

103^D CONGRESS
2^D SESSION

S. 2291

To separate certain activities involving derivative financial instruments from the insured deposits of insured depository institutions, to provide for regulatory coordination in the establishment of principles related to such activities, to provide enhanced regulatory oversight, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 18 (legislative day, JULY 11), 1994

Mr. RIEGLE introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To separate certain activities involving derivative financial instruments from the insured deposits of insured depository institutions, to provide for regulatory coordination in the establishment of principles related to such activities, to provide enhanced regulatory oversight, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Derivatives Super-
5 vision Act of 1994”.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act, the following definitions
3 shall apply:

4 (1) APPROPRIATE FEDERAL BANKING AGEN-
5 CY.—The term “appropriate Federal banking agen-
6 cy” has the same meaning as in section 3 of the
7 Federal Deposit Insurance Act.

8 (2) CAPITALIZATION.—The terms “adequately-
9 capitalized” and “well-capitalized” have the same
10 meanings as in section 38 of the Federal Deposit In-
11 surance Act.

12 (3) DEALER.—The term “dealer” means any
13 person engaged in the business of purchasing, sell-
14 ing, or engaging in transactions involving derivative
15 financial instruments for its own account, through a
16 broker or otherwise, for the purpose of serving cus-
17 tomers who are end-users or other dealers.

18 (4) DERIVATIVE FINANCIAL INSTRUMENT.—
19 The term “derivative financial instrument” means—

20 (A) a qualified financial contract (as de-
21 fined in section 11(e)(8) of the Federal Deposit
22 Insurance Act); and

23 (B) any other instrument which an appro-
24 priate Federal financial institutions regulatory
25 agency determines, by regulation or order, to be

1 a derivative financial instrument for purposes of
2 this Act.

3 (5) FEDERAL FINANCIAL INSTITUTIONS REGU-
4 LATORY AGENCY.—The term “Federal financial in-
5 stitutions regulatory agency” means—

6 (A) the Office of the Comptroller of the
7 Currency;

8 (B) the Board of Governors of the Federal
9 Reserve System;

10 (C) the Federal Deposit Insurance Cor-
11 poration;

12 (D) the Office of Thrift Supervision;

13 (E) the National Credit Union Administra-
14 tion Board;

15 (F) the Securities and Exchange Commis-
16 sion;

17 (G) the Commodity Futures Trading Com-
18 mission;

19 (H) the Office of Federal Housing Enter-
20 prise Oversight; and

21 (I) the Federal Housing Finance Board.

22 (6) HEDGING TRANSACTION.—The term “hedg-
23 ing transaction” means any transaction involving a
24 derivative financial instrument if—

1 (A) such transaction is entered into in the
2 normal course of business primarily—

3 (i) to reduce risk of price change or
4 currency fluctuations with respect to other
5 transactions entered into by the institu-
6 tion, previously or simultaneously, to which
7 the derivative financial instrument trans-
8 action relates, either individually or in the
9 aggregate; or

10 (ii) to reduce risk of interest rate
11 changes with respect to transactions en-
12 tered into by the institution, previously or
13 simultaneously, to which the derivative fi-
14 nancial instrument transaction relates, ei-
15 ther individually or in the aggregate; and

16 (B) before the close of the day on which
17 such transaction was entered into (or such ear-
18 lier time as the appropriate Federal financial
19 regulatory agency may prescribe by regulation),
20 the regulated entity clearly identifies such
21 transaction as a hedging transaction.

22 (7) INSURED DEPOSITORY INSTITUTION.—The
23 term “insured depository institution” has the same
24 meaning as in section 3 of the Federal Deposit In-
25 surance Act and includes an insured credit union, as

1 defined in section 101 of the Federal Credit Union
2 Act.

3 (8) MAJOR DEALER.—The term “major dealer”
4 means any dealer whose ability to meet obligations
5 as they become due is potentially significant to the
6 stability of financial markets, as determined by the
7 Federal financial institutions regulators, based upon
8 size, market share, and the extent of linkages with
9 other market participants.

10 (9) REGULATED ENTITY.—The term “regulated
11 entity” means—

12 (A) an insured depository institution;

13 (B) a Federal Home Loan Bank, as de-
14 fined in section 2 of the Federal Home Loan
15 Bank Act;

16 (C) the Federal National Mortgage Asso-
17 ciation and any affiliate thereof; and

18 (D) the Federal Home Loan Mortgage
19 Corporation and any affiliate thereof.

20 **SEC. 3. LIMITATIONS ON DERIVATIVE ACTIVITIES.**

21 (a) GENERAL PROHIBITION.—Except as provided in
22 subsection (b), a regulated entity may not purchase, sell,
23 or engage in any transaction involving a derivative finan-
24 cial instrument for the account of that entity.

25 (b) EXCEPTIONS.—

1 (1) HEDGING TRANSACTIONS.—A regulated en-
2 tity may purchase, sell, or engage in any transaction
3 involving a derivative financial instrument for the
4 account of that entity for the purpose of engaging
5 in a hedging transaction if such activity involves a
6 category of derivative financial instruments approved
7 by rule, regulation, or order of the appropriate Fed-
8 eral financial regulatory agency for such purpose.

9 (2) DEALING.—

10 (A) WELL-CAPITALIZED ENTITIES.—A
11 well-capitalized insured depository institution
12 may purchase, sell, or engage in a transaction
13 involving a derivative financial instrument as a
14 dealer if such activity involves a category of de-
15 rivative financial instruments approved for such
16 purpose by rule, regulation, or order of the ap-
17 propriate Federal banking agency.

18 (B) ADEQUATELY CAPITALIZED INSTITU-
19 TIONS.—An insured depository institution or a
20 Federal Home Loan Bank that is adequately
21 capitalized may purchase, sell, or engage in a
22 transaction involving a derivative financial in-
23 strument as a dealer if—

24 (i) the appropriate Federal financial
25 institutions regulatory agency determines

1 that such activity by the institution is in
2 the public interest; and

3 (ii) the category of such derivative fi-
4 nancial instrument has been approved for
5 such purpose by any rule, regulation, or
6 order issued under subparagraph (A).

7 (c) PROHIBITION AGAINST SPECULATION.—Nothing
8 in this section shall be construed to authorize a regulated
9 entity, or any subsidiary of such entity, to purchase, sell,
10 or engage in a transaction involving a derivative financial
11 instrument for its own account for any speculative pur-
12 pose.

13 **SEC. 4. REGULATORY COORDINATION.**

14 (a) SUPERVISION BY FEDERAL FINANCIAL INSTITU-
15 TIONS REGULATORY AGENCIES.—

16 (1) IN GENERAL.—The Federal financial insti-
17 tutions regulatory agencies shall jointly establish
18 principles and standards related to capital, account-
19 ing, disclosure, suitability, internal controls struc-
20 tures, and other appropriate regulatory actions for
21 the supervision of regulated entities and major deal-
22 ers engaged in activities involving derivative finan-
23 cial instruments.

24 (2) DEVELOPMENT OF MINIMUM CAPITAL
25 STANDARDS.—In establishing principles, standards,

1 or other regulatory actions under paragraph (1), the
2 Federal financial institutions regulatory agencies
3 shall jointly develop minimum capital requirements
4 (including the leverage ratio, if appropriate) to
5 guard against risks that may be posed by regulated
6 entities and major dealers engaged in activities in-
7 volving derivative financial instruments, including—

8 (A) credit risk;

9 (B) market risk;

10 (C) operational risk; and

11 (D) legal risk.

12 (3) TRAINING.—The Federal financial institu-
13 tions regulatory agencies shall jointly sponsor train-
14 ing programs concerning derivative financial instru-
15 ments for examiners and assistant examiners em-
16 ployed by the Federal financial institutions regu-
17 latory agencies. Such training programs shall be
18 open to enrollment by employees of State financial
19 institutions supervisory agencies.

20 (4) CONFIDENTIAL EMERGENCY MANAGEMENT
21 REPORTING.—

22 (A) IN GENERAL.—

23 (i) INFORMATION ON A NIGHTLY
24 BASIS.—Not later than 1 year after the
25 date of enactment of this Act, the Federal

1 financial institutions regulatory agencies
2 shall jointly develop a means to obtain, on
3 a nightly basis, all necessary information
4 from a regulated entity or a major dealer.

5 (ii) EMERGENCY NEED.—If any Fed-
6 eral financial institutions regulatory agen-
7 cy determines that such agency needs the
8 information described in clause (i) as a re-
9 sult of adverse market conditions or other
10 emergency situations (as defined by that
11 agency), a regulated entity or a major
12 dealer shall provide such information to its
13 appropriate Federal financial institutions
14 regulatory agency, as may be required by
15 that agency.

16 (B) CONFIDENTIALITY OF INFORMATION
17 PROVIDED.—A Federal financial institutions
18 regulatory agency that receives information
19 pursuant to this paragraph with respect to any
20 regulated entity or major dealer may not pro-
21 vide such information to any person or entity
22 other than another Federal financial institu-
23 tions regulatory agency with jurisdiction over
24 that entity, dealer, or affiliate, without the prior

1 written approval of the appropriate Federal fi-
2 nancial institutions regulatory agency.

3 **SEC. 5. DISCLOSURE REQUIREMENTS.**

4 (a) INFORMATION REQUIRED TO BE INCLUDED IN
5 REPORTS.—Any report of condition or comparable docu-
6 ment made by any regulated entity or major dealer in ac-
7 cordance with any applicable provision of law or with re-
8 spect to any period beginning after December 31, 1994,
9 shall include the following information:

10 (1) QUANTITATIVE INFORMATION WITH RE-
11 SPECT TO ALL DERIVATIVE FINANCIAL INSTRU-
12 MENTS.—

13 (A) GROSS NOTIONAL AND FAIR VALUE.—
14 The gross notional value and the gross positive
15 and negative fair values of holdings, positions,
16 or other interests of the regulated entity or
17 major dealer in any category of derivative fi-
18 nancial instrument.

19 (B) REVENUE, GAINS, AND LOSSES.—All
20 revenue (identified by source of revenue), gains,
21 and losses of the institution attributable to
22 holdings, positions, or other interests of the reg-
23 ulated entity or major dealer in any category of
24 derivative financial instrument.

1 (C) EXPOSURE UNDER BILATERAL NET-
2 TING CONTRACT.—The net current credit expo-
3 sure of the regulated entity or major dealer
4 under legally enforceable bilateral arrangements
5 with respect to holdings, positions, or other in-
6 terests of the entity or dealer in any category
7 of derivative financial instrument.

8 (D) EXPOSURE TO INDIVIDUAL
9 COUNTERPARTIES.—The exposure to individual
10 counterparties to any transaction involving
11 holdings, positions, or other interests of the reg-
12 ulated entity or major dealer in any category of
13 derivative financial instrument. The Federal fi-
14 nancial institutions regulatory agencies shall de-
15 termine, by regulation or order, the nature and
16 size of the individual counterparties for which
17 such information shall be required.

18 (2) TERMS TO MATURITY.—Information on the
19 remaining term to maturity of holdings, positions, or
20 other interests of the regulated entity or major deal-
21 er in any category of derivative financial instrument.

22 (b) REPORTING REQUIREMENT.—Information re-
23 ported pursuant to subsection (a) with respect to deriva-
24 tive financial instruments traded or purchased on an ex-
25 change, and the holdings, positions, or other interests in

1 derivative financial instruments which are the subjects of
2 such trades, shall be provided separately from information
3 relating to derivative financial instruments not traded or
4 purchased on an exchange, and the holdings, positions, or
5 other interests in derivative financial instruments which
6 are the subjects of such transactions.

7 **SEC. 6. MANAGEMENT CONTROLS.**

8 (a) REQUIREMENTS RELATING TO DIRECTORS AND
9 SENIOR EXECUTIVE OFFICERS.—

10 (1) MANAGEMENT PLAN REQUIRED WITH RE-
11 SPECT TO ALL DERIVATIVE FINANCIAL INSTRU-
12 MENTS.—A regulated entity or a major dealer may
13 not engage in activities involving derivative financial
14 instruments without, as part of its internal controls
15 structure, a management plan that—

16 (A) sets forth—

17 (i) the purpose of the holdings, posi-
18 tions, or other interests of the regulated
19 entity or major dealer in any category of
20 derivative financial instrument;

21 (ii) how such holdings, positions, or
22 other interests in any category of deriva-
23 tive financial instrument is consistent with
24 the overall risk management plan of the
25 regulated entity or major dealer; and

1 (iii) how the regulated entity or major
2 dealer acquires holdings, positions, and
3 other interests in any category of deriva-
4 tive financial instruments; and

5 (B) describes the accounting methods used
6 to value holdings, positions, or other interests
7 of the regulated entity or major dealer in any
8 category of derivative financial instrument; and

9 (C) requires that derivative financial in-
10 strument activities are conducted with direct
11 oversight by the appropriate senior executive of-
12 ficers (as defined pursuant to section 32(f) of
13 the Federal Deposit Insurance Act) of the regu-
14 lated entity or major dealer.

15 (2) FAMILIARITY WITH RISKS REQUIRED.—A
16 regulated entity or major dealer may not engage in
17 any transaction involving a derivative financial in-
18 strument unless the board of directors of such entity
19 or dealer periodically reviews compliance with the
20 management plan by the appropriate senior execu-
21 tive officers.

22 **SEC. 7. ENFORCEMENT.**

23 (a) IN GENERAL.—Each Federal financial institu-
24 tions regulatory agency may use the enforcement author-
25 ity available to that agency under other provisions of law

1 to enforce the provisions of sections 3 through 6 of this
2 Act, and any regulations promulgated in accordance with
3 this Act, as the agency determines to be appropriate.

4 (b) SECURITIES AND EXCHANGE COMMISSION EN-
5 FORCEMENT AUTHORITY.—The Securities Exchange Act
6 of 1934 (15 U.S.C. 78a et seq.) is amended by inserting
7 after section 21C the following new section:

8 “DERIVATIVE FINANCIAL INSTRUMENTS
9 “SEC. 21D. (a) SUPERVISION BY THE COMMIS-
10 SION.—Any major dealer whose activities involving deriva-
11 tive financial instruments are not subject to regulation by
12 a Federal financial institutions regulatory agency under
13 the Derivatives Supervision Act of 1994, shall be subject
14 to appropriate regulation and enforcement by the Commis-
15 sion in accordance with the authority provided to the Com-
16 mission under this title, and consistent with any prin-
17 ciples, standards, or other regulatory actions established
18 in accordance with the Derivatives Supervision Act of
19 1994.

20 “(b) DEFINITIONS.—For purposes of this section, the
21 terms ‘derivative financial instrument’, ‘Federal financial
22 institutions regulatory agency’, and ‘major dealer’ have
23 the same meanings as in section 2 of the Derivatives Su-
24 pervision Act of 1994.”.

1 **SEC. 8. INTERNATIONAL COORDINATION.**

2 The Secretary of the Treasury and the Chairman of
3 the Board of Governors of the Federal Reserve System,
4 in consultation with the Federal financial institutions reg-
5 ulatory agencies, shall encourage governments, central
6 banks, and regulatory authorities of other industrialized
7 countries to work toward maintaining and, where appro-
8 priate, adopting comparable supervisory standards, regu-
9 lations, and capital standards in particular, for regulated
10 entities and major dealers engaged in activities involving
11 derivative financial instruments.

12 **SEC. 9. BANK HOLDING COMPANIES.**

13 Section 3 of the Bank Holding Company Act of 1956
14 (12 U.S.C. 1842) is amended by adding at the end the
15 following new subsection:

16 “(h) DERIVATIVE ACTIVITIES.—

17 “(1) IN GENERAL.—A subsidiary of a bank
18 holding company may purchase, sell, or engage in
19 any transaction involving a derivative financial in-
20 strument for the account of that subsidiary if it is
21 not an insured depository institution or a subsidiary
22 of an insured depository institution.

23 “(2) CONSOLIDATED CAPITAL.—The capital of
24 a subsidiary engaged in activities described in para-
25 graph (1) shall not be included in the consolidated
26 capital of its parent bank holding company for the

1 purpose of determining the compliance of such bank
2 holding company with any applicable capital require-
3 ment.

4 “(3) ESTABLISHMENT OF SUBSIDIARIES.—The
5 Board shall establish, by regulation, appropriate
6 terms and conditions for the establishment of a sub-
7 sidiary referred to in paragraph (1), consistent with
8 any principles, standards or other regulatory actions
9 established under section 4 of the Derivatives Super-
10 vision Act of 1994.

11 “(4) DEFINITIONS.—For purposes of this sub-
12 section—

13 “(A) the term ‘derivative financial instru-
14 ment’ means—

15 “(i) an instrument the value of which
16 is derived from the value of other assets,
17 interest or currency exchange rates, or in-
18 dexes, including qualified financial con-
19 tracts (as defined in section 11(e)(8) of the
20 Federal Deposit Insurance Act); and

21 “(ii) any other instrument which an
22 appropriate Federal financial institutions
23 regulatory agency determines, by regula-
24 tion or order, to be a derivative financial

1 instrument for purposes of this section;

2 and

3 “(B) the term ‘Federal financial institu-
4 tions regulatory agency’ has the same meaning
5 as in section 2 of the Derivatives Supervision
6 Act of 1994.”.

7 **SEC. 10. SYSTEMIC RISK.**

8 (a) IN GENERAL.—Not later than 18 months after
9 the date of enactment of this Act, the Federal financial
10 institutions regulatory agencies shall, in order to reduce
11 the risk associated with potential systemic financial mar-
12 ket failure, promulgate appropriate regulations to require
13 regulated entities and major dealers to—

14 (1) increase use of clearinghouses and multilat-
15 eral netting agreements;

16 (2) reduce intraday debit positions;

17 (3) shorten intervals between financial trans-
18 actions in cash markets and their final settlement;

19 (4) shorten intervals between delivery of and
20 payment for financial products; and

21 (5) otherwise reduce payments and settlement
22 risk.

23 (b) CONSIDERATIONS.—In implementing this section,
24 the Federal financial institutions regulatory agencies shall
25 consider, as appropriate—

1 (1) the costs imposed on or benefits granted to
2 regulated entities and major dealers by regulatory
3 actions taken under this section;

4 (2) the public benefits of reducing systemic
5 risk; and

6 (3) the effects of any proposed action on the
7 international competitive position of United States
8 financial institutions.

9 (c) EFFECTIVE DATE OF REGULATIONS.—The regu-
10 lations promulgated under subsection (a) shall become ef-
11 fective 3 years after the date of enactment of this Act,
12 and shall be fully implemented 5 years after the date of
13 enactment of this Act.

14 **SEC. 11. REGULATORY CLARIFICATION AMENDMENTS.**

15 (a) FEDERAL DEPOSIT INSURANCE ACT AMEND-
16 MENTS.—

17 (1) DEFINITIONS OF CERTAIN TERMS.—Section
18 11(e)(8)(D) of the Federal Deposit Insurance Act
19 (12 U.S.C. 1821(e)(8)(D)) is amended—

20 (A) in clause (iv), by striking “section
21 101(24)” and inserting “section 101(25)”;

22 (B) in clause (v)(I), by striking “section
23 101(41)” and inserting “section 101(47)”;

24 (C) in clause (vi)(I)—

1 (i) by inserting “equity or equity
2 index swap, equity or equity index option,
3 bond option,” after “commodity swap,”;
4 and

5 (ii) by striking “purchased” each
6 place it appears; and

7 (D) by striking clause (vii) and inserting
8 the following:

9 “(vii) TREATMENT OF MASTER
10 AGREEMENT AS 1 AGREEMENT.—Any mas-
11 ter agreement for any qualified financial
12 contract, as defined in clauses (i) through
13 (vi) (or any master agreement there for),
14 together with all supplements thereto, shall
15 be treated as a single agreement and a sin-
16 gle qualified financial contract.”.

17 (2) DEFAULT AGAINST CORPORATION AS CON-
18 SERVATOR.—Section 11(e)(8)(E) of the Federal De-
19 posit Insurance Act (12 U.S.C. 1821(e)(8)(E)) is
20 amended—

21 (A) by striking “paragraph (12) of this
22 subsection,”; and

23 (B) by striking “subsection (d)(9)” and in-
24 serting “paragraph (10) of this subsection, sub-
25 sections (d)(9) and (n)(4)(I)”.

1 (3) NOTIFICATION OF TRANSFER; RIGHTS EN-
2 FORCEABLE AGAINST RECEIVER OR CONSERVA-
3 TOR.—Section 11(e)(10) of the Federal Deposit In-
4 surance Act (12 U.S.C. 1821(e)(10)) is amended—

5 (A) in the heading, by inserting “; RIGHTS
6 ENFORCEABLE AGAINST CONSERVATOR OR RE-
7 CEIVER” before the period;

8 (B) by redesignating subparagraph (B) as
9 subparagraph (C); and

10 (C) by striking subparagraph (A) and in-
11 serting the following:

12 “(A) IN GENERAL.—The receiver for an
13 insured depository institution in default shall
14 notify any person who is a party to a qualified
15 financial contract, not later than 5:00 p.m.
16 (Eastern Time) on the business day following
17 the appointment of the receiver, of any transfer
18 made by the receiver of the assets and liabilities
19 of such institution that includes such qualified
20 financial contract.

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

23 “(i) RIGHTS AGAINST A RECEIVER.—
24 A person who is a party to a qualified fi-
25 nancial contract with an insured depository

1 institution may not exercise any right such
2 person may have to net or close out such
3 contract under paragraph (8)(A) of this
4 subsection, or section 403 or 404 of the
5 Federal Deposit Insurance Corporation
6 Improvement Act of 1991, solely by reason
7 of the appointment of a receiver for the de-
8 pository institution (or insolvency or finan-
9 cial condition of the institution for which
10 the receiver is appointed)—

11 “(I) before 5:00 p.m. (Eastern
12 Time) on the business day following
13 the appointment of the receiver; or

14 “(II) after the person has re-
15 ceived notice that the contract has
16 been transferred pursuant to para-
17 graph (9)(A).

18 “(ii) TIMING OF NOTIFICATION.—For
19 purposes of clause (i)(II), the Corporation,
20 as receiver of an insured depository institu-
21 tion, shall be deemed to have provided no-
22 tice if such notice was sent to the last ad-
23 dress shown in the records of the insured
24 depository institution by the means, if any,
25 provided for in the subject qualified finan-

1 cial contract, or by other means reasonably
2 calculated to reach that person not later
3 than the time specified in clause (i)(I).

4 “(iii) RIGHTS AGAINST CONSERVA-
5 TOR.—A person who is a party to a quali-
6 fied financial contract with an insured de-
7 pository institution may not exercise any
8 right such person has to net or close out
9 such contract under paragraph (8)(E) of
10 this subsection, or section 403 or 404 of
11 the Federal Deposit Insurance Corporation
12 Improvement Act of 1991, solely by reason
13 of the appointment of a conservator for the
14 insured depository institution.”.

15 (4) AGREEMENTS AGAINST INTEREST OF COR-
16 PORATION.—Section 13(e) of the Federal Deposit
17 Insurance Act (12 U.S.C. 1823(e)) is amended—

18 (A) by inserting the following before “No
19 agreement”:

20 “(1) IN GENERAL.—”;

21 (B) by redesignating paragraphs (1)
22 through (4) as subparagraphs (A) through (D),
23 respectively; and

24 (C) by adding at the end the following new
25 paragraph:

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

4 “(A) deposits of, or other credit extension
5 by, a Federal, State, or local governmental en-
6 tity, including an agreement to provide collat-
7 eral in lieu of a surety bond;

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

11 “(C) extensions of credit, including any
12 overdraft, from a Federal Reserve Bank or
13 Federal Home Loan Bank; or

14 “(D) a qualified financial contract, as de-
15 fined in section 11(e)(8)(D);

16 shall not be deemed to be invalid pursuant to sub-
17 paragraph (B) of paragraph (1) solely because such
18 agreement was not executed contemporaneously with
19 the acquisition of the collateral or because of
20 pledges, delivery, and substitution of the collateral
21 made in accordance with such agreement.”.

22 (b) FEDERAL DEPOSIT INSURANCE CORPORATION
23 IMPROVEMENT ACT AMENDMENTS.—Sections 403(a) and
24 404(a) of the Federal Deposit Insurance Corporation Im-
25 provement Act of 1991 (12 U.S.C. 4403(a), 4404(a)) are

1 each amended by striking “other provision of law” each
2 place such term appears, and inserting “provision of law,
3 other than paragraphs (8)(E) and (10)(B) of section 11(e)
4 of the Federal Deposit Insurance Act”.

5 (c) BANKRUPTCY CODE AMENDMENTS.—

6 (1) DEFINITIONS.—Section 101 of title 11,
7 United States Code, is amended—

8 (A) in paragraph (55)(A) (the first place
9 paragraph (55) appears)—

10 (i) by inserting “equity or equity
11 index swap, equity or equity index option,
12 bond option,” after “basis swap,”;

13 (ii) by inserting “interest rate fu-
14 ture,” after “commodity swap,”;

15 (iii) by striking “forward foreign ex-
16 change” and inserting “foreign exchange”;
17 and

18 (iv) by inserting “currency future,”
19 after “cross-currency rate swap agree-
20 ment,”;

21 (B) by redesignating paragraphs (54)
22 through (57), the second place those para-
23 graphs appear, as paragraphs (58) through
24 (61), respectively;

1 (C) in paragraph (60), as redesignated, by
2 striking “and”;

3 (D) in paragraph (61), as redesignated, by
4 striking the period at the end and inserting a
5 semicolon; and

6 (E) by adding at the end the following new
7 paragraphs:

8 “(62) ‘master netting agreement’ means an
9 agreement providing for the exercise of rights, in-
10 cluding rights of setoff, liquidation, termination, ac-
11 celeration, or closeout, in connection with one or
12 more contracts with the debtor that are described in
13 paragraphs (1) through (5) of section 561(a); and

14 “(63) ‘master netting agreement participant’
15 means an entity that, at any time before the filing
16 of the petition, has an outstanding master netting
17 agreement covering any of the contracts described in
18 section 561 with the debtor.”.

19 (2) AUTOMATIC STAY.—Section 362(b) of title
20 11, United States Code, is amended—

21 (A) in paragraph (13), by striking “or” at
22 the end;

23 (B) by redesignating paragraphs (15) and
24 (16) as paragraphs (16) and (17), respectively;

1 (C) by redesignating paragraph (14), the
2 second place such paragraph appears, as para-
3 graph (15); and

4 (D) by amending paragraph (14) to read
5 as follows:

6 “(14) under subsection (a), of the setoff by a
7 swap participant or master netting agreement par-
8 ticipant of any mutual debt and claim under or in
9 connection with any swap agreement or master net-
10 ting agreement that constitutes the setoff of a claim
11 against the debtor for any payment due from the
12 debtor under or in connection with any such agree-
13 ment against—

14 “(A) any payment due to the debtor from
15 such participant under or in connection with
16 any such agreement; or

17 “(B) cash, securities, or other property of
18 the debtor held by or due from such participant
19 to guarantee, secure, or settle any such agree-
20 ment;”.

21 (3) LIMITATIONS ON AVOIDING POWERS.—Sec-
22 tion 546(g) of title 11, United States Code, is
23 amended—

24 (A) by inserting “or a master netting
25 agreement covering any of the contracts de-

1 scribed in section 561” after “under a swap
2 agreement”;

3 (B) by inserting “or a master netting
4 agreement participant” after “swap partici-
5 pant”; and

6 (C) by inserting “or any master netting
7 agreement” after “with a swap agreement”.

8 (4) FRAUDULENT TRANSFERS AND OBLIGA-
9 TIONS.—Section 548(d)(2) of title 11, United States
10 Code, is amended—

11 (A) in subparagraph (C), by striking
12 “and”;

13 (B) in subparagraph (D), by striking the
14 period and inserting “; and”; and

15 (C) by adding at the end the following new
16 subparagraph:

17 “(E) a master netting agreement partici-
18 pant that receives a transfer in connection with
19 a master netting agreement covering any of the
20 contracts described in section 561 takes for
21 value to the extent of such transfer.”.

22 (5) CONTRACTUAL RIGHT TO LIQUIDATE A SE-
23 CURITIES CONTRACT.—Section 555 of title 11,
24 United States Code, is amended—

1 (A) in the section heading, by inserting “,
2 **terminate, or accelerate**” after “**liq-**
3 **uidate**”; and

4 (B) in the first sentence, by inserting “,
5 termination, or acceleration” after “liquida-
6 tion”.

7 (6) CONTRACTUAL RIGHT TO LIQUIDATE A
8 COMMODITIES CONTRACT OR FORWARD CON-
9 TRACT.—Section 556 of title 11, United States
10 Code, is amended—

11 (A) in the section heading, by inserting “,
12 **terminate, or accelerate**” after “**liq-**
13 **uidate**”; and

14 (B) in the first sentence, by inserting “,
15 termination, or acceleration” after “liquida-
16 tion”.

17 (7) CONTRACTUAL RIGHT TO LIQUIDATE A RE-
18 PURCHASE AGREEMENT.—Section 559 of title 11,
19 United States Code, is amended—

20 (A) in the section heading, by inserting “,
21 **terminate, or accelerate**” after “**liq-**
22 **uidate**”; and

23 (B) in the first sentence, by inserting “,
24 termination, or acceleration” after “liquida-
25 tion”.

1 (8) CONTRACTUAL RIGHT TO LIQUIDATE A
2 SWAP AGREEMENT.—Section 560 of title 11, United
3 States Code, is amended—

4 (A) in the section heading, by striking
5 “TERMINATE” and inserting “LIQUIDATE, TER-
6 MINATE, OR ACCELERATE”; and

7 (B) in the first sentence, by striking “ter-
8 mination” and inserting “liquidation, termi-
9 nation, or acceleration”.

10 (9) CONTRACTUAL RIGHT TO TERMINATE, LIQ-
11 UIDATE, ACCELERATE, OR OFFSET A MASTER NET-
12 TING AGREEMENT.—Chapter 5 of title 11, United
13 States Code, is amended by adding at the end the
14 following new section:

15 **“§ 561. Contractual right to terminate, liquidate, ac-
16 celerate, or offset under a master netting
17 agreement**

18 “(a) IN GENERAL.—Subject to subsection (b), the ex-
19 ercise of any contractual right, because of a condition of
20 the kind specified in section 365(e)(1), to cause termi-
21 nation, liquidation, acceleration, offset, or netting of val-
22 ues or payment amounts arising under or in connection
23 with one or more—

24 “(1) securities contracts, as defined in section
25 741(7);

1 “(2) commodities contracts, as defined in sec-
2 tion 761(4);

3 “(3) forward contracts;

4 “(4) repurchase agreements; or

5 “(5) swap agreements;

6 under a master netting agreement covering such contracts
7 shall not be stayed, avoided, or otherwise limited by oper-
8 ation of any provision of this title or by any order of a
9 court or administrative agency in any proceeding under
10 this title.

11 “(b) EXCEPTION.—A party may exercise a contrac-
12 tual right described in subsection (a) only if that party
13 could exercise such a right under section 555, 556, 559,
14 or 560 for each individual contract covered by the master
15 netting agreement in issue.

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

1 (9) DEBTS OF A MUNICIPALITY.—Section
2 901(a) of title 11, United States Code, is amend-
3 ed—

4 (A) by inserting “555, 556,” after “553,”;
5 and

6 (B) by inserting “559, 560, 561” after
7 “557,”.

8 **SEC. 12. REGULATIONS.**

9 Each of the Federal financial institutions regulatory
10 agencies shall issue consistent regulations governing ac-
11 tivities involving derivative financial instruments for the
12 purpose of implementing this Act.

13 **SEC. 13. EFFECTIVE DATES.**

14 (a) IN GENERAL.—Except as provided in subsection
15 (b), this Act shall become effective 1 year after the date
16 of enactment of this Act.

17 (b) EXCEPTION.—The amendments made by section
18 11 shall become effective on the date of enactment of this
19 Act.

○

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