreement, contract, or transaction, including the terms and conditions incorporated by reference in any such agreement, contract, or transaction, which is an interest rate swap, option, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, and forward rate agreement; a same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, or forward agreement; an equity index or equity swap, option, or forward agreement; a debt index or debt swap, option, or forward agreement; a credit spread or credit swap, option, or forward agreement; a commodity index or commodity swap, option, or forward agreement; and a weather swap, weather derivative, or weather option;

(B) any agreement, contract or transaction similar to any other agreement, contract, or transaction referred to in this clause<sup>1</sup> that is presently, or in the future becomes, regularly entered into by parties that participate in swap transactions (including terms and conditions incorporated by reference in the agreement) and that is a forward, swap, or option on one or more occurrences of any event, rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic or other indices or measures of economic or other risk or value;

(C) any agreement, contract, or transaction excluded from the Commodity Exchange Act [7 U.S.C. 1 et seq.] under section 2(c), 2(d), 2(f), or 2(g) of such Act [7 U.S.C. 2(c), (d), (f), (g)], or exempted under section 2(h) or 4(c) of such Act [7 U.S.C. 2(h), 6(c)]; and

(D) any option to enter into any, or any combination of, agreements, contracts or transactions referred to in this subparagraph.<sup>1</sup>

**(3) Other definitions**

The terms “insured State nonmember bank”, “State member bank”, and “affiliate” have the same meanings as in section 1813 of this title.

(Pub. L. 102-242, title IV, §408, as added Pub. L. 106-554, §1(a)(5) [title I, §112(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-391.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in par. (2)(C), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

<sup>1</sup> So in original. Probably should be “this paragraph”.

**§ 4422. Multilateral clearing organizations**

**(a) In general**

Except with respect to clearing organizations described in subsection (b) of this section, no person may operate a multilateral clearing organization for over-the-counter derivative instruments, or otherwise engage in activities that constitute such a multilateral clearing organization unless the person is a national bank, a State member bank, an insured State nonmember bank, an affiliate of a national bank, a State member bank, or an insured State nonmember bank, or a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.].

**(b) Clearing organizations**

Subsection (a) of this section shall not apply to any clearing organization that—

(1) is registered as a clearing agency under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.];

(2) is registered as a derivatives clearing organization under the Commodity Exchange Act [7 U.S.C. 1 et seq.]; or

(3) is supervised by a foreign financial regulator that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as applicable, has determined satisfies appropriate standards.

(Pub. L. 102-242, title IV, §409, as added Pub. L. 106-554, §1(a)(5) [title I, §112(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-392.)

REFERENCES IN TEXT

Section 25A of the Federal Reserve Act, referred to in subsec. (a), popularly known as the Edge Act, is classified to subchapter II (§611 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 611 of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Commodity Exchange Act, referred to in subsec. (b)(2), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

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