

# Union Calendar No. 297

108TH CONGRESS  
2D SESSION

# H. R. 2120

**[Report No. 108-277, Part I]**

To revise the banking and bankruptcy insolvency laws with respect to the termination and netting of financial contracts, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2003

Mr. TOOMEY (for himself, Mr. OXLEY, Mr. KANJORSKI, Mr. LEACH, Mr. BAKER, Mr. BACHUS, Mr. SHERMAN, Mrs. MALONEY, Mr. SHAYS, Mrs. BIGGERT, Ms. HART, Mrs. KELLY, Mr. NEY, Mr. ACKERMAN, Mr. CROWLEY, Mr. MURPHY, Mr. SESSIONS, Mr. FOSSELLA, Mr. EMANUEL, and Mr. ISRAEL) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

SEPTEMBER 17, 2003

Reported from the Committee on Financial Services

SEPTEMBER 18, 2003

Referral to the Committee on the Judiciary extended for a period ending not later than October 3, 2003

OCTOBER 3, 2003

Referral to the Committee on the Judiciary extended for a period ending not later than October 31, 2003

OCTOBER 31, 2003

Referral to the Committee on the Judiciary extended for a period ending not later than November 7, 2003

NOVEMBER 7, 2003

Referral to the Committee on the Judiciary extended for a period ending not later than November 21, 2003

NOVEMBER 21, 2003

Referral to the Committee on the Judiciary extended for a period ending not later than January 31, 2004

JANUARY 31, 2004

Referral to the Committee on the Judiciary extended for a period ending not later than March 2, 2004

FEBRUARY 26, 2004

Referral to the Committee on the Judiciary extended for a period ending not later than June 1, 2004

JUNE 1, 2004

Additional sponsors: Mr. HINOJOSA, Mr. WATT, Mr. BOUCHER, and Mr. DREIER

JUNE 1, 2004

The Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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## A BILL

To revise the banking and bankruptcy insolvency laws with respect to the termination and netting of financial contracts, and for other purposes.

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

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

6       (b) **TABLE OF CONTENTS.**—The table of contents for  
 7       this Act is as follows:

Sec. 1. Short title; table of contents.

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

Sec. 3. Authority of the corporation with respect to failed and failing institutions.

Sec. 4. Amendments relating to transfers of qualified financial contracts.

- Sec. 5. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
- Sec. 6. Clarifying amendment relating to master agreements.
- Sec. 7. Federal Deposit Insurance Corporation Improvement Act of 1991.
- Sec. 8. Bankruptcy code amendments.
- Sec. 9. Recordkeeping requirements.
- Sec. 10. Exemptions from contemporaneous execution requirement.
- Sec. 11. Damage measure.
- Sec. 12. SIPC stay.
- Sec. 13. Applicability of other sections to chapter 9.
- Sec. 14. Effective date; application of amendments.
- Sec. 15. Savings clause.

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

4 (a) DEFINITION OF QUALIFIED FINANCIAL CON-  
 5 TRACT.—

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

10 (A) by striking “subsection—” and insert-  
 11 ing “subsection, the following definitions shall  
 12 apply.”; and

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

16 (2) INSURED CREDIT UNIONS.—Section  
 17 207(c)(8)(D) of the Federal Credit Union Act (12  
 18 U.S.C. 1787(c)(8)(D)) is amended—

1 (A) by striking “subsection—” and insert-  
2 ing “subsection, the following definitions shall  
3 apply:”; and

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

7 (b) DEFINITION OF SECURITIES CONTRACT.—

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

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

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

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

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

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

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

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

7 “(V) means any margin loan;

8 “(VI) means any other agree-  
9 ment or transaction that is similar to  
10 any agreement or transaction referred  
11 to in this clause;

12 “(VII) means any combination of  
13 the agreements or transactions re-  
14 ferred to in this clause;

15 “(VIII) means any option to  
16 enter into any agreement or trans-  
17 action referred to in this clause;

18 “(IX) means a master agreement  
19 that provides for an agreement or  
20 transaction referred to in subclause  
21 (I), (III), (IV), (V), (VI), (VII), or  
22 (VIII), together with all supplements  
23 to any such master agreement, with-  
24 out regard to whether the master  
25 agreement provides for an agreement

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

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

18 (2) INSURED CREDIT UNIONS.—Section  
19 207(c)(8)(D)(ii) of the Federal Credit Union Act  
20 (12 U.S.C. 1787(c)(8)(D)(ii)) is amended to read as  
21 follows:

22 “(ii) SECURITIES CONTRACT.—The  
23 term ‘securities contract’—

24 “(I) means a contract for the  
25 purchase, sale, or loan of a security, a

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

17 “(II) does not include any pur-  
18 chase, sale, or repurchase obligation  
19 under a participation in a commercial  
20 mortgage loan unless the Board deter-  
21 mines by regulation, resolution, or  
22 order to include any such agreement  
23 within the meaning of such term;

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

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

18           “(V) means any margin loan;

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

23           “(VII) means any combination of  
24 the agreements or transactions re-  
25 ferred to in this clause;

1 “(VIII) means any option to  
2 enter into any agreement or trans-  
3 action referred to in this clause;

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

21 “(X) means any security agree-  
22 ment or arrangement or other credit  
23 enhancement related to any agree-  
24 ment or transaction referred to in this  
25 clause, including any guarantee or re-

1                   imbursement obligation in connection  
2                   with any agreement or transaction re-  
3                   ferred to in this clause.”.

4           (c) DEFINITION OF COMMODITY CONTRACT.—

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

9                           “(iii) COMMODITY CONTRACT.—The  
10                           term ‘commodity contract’ means—

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

17                                   “(II) with respect to a foreign fu-  
18                                   tures commission merchant, a foreign  
19                                   future;

20                                   “(III) with respect to a leverage  
21                                   transaction merchant, a leverage  
22                                   transaction;

23                                   “(IV) with respect to a clearing  
24                                   organization, a contract for the pur-  
25                                   chase or sale of a commodity for fu-

1           ture delivery on, or subject to the  
2           rules of, a contract market or board  
3           of trade that is cleared by such clear-  
4           ing organization, or commodity option  
5           traded on, or subject to the rules of,  
6           a contract market or board of trade  
7           that is cleared by such clearing orga-  
8           nization;

9                   “(V) with respect to a commodity  
10                  options dealer, a commodity option;

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

15                   “(VII) any combination of the  
16                  agreements or transactions referred to  
17                  in this clause;

18                   “(VIII) any option to enter into  
19                  any agreement or transaction referred  
20                  to in this clause;

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

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

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

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

1           “(iii) COMMODITY CONTRACT.—The  
2 term ‘commodity contract’ means—

3           “(I) with respect to a futures  
4 commission merchant, a contract for  
5 the purchase or sale of a commodity  
6 for future delivery on, or subject to  
7 the rules of, a contract market or  
8 board of trade;

9           “(II) with respect to a foreign fu-  
10 tures commission merchant, a foreign  
11 future;

12           “(III) with respect to a leverage  
13 transaction merchant, a leverage  
14 transaction;

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

1           “(V) with respect to a commodity  
2 options dealer, a commodity option;

3           “(VI) any other agreement or  
4 transaction that is similar to any  
5 agreement or transaction referred to  
6 in this clause;

7           “(VII) any combination of the  
8 agreements or transactions referred to  
9 in this clause;

10          “(VIII) any option to enter into  
11 any agreement or transaction referred  
12 to in this clause;

13          “(IX) a master agreement that  
14 provides for an agreement or trans-  
15 action referred to in subclause (I),  
16 (II), (III), (IV), (V), (VI), (VII), or  
17 (VIII), together with all supplements  
18 to any such master agreement, with-  
19 out regard to whether the master  
20 agreement provides for an agreement  
21 or transaction that is not a com-  
22 modity contract under this clause, ex-  
23 cept that the master agreement shall  
24 be considered to be a commodity con-  
25 tract under this clause only with re-

1 spect to each agreement or trans-  
2 action under the master agreement  
3 that is referred to in subclause (I),  
4 (II), (III), (IV), (V), (VI), (VII), or  
5 (VIII); or

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

14 (d) DEFINITION OF FORWARD CONTRACT.—

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

19 “(iv) FORWARD CONTRACT.—The  
20 term ‘forward contract’ means—

21 “(I) a contract (other than a  
22 commodity contract) for the purchase,  
23 sale, or transfer of a commodity or  
24 any similar good, article, service,  
25 right, or interest which is presently or

1 in the future becomes the subject of  
2 dealing in the forward contract trade,  
3 or product or byproduct thereof, with  
4 a maturity date more than 2 days  
5 after the date the contract is entered  
6 into, including, a repurchase trans-  
7 action, reverse repurchase transaction,  
8 consignment, lease, swap, hedge  
9 transaction, deposit, loan, option, allo-  
10 cated transaction, unallocated trans-  
11 action, or any other similar agree-  
12 ment;

13 “(II) any combination of agree-  
14 ments or transactions referred to in  
15 subclauses (I) and (III);

16 “(III) any option to enter into  
17 any agreement or transaction referred  
18 to in subclause (I) or (II);

19 “(IV) a master agreement that  
20 provides for an agreement or trans-  
21 action referred to in subclauses (I),  
22 (II), or (III), together with all supple-  
23 ments to any such master agreement,  
24 without regard to whether the master  
25 agreement provides for an agreement

1 or transaction that is not a forward  
2 contract under this clause, except that  
3 the master agreement shall be consid-  
4 ered to be a forward contract under  
5 this clause only with respect to each  
6 agreement or transaction under the  
7 master agreement that is referred to  
8 in subclause (I), (II), or (III); or

9 “(V) any security agreement or  
10 arrangement or other credit enhance-  
11 ment related to any agreement or  
12 transaction referred to in subclause  
13 (I), (II), (III), or (IV), including any  
14 guarantee or reimbursement obliga-  
15 tion in connection with any agreement  
16 or transaction referred to in any such  
17 subclause.”.

18 (2) INSURED CREDIT UNIONS.—Section  
19 207(c)(8)(D)(iv) of the Federal Credit Union Act  
20 (12 U.S.C. 1787(c)(8)(D)(iv)) is amended to read as  
21 follows:

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

24 “(I) a contract (other than a  
25 commodity contract) for the purchase,

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

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

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

22 “(IV) a master agreement that  
23 provides for an agreement or trans-  
24 action referred to in subclauses (I),  
25 (II), or (III), together with all supple-

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

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

21           (e) DEFINITION OF REPURCHASE AGREEMENT.—

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

1           “(v) REPURCHASE AGREEMENT.—The  
2 term ‘repurchase agreement’ (which defini-  
3 tion also applies to a reverse repurchase  
4 agreement)—

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

1           acceptances, securities, mortgage  
2           loans, or interests as described above,  
3           at a date certain not later than 1 year  
4           after such transfers or on demand,  
5           against the transfer of funds, or any  
6           other similar agreement;

7           “(II) does not include any repur-  
8           chase obligation under a participation  
9           in a commercial mortgage loan unless  
10          the Corporation determines by regula-  
11          tion, resolution, or order to include  
12          any such participation within the  
13          meaning of such term;

14          “(III) means any combination of  
15          agreements or transactions referred to  
16          in subclauses (I) and (IV);

17          “(IV) means any option to enter  
18          into any agreement or transaction re-  
19          ferred to in subclause (I) or (III);

20          “(V) means a master agreement  
21          that provides for an agreement or  
22          transaction referred to in subclause  
23          (I), (III), or (IV), together with all  
24          supplements to any such master  
25          agreement, without regard to whether

1 the master agreement provides for an  
2 agreement or transaction that is not a  
3 repurchase agreement under this  
4 clause, except that the master agree-  
5 ment shall be considered to be a re-  
6 purchase agreement under this sub-  
7 clause only with respect to each agree-  
8 ment or transaction under the master  
9 agreement that is referred to in sub-  
10 clause (I), (III), or (IV); and

11 “(VI) means any security agree-  
12 ment or arrangement or other credit  
13 enhancement related to any agreement  
14 or transaction referred to in subclause  
15 (I), (III), (IV), or (V), including any  
16 guarantee or reimbursement obligation  
17 in connection with any agreement or  
18 transaction referred to in any such  
19 subclause.

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

1           Development (as determined by regulation  
2           or order adopted by the appropriate Fed-  
3           eral banking authority).”.

4           (2)   INSURED   CREDIT   UNIONS.—Section  
5           207(c)(8)(D)(v) of the Federal Credit Union Act (12  
6           U.S.C. 1787(c)(8)(D)(v)) is amended to read as fol-  
7           lows:

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

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

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

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

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

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

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

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

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

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

13                  (f) DEFINITION OF SWAP AGREEMENT.—

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

18                                  “(vi) SWAP AGREEMENT.—The term  
19                                  ‘swap agreement’ means—

20    “(I) any agreement, including the  
21    terms and conditions incorporated by  
22    reference in any such agreement,  
23    which is an interest rate swap, option,  
24    future, or forward agreement, includ-  
25    ing a rate floor, rate cap, rate collar,

1 cross-currency rate swap, and basis  
2 swap; a spot, same day-tomorrow, to-  
3 morrow-next, forward, or other for-  
4 eign exchange or precious metals  
5 agreement; a currency swap, option,  
6 future, or forward agreement; an eq-  
7 uity index or equity swap, option, fu-  
8 ture, or forward agreement; a debt  
9 index or debt swap, option, future, or  
10 forward agreement; a total return,  
11 credit spread or credit swap, option,  
12 future, or forward agreement; a com-  
13 modity index or commodity swap, op-  
14 tion, future, or forward agreement; or  
15 a weather swap, weather derivative, or  
16 weather option;

17 “(II) any agreement or trans-  
18 action that is similar to any other  
19 agreement or transaction referred to  
20 in this clause and that is of a type  
21 that has been, is presently, or in the  
22 future becomes, the subject of recur-  
23 rent dealings in the swap markets (in-  
24 cluding terms and conditions incor-  
25 porated by reference in such agree-

1                   ment) and that is a forward, swap, fu-  
2                   ture, or option on one or more rates,  
3                   currencies, commodities, equity securi-  
4                   ties or other equity instruments, debt  
5                   securities or other debt instruments,  
6                   quantitative measures associated with  
7                   an occurrence, extent of an occur-  
8                   rence, or contingency associated with  
9                   a financial, commercial, or economic  
10                  consequence, or economic or financial  
11                  indices or measures of economic or fi-  
12                  nancial risk or value;

13                   “(III) any combination of agree-  
14                   ments or transactions referred to in  
15                   this clause;

16                   “(IV) any option to enter into  
17                   any agreement or transaction referred  
18                   to in this clause;

19                   “(V) a master agreement that  
20                   provides for an agreement or trans-  
21                   action referred to in subclause (I),  
22                   (II), (III), or (IV), together with all  
23                   supplements to any such master  
24                   agreement, without regard to whether  
25                   the master agreement contains an

1 agreement or transaction that is not a  
2 swap agreement under this clause, ex-  
3 cept that the master agreement shall  
4 be considered to be a swap agreement  
5 under this clause only with respect to  
6 each agreement or transaction under  
7 the master agreement that is referred  
8 to in subclause (I), (II), (III), or (IV);  
9 and

10 “(VI) any security agreement or  
11 arrangement or other credit enhance-  
12 ment related to any agreements or  
13 transactions referred to in subclause  
14 (I), (II), (III), (IV), or (V), including  
15 any guarantee or reimbursement obli-  
16 gation in connection with any agree-  
17 ment or transaction referred to in any  
18 such subclause.

19 Such term is applicable for purposes of  
20 this subsection only and shall not be con-  
21 strued or applied so as to challenge or af-  
22 fect the characterization, definition, or  
23 treatment of any swap agreement under  
24 any other statute, regulation, or rule, in-  
25 cluding the Securities Act of 1933, the Se-

1 securities Exchange Act of 1934, the Public  
2 Utility Holding Company Act of 1935, the  
3 Trust Indenture Act of 1939, the Invest-  
4 ment Company Act of 1940, the Invest-  
5 ment Advisers Act of 1940, the Securities  
6 Investor Protection Act of 1970, the Com-  
7 modity Exchange Act, the Gramm-Leach-  
8 Bliley Act, and the Legal Certainty for  
9 Bank Products Act of 2000.”.

10 (2) INSURED CREDIT UNIONS.—Section  
11 207(c)(8)(D) of the Federal Credit Union Act (12  
12 U.S.C. 1787(c)(8)(D)) is amended by adding at the  
13 end the following new clause:

14 “(vi) SWAP AGREEMENT.—The term  
15 ‘swap agreement’ means—

16 “(I) any agreement, including the  
17 terms and conditions incorporated by  
18 reference in any such agreement,  
19 which is an interest rate swap, option,  
20 future, or forward agreement, includ-  
21 ing a rate floor, rate cap, rate collar,  
22 cross-currency rate swap, and basis  
23 swap; a spot, same day-tomorrow, to-  
24 morrow-next, forward, or other for-  
25 eign exchange or precious metals

1 agreement; a currency swap, option,  
2 future, or forward agreement; an equity  
3 index or equity swap, option, future,  
4 or forward agreement; a debt  
5 index or debt swap, option, future, or  
6 forward agreement; a total return,  
7 credit spread or credit swap, option,  
8 future, or forward agreement; a commodity  
9 index or commodity swap, option,  
10 future, or forward agreement; or  
11 a weather swap, weather derivative, or  
12 weather option;

13 “(II) any agreement or transaction  
14 that is similar to any other  
15 agreement or transaction referred to  
16 in this clause and that is of a type  
17 that has been, is presently, or in the  
18 future becomes, the subject of recurrent  
19 dealings in the swap markets (including  
20 terms and conditions incorporated by  
21 reference in such agreement) and that  
22 is a forward, swap, future, or option  
23 on one or more rates, currencies,  
24 commodities, equity securities or other  
25 equity instruments, debt

1 securities or other debt instruments,  
2 quantitative measures associated with  
3 an occurrence, extent of an occur-  
4 rence, or contingency associated with  
5 a financial, commercial, or economic  
6 consequence, or economic or financial  
7 indices or measures of economic or fi-  
8 nancial risk or value;

9 “(III) any combination of agree-  
10 ments or transactions referred to in  
11 this clause;

12 “(IV) any option to enter into  
13 any agreement or transaction referred  
14 to in this clause;

15 “(V) a master agreement that  
16 provides for an agreement or trans-  
17 action referred to in subclause (I),  
18 (II), (III), or (IV), together with all  
19 supplements to any such master  
20 agreement, without regard to whether  
21 the master agreement contains an  
22 agreement or transaction that is not a  
23 swap agreement under this clause, ex-  
24 cept that the master agreement shall  
25 be considered to be a swap agreement

1 under this clause only with respect to  
2 each agreement or transaction under  
3 the master agreement that is referred  
4 to in subclause (I), (II), (III), or (IV);  
5 and

6 “(VI) any security agreement or  
7 arrangement or other credit enhance-  
8 ment related to any agreements or  
9 transactions referred to in subclause  
10 (I), (II), (III), (IV), or (V), including  
11 any guarantee or reimbursement obli-  
12 gation in connection with any agree-  
13 ment or transaction referred to in any  
14 such subclause.

15 Such term is applicable for purposes of  
16 this subsection only and shall not be con-  
17 strued or applied so as to challenge or af-  
18 fect the characterization, definition, or  
19 treatment of any swap agreement under  
20 any other statute, regulation, or rule, in-  
21 cluding the Securities Act of 1933, the Se-  
22 curities Exchange Act of 1934, the Public  
23 Utility Holding Company Act of 1935, the  
24 Trust Indenture Act of 1939, the Invest-  
25 ment Company Act of 1940, the Invest-

1                   ment Advisers Act of 1940, the Securities  
2                   Investor Protection Act of 1970, the Com-  
3                   modity Exchange Act, the Gramm-Leach-  
4                   Bliley Act, and the Legal Certainty for  
5                   Bank Products Act of 2000.”.

6           (g) DEFINITION OF TRANSFER.—

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

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

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

24                           “(viii) TRANSFER.—The term ‘trans-  
25                           fer’ means every mode, direct or indirect,

1 absolute or conditional, voluntary or invol-  
2 untary, of disposing of or parting with  
3 property or with an interest in property,  
4 including retention of title as a security in-  
5 terest and foreclosure of the depository in-  
6 stitution's equity of redemption.”.

7 (h) TREATMENT OF QUALIFIED FINANCIAL CON-  
8 TRACTS.—

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

12 (A) in subparagraph (A)—

13 (i) by striking “paragraph (10)” and  
14 inserting “paragraphs (9) and (10)”;

15 (ii) in clause (i), by striking “to cause  
16 the termination or liquidation” and insert-  
17 ing “such person has to cause the termi-  
18 nation, liquidation, or acceleration”; and

19 (iii) by striking clause (ii) and insert-  
20 ing the following new clause:

21 “(ii) any right under any security  
22 agreement or arrangement or other credit  
23 enhancement related to one or more quali-  
24 fied financial contracts described in clause  
25 (i);” and

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

3 “(ii) any right under any security  
4 agreement or arrangement or other credit  
5 enhancement related to one or more quali-  
6 fied financial contracts described in clause  
7 (i);”.

8 (2) INSURED CREDIT UNIONS.—Section  
9 207(c)(8) of the Federal Credit Union Act (12  
10 U.S.C. 1787(c)(8)) is amended—

11 (A) in subparagraph (A)—

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

14 (ii) in clause (i), by striking “to cause  
15 the termination or liquidation” and insert-  
16 ing “such person has to cause the termi-  
17 nation, liquidation, or acceleration”; and

18 (iii) by striking clause (ii) and insert-  
19 ing the following new clause:

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

1 (B) in subparagraph (E), by striking  
2 clause (ii) and inserting the following new  
3 clause:

4 “(ii) any right under any security  
5 agreement or arrangement or other credit  
6 enhancement related to 1 or more qualified  
7 financial contracts described in clause  
8 (i);”.

9 (i) AVOIDANCE OF TRANSFERS.—

10 (1) FDIC-INSURED DEPOSITORY INSTITU-  
11 TIONS.—Section 11(e)(8)(C)(i) of the Federal De-  
12 posit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is  
13 amended by inserting “section 5242 of the Revised  
14 Statutes of the United States or any other Federal  
15 or State law relating to the avoidance of preferential  
16 or fraudulent transfers,” before “the Corporation”.

17 (2) INSURED CREDIT UNIONS.—Section  
18 207(c)(8)(C)(i) of the Federal Credit Union Act (12  
19 U.S.C. 1787(c)(8)(C)(i)) is amended by inserting  
20 “section 5242 of the Revised Statutes of the United  
21 States or any other Federal or State law relating to  
22 the avoidance of preferential or fraudulent trans-  
23 fers,” before “the Board”.

1 **SEC. 3. AUTHORITY OF THE FDIC AND NCUAB WITH RE-**  
2 **SPECT TO FAILED AND FAILING INSTITU-**  
3 **TIONS.**

4 (a) FEDERAL DEPOSIT INSURANCE CORPORATION.—

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

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

12 (B) by adding at the end the following new  
13 subparagraphs:

14 “(F) CLARIFICATION.—No provision of law  
15 shall be construed as limiting the right or  
16 power of the Corporation, or authorizing any  
17 court or agency to limit or delay, in any man-  
18 ner, the right or power of the Corporation to  
19 transfer any qualified financial contract in ac-  
20 cordance with paragraphs (9) and (10) of this  
21 subsection or to disaffirm or repudiate any such  
22 contract in accordance with subsection (e)(1) of  
23 this section.

24 “(G) WALKAWAY CLAUSES NOT EFFEC-  
25 TIVE.—

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

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

23           (2) TECHNICAL AND CONFORMING AMEND-  
24          MENT.—Section 11(e)(12)(A) of the Federal Deposit  
25          Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amend-

1 ed by inserting “or the exercise of rights or powers  
2 by” after “the appointment of”.

3 (b) NATIONAL CREDIT UNION ADMINISTRATION  
4 BOARD.—

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

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

13 (B) by adding at the end the following new  
14 subparagraphs:

15 “(F) CLARIFICATION.—No provision of law  
16 shall be construed as limiting the right or  
17 power of the Board, or authorizing any court or  
18 agency to limit or delay, in any manner, the  
19 right or power of the Board to transfer any  
20 qualified financial contract in accordance with  
21 paragraphs (9) and (10) of this subsection or to  
22 disaffirm or repudiate any such contract in ac-  
23 cordance with subsection (c)(1) of this section.

24 “(G) WALKAWAY CLAUSES NOT EFFEC-  
25 TIVE.—

1           “(i) IN GENERAL.—Notwithstanding  
2           the provisions of subparagraphs (A) and  
3           (E), and sections 403 and 404 of the Fed-  
4           eral Deposit Insurance Corporation Im-  
5           provement Act of 1991, no walkaway  
6           clause shall be enforceable in a qualified fi-  
7           nancial contract of an insured credit union  
8           in default.

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

23           (2) TECHNICAL AND CONFORMING AMEND-  
24          MENT.—Section 207(c)(12)(A) of the Federal Credit  
25          Union Act (12 U.S.C. 1787(c)(12)(A)) is amended

1 by inserting “or the exercise of rights or powers by”  
2 after “the appointment of”.

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

5 (a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—

6 (1) TRANSFERS OF QUALIFIED FINANCIAL  
7 CONTRACTS TO FINANCIAL INSTITUTIONS.—Section  
8 11(e)(9) of the Federal Deposit Insurance Act (12  
9 U.S.C. 1821(e)(9)) is amended to read as follows:

10 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
11 TRACTS.—

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

17 “(i) transfer to one financial institu-  
18 tion, other than a financial institution for  
19 which a conservator, receiver, trustee in  
20 bankruptcy, or other legal custodian has  
21 been appointed or which is otherwise the  
22 subject of a bankruptcy or insolvency pro-  
23 ceeding—

24 “(I) all qualified financial con-  
25 tracts between any person or any af-

1           filiate of such person and the deposi-  
2           tory institution in default;

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

11                   “(III) all claims of such deposi-  
12          tory institution against such person or  
13          any affiliate of such person under any  
14          such contract; and

15                   “(IV) all property securing or  
16          any other credit enhancement for any  
17          contract described in subclause (I) or  
18          any claim described in subclause (II)  
19          or (III) under any such contract; or

20                   “(ii) transfer none of the qualified fi-  
21          nancial contracts, claims, property or other  
22          credit enhancement referred to in clause (i)  
23          (with respect to such person and any affil-  
24          iate of such person).

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

23           “(C) TRANSFER OF CONTRACTS SUBJECT  
24           TO THE RULES OF A CLEARING ORGANIZA-  
25           TION.—In the event that a conservator or re-

1 ceiver transfers any qualified financial contract  
2 and related claims, property, and credit en-  
3 hancements pursuant to subparagraph (A)(i)  
4 and such contract is cleared by or subject to the  
5 rules of a clearing organization, the clearing or-  
6 ganization shall not be required to accept the  
7 transferee as a member by virtue of the trans-  
8 fer.

9 “(D) DEFINITIONS.—For purposes of this  
10 paragraph, the term ‘financial institution’  
11 means a broker or dealer, a depository institu-  
12 tion, a futures commission merchant, or any  
13 other institution, as determined by the Corpora-  
14 tion by regulation to be a financial institution,  
15 and the term ‘clearing organization’ has the  
16 same meaning as in section 402 of the Federal  
17 Deposit Insurance Corporation Improvement  
18 Act of 1991.”.

19 (2) NOTICE TO QUALIFIED FINANCIAL CON-  
20 TRACT COUNTERPARTIES.—Section 11(e)(10)(A) of  
21 the Federal Deposit Insurance Act (12 U.S.C.  
22 1821(e)(10)(A)) is amended in the material imme-  
23 diately following clause (ii) by striking “the conser-  
24 vator” and all that follows through the period and  
25 inserting the following: “the conservator or receiver

1 shall notify any person who is a party to any such  
2 contract of such transfer by 5:00 p.m. (eastern time)  
3 on the business day following the date of the ap-  
4 pointment of the receiver in the case of a receiver-  
5 ship, or the business day following such transfer in  
6 the case of a conservatorship.”.

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

11 (A) by redesignating subparagraph (B) as  
12 subparagraph (D); and

13 (B) by inserting after subparagraph (A)  
14 the following new subparagraphs:

15 “(B) CERTAIN RIGHTS NOT ENFORCE-  
16 ABLE.—

17 “(i) RECEIVERSHIP.—A person who is  
18 a party to a qualified financial contract  
19 with an insured depository institution may  
20 not exercise any right that such person has  
21 to terminate, liquidate, or net such con-  
22 tract under paragraph (8)(A) of this sub-  
23 section or section 403 or 404 of the Fed-  
24 eral Deposit Insurance Corporation Im-  
25 provement Act of 1991, solely by reason of

1 or incidental to the appointment of a re-  
2 ceiver for the depository institution (or the  
3 insolvency or financial condition of the de-  
4 pository institution for which the receiver  
5 has been appointed)—

6 “(I) until 5:00 p.m. (eastern  
7 time) on the business day following  
8 the date of the appointment of the re-  
9 ceiver; or

10 “(II) after the person has re-  
11 ceived notice that the contract has  
12 been transferred pursuant to para-  
13 graph (9)(A).

14 “(ii) CONSERVATORSHIP.—A person  
15 who is a party to a qualified financial con-  
16 tract with an insured depository institution  
17 may not exercise any right that such per-  
18 son has to terminate, liquidate, or net such  
19 contract under paragraph (8)(E) of this  
20 subsection or section 403 or 404 of the  
21 Federal Deposit Insurance Corporation  
22 Improvement Act of 1991, solely by reason  
23 of or incidental to the appointment of a  
24 conservator for the depository institution  
25 (or the insolvency or financial condition of

1 the depository institution for which the  
2 conservator has been appointed).

3 “(iii) NOTICE.—For purposes of this  
4 paragraph, the Corporation as receiver or  
5 conservator of an insured depository insti-  
6 tution shall be deemed to have notified a  
7 person who is a party to a qualified finan-  
8 cial contract with such depository institu-  
9 tion if the Corporation has taken steps  
10 reasonably calculated to provide notice to  
11 such person by the time specified in sub-  
12 paragraph (A).

13 “(C) TREATMENT OF BRIDGE BANKS.—  
14 The following institutions shall not be consid-  
15 ered to be a financial institution for which a  
16 conservator, receiver, trustee in bankruptcy, or  
17 other legal custodian has been appointed or  
18 which is otherwise the subject of a bankruptcy  
19 or insolvency proceeding for purposes of para-  
20 graph (9):

21 “(i) A bridge bank.

22 “(ii) A depository institution orga-  
23 nized by the Corporation, for which a con-  
24 servator is appointed either—

1                   “(I) immediately upon the orga-  
2                   nization of the institution; or

3                   “(II) at the time of a purchase  
4                   and assumption transaction between  
5                   the depository institution and the Cor-  
6                   poration as receiver for a depository  
7                   institution in default.”.

8                   (b) INSURED CREDIT UNIONS.—

9                   (1) TRANSFERS OF QUALIFIED FINANCIAL CON-  
10                  TRACTS TO FINANCIAL INSTITUTIONS.—Section  
11                  207(c)(9) of the Federal Credit Union Act (12  
12                  U.S.C. 1787(c)(9)) is amended to read as follows:

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

15                  “(A) IN GENERAL.—In making any trans-  
16                  fer of assets or liabilities of a credit union in  
17                  default which includes any qualified financial  
18                  contract, the conservator or liquidating agent  
19                  for such credit union shall either—

20                  “(i) transfer to 1 financial institution,  
21                  other than a financial institution for which  
22                  a conservator, receiver, trustee in bank-  
23                  ruptcy, or other legal custodian has been  
24                  appointed or which is otherwise the subject  
25                  of a bankruptcy or insolvency proceeding—

1           “(I) all qualified financial con-  
2           tracts between any person or any af-  
3           filiate of such person and the credit  
4           union in default;

5           “(II) all claims of such person or  
6           any affiliate of such person against  
7           such credit union under any such con-  
8           tract (other than any claim which,  
9           under the terms of any such contract,  
10          is subordinated to the claims of gen-  
11          eral unsecured creditors of such credit  
12          union);

13          “(III) all claims of such credit  
14          union against such person or any af-  
15          filiate of such person under any such  
16          contract; and

17          “(IV) all property securing or  
18          any other credit enhancement for any  
19          contract described in subclause (I) or  
20          any claim described in subclause (II)  
21          or (III) under any such contract; or

22          “(ii) transfer none of the qualified fi-  
23          nancial contracts, claims, property or other  
24          credit enhancement referred to in clause (i)

1 (with respect to such person and any affil-  
2 iate of such person).

3 “(B) TRANSFER TO FOREIGN BANK, FOR-  
4 EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
5 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-  
6 STITUTION.—In transferring any qualified fi-  
7 nancial contracts and related claims and prop-  
8 erty under subparagraph (A)(i), the conservator  
9 or liquidating agent for the credit union shall  
10 not make such transfer to a foreign bank, fi-  
11 nancial institution organized under the laws of  
12 a foreign country, or a branch or agency of a  
13 foreign bank or financial institution unless,  
14 under the law applicable to such bank, financial  
15 institution, branch or agency, to the qualified  
16 financial contracts, and to any netting contract,  
17 any security agreement or arrangement or other  
18 credit enhancement related to 1 or more quali-  
19 fied financial contracts, the contractual rights  
20 of the parties to such qualified financial con-  
21 tracts, netting contracts, security agreements or  
22 arrangements, or other credit enhancements are  
23 enforceable substantially to the same extent as  
24 permitted under this section.

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

12           “(D) DEFINITIONS.—For purposes of this  
13 paragraph—

14           “(i) the term ‘financial institution’  
15 means a broker or dealer, a depository in-  
16 stitution, a futures commission merchant,  
17 a credit union, or any other institution, as  
18 determined by the Board by regulation to  
19 be a financial institution; and

20           “(ii) the term ‘clearing organization’  
21 has the same meaning as in section 402 of  
22 the Federal Deposit Insurance Corporation  
23 Improvement Act of 1991.”.

24           (2) NOTICE TO QUALIFIED FINANCIAL CON-  
25 TRACT COUNTERPARTIES.—Section 207(c)(10)(A) of

1 the Federal Credit Union Act (12 U.S.C.  
2 1787(c)(10)(A)) is amended in the material imme-  
3 diately following clause (ii) by striking “the conser-  
4 vator” and all that follows through the period and  
5 inserting the following: “the conservator or liqui-  
6 dating agent shall notify any person who is a party  
7 to any such contract of such transfer by 5:00 p.m.  
8 (eastern time) on the business day following the date  
9 of the appointment of the liquidating agent in the  
10 case of a liquidation, or the business day following  
11 such transfer in the case of a conservatorship.”.

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

16 (A) by redesignating subparagraph (B) as  
17 subparagraph (D); and

18 (B) by inserting after subparagraph (A)  
19 the following new subparagraphs:

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

22 “(i) LIQUIDATION.—A person who is  
23 a party to a qualified financial contract  
24 with an insured credit union may not exer-  
25 cise any right that such person has to ter-

1           minate, liquidate, or net such contract  
2           under paragraph (8)(A) of this subsection  
3           or section 403 or 404 of the Federal De-  
4           posit Insurance Corporation Improvement  
5           Act of 1991, solely by reason of or inci-  
6           dental to the appointment of a liquidating  
7           agent for the credit union institution (or  
8           the insolvency or financial condition of the  
9           credit union for which the liquidating  
10          agent has been appointed)—

11                   “(I) until 5:00 p.m. (eastern  
12                   time) on the business day following  
13                   the date of the appointment of the liq-  
14                   uidating agent; or

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

19                   “(ii) CONSERVATORSHIP.—A person  
20                   who is a party to a qualified financial con-  
21                   tract with an insured credit union may not  
22                   exercise any right that such person has to  
23                   terminate, liquidate, or net such contract  
24                   under paragraph (8)(E) of this subsection  
25                   or section 403 or 404 of the Federal De-

1           posit Insurance Corporation Improvement  
2           Act of 1991, solely by reason of or inci-  
3           dental to the appointment of a conservator  
4           for the credit union or the insolvency or fi-  
5           nancial condition of the credit union for  
6           which the conservator has been appointed).

7           “(iii) NOTICE.—For purposes of this  
8           paragraph, the Board as conservator or  
9           liquidating agent of an insured credit  
10          union shall be deemed to have notified a  
11          person who is a party to a qualified finan-  
12          cial contract with such credit union if the  
13          Board has taken steps reasonably cal-  
14          culated to provide notice to such person by  
15          the time specified in subparagraph (A).

16          “(C) TREATMENT OF BRIDGE BANKS.—  
17          The following institutions shall not be consid-  
18          ered to be a financial institution for which a  
19          conservator, receiver, trustee in bankruptcy, or  
20          other legal custodian has been appointed or  
21          which is otherwise the subject of a bankruptcy  
22          or insolvency proceeding for purposes of para-  
23          graph (9):

24                 “(i) A bridge bank.

1                   “(ii) A credit union organized by the  
2                   Board, for which a conservator is ap-  
3                   pointed either—

4                                 “(I) immediately upon the orga-  
5                                 nization of the credit union; or

6                                 “(II) at the time of a purchase  
7                                 and assumption transaction between  
8                                 the credit union and the Board as re-  
9                                 ceiver for a credit union in default.”.

10 **SEC. 5. AMENDMENTS RELATING TO DISAFFIRMANCE OR**  
11 **REPUDIATION OF QUALIFIED FINANCIAL**  
12 **CONTRACTS.**

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

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

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

20                                 “(11) DISAFFIRMANCE OR REPUDIATION OF  
21                                 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
22                                 the rights of disaffirmance or repudiation of a con-  
23                                 servator or receiver with respect to any qualified fi-  
24                                 nancial contract to which an insured depository in-

1       stitution is a party, the conservator or receiver for  
2       such institution shall either—

3               “(A) disaffirm or repudiate all qualified fi-  
4               nancial contracts between—

5                       “(i) any person or any affiliate of  
6                       such person; and

7                       “(ii) the depository institution in de-  
8                       fault; or

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

13           (3) by adding at the end the following new  
14           paragraph:

15               “(17) SAVINGS CLAUSE.—The meanings of  
16               terms used in this subsection are applicable for pur-  
17               poses of this subsection only, and shall not be con-  
18               strued or applied so as to challenge or affect the  
19               characterization, definition, or treatment of any  
20               similar terms under any other statute, regulation, or  
21               rule, including the Gramm-Leach-Bliley Act, the  
22               Legal Certainty for Bank Products Act of 2000, the  
23               securities laws (as that term is defined in section  
24               3(a)(47) of the Securities Exchange Act of 1934),  
25               and the Commodity Exchange Act.”.

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

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

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

9 “(11) DISAFFIRMANCE OR REPUDIATION OF  
10 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
11 the rights of disaffirmance or repudiation of a con-  
12 servator or liquidating agent with respect to any  
13 qualified financial contract to which an insured cred-  
14 it union is a party, the conservator or liquidating  
15 agent for such credit union shall either—

16 “(A) disaffirm or repudiate all qualified fi-  
17 nancial contracts between—

18 “(i) any person or any affiliate of  
19 such person; and

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

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

1           (3) by adding at the end the following new  
2 paragraph:

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

14 **SEC. 6. CLARIFYING AMENDMENT RELATING TO MASTER**  
15 **AGREEMENTS.**

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

20                   “(vii) TREATMENT OF MASTER  
21 AGREEMENT AS ONE AGREEMENT.—Any  
22 master agreement for any contract or  
23 agreement described in any preceding  
24 clause of this subparagraph (or any master  
25 agreement for such master agreement or

1 agreements), together with all supplements  
2 to such master agreement, shall be treated  
3 as a single agreement and a single quali-  
4 fied financial contract. If a master agree-  
5 ment contains provisions relating to agree-  
6 ments or transactions that are not them-  
7 selves qualified financial contracts, the  
8 master agreement shall be deemed to be a  
9 qualified financial contract only with re-  
10 spect to those transactions that are them-  
11 selves qualified financial contracts.”.

12 (b) INSURED CREDIT UNIONS.—Section  
13 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C.  
14 1787(c)(8)(D)) is amended by inserting after clause (vi)  
15 (as added by section 2(f)) the following new clause:

16 “(vii) TREATMENT OF MASTER  
17 AGREEMENT AS ONE AGREEMENT.—Any  
18 master agreement for any contract or  
19 agreement described in any preceding  
20 clause of this subparagraph (or any master  
21 agreement for such master agreement or  
22 agreements), together with all supplements  
23 to such master agreement, shall be treated  
24 as a single agreement and a single quali-  
25 fied financial contract. If a master agree-

1           ment contains provisions relating to agree-  
2           ments or transactions that are not them-  
3           selves qualified financial contracts, the  
4           master agreement shall be deemed to be a  
5           qualified financial contract only with re-  
6           spect to those transactions that are them-  
7           selves qualified financial contracts.”.

8   **SEC. 7. FEDERAL DEPOSIT INSURANCE CORPORATION IM-**  
9                           **PROVEMENT ACT OF 1991.**

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

13           (1) in paragraph (2)—

14                   (A) in subparagraph (A)(ii), by inserting  
15           before the semicolon “, or is exempt from such  
16           registration by order of the Securities and Ex-  
17           change Commission”; and

18                   (B) in subparagraph (B), by inserting be-  
19           fore the period “, that has been granted an ex-  
20           emption under section 4(c)(1) of the Com-  
21           modity Exchange Act, or that is a multilateral  
22           clearing organization (as defined in section 408  
23           of this Act)”; and

24           (2) in paragraph (6)—

1 (A) by redesignating subparagraphs (B)  
2 through (D) as subparagraphs (C) through (E),  
3 respectively;

4 (B) by inserting after subparagraph (A)  
5 the following new subparagraph:

6 “(B) an uninsured national bank or an un-  
7 insured State bank that is a member of the  
8 Federal Reserve System, if the national bank or  
9 State member bank is not eligible to make ap-  
10 plication to become an insured bank under sec-  
11 tion 5 of the Federal Deposit Insurance Act;”;  
12 and

13 (C) by amending subparagraph (C) (as re-  
14 designated) to read as follows:

15 “(C) a branch or agency of a foreign bank,  
16 a foreign bank and any branch or agency of the  
17 foreign bank, or the foreign bank that estab-  
18 lished the branch or agency, as those terms are  
19 defined in section 1(b) of the International  
20 Banking Act of 1978;”;

21 (3) in paragraph (11), by inserting before the  
22 period “and any other clearing organization with  
23 which such clearing organization has a netting con-  
24 tract”;

1           (4) by amending paragraph (14)(A)(i) to read  
2 as follows:

3                   “(i) means a contract or agreement  
4                   between 2 or more financial institutions,  
5                   clearing organizations, or members that  
6                   provides for netting present or future pay-  
7                   ment obligations or payment entitlements  
8                   (including liquidation or close out values  
9                   relating to such obligations or entitle-  
10                  ments) among the parties to the agree-  
11                  ment; and”;

12           (5) by adding at the end the following new  
13 paragraph:

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

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

23                   (1) by striking subsection (a) and inserting the  
24                   following:

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

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

16           “(f) ENFORCEABILITY OF SECURITY AGREE-  
17 MENTS.—The provisions of any security agreement or ar-  
18 rangement or other credit enhancement related to one or  
19 more netting contracts between any 2 financial institu-  
20 tions shall be enforceable in accordance with their terms  
21 (except as provided in section 561(b)(2) of title 11, United  
22 States Code), and shall not be stayed, avoided, or other-  
23 wise limited by any State or Federal law (other than para-  
24 graphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the  
25 Federal Deposit Insurance Act, paragraphs (8)(E),

1 (8)(F), and (10)(B) of section 207(c) of the Federal Cred-  
2 it Union Act, and section 5(b)(2) of the Securities Investor  
3 Protection Act of 1970).”.

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

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

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

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

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

14       (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-  
15 SURED NATIONAL BANKS, UNINSURED FEDERAL  
16 BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE  
17 MEMBER BANKS, AND EDGE ACT CORPORATIONS.—The  
18 Federal Deposit Insurance Corporation Improvement Act  
19 of 1991 (12 U.S.C. 4401 et seq.) is amended—

20               (1) by redesignating section 407 as section  
21               407A; and

22               (2) by inserting after section 406 the following  
23               new section:

1 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**  
2 **NATIONAL BANKS, UNINSURED FEDERAL**  
3 **BRANCHES AND AGENCIES, CERTAIN UNIN-**  
4 **SURED STATE MEMBER BANKS, AND EDGE**  
5 **ACT CORPORATIONS.**

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

15 “(1) any reference to the ‘Corporation as re-  
16 ceiver’ or ‘the receiver or the Corporation’ shall refer  
17 to the receiver appointed by the Comptroller of the  
18 Currency in the case of an uninsured national bank  
19 or uninsured Federal branch or agency, or to the re-  
20 ceiver appointed by the Board of Governors of the  
21 Federal Reserve System in the case of a corporation  
22 chartered under section 25A of the Federal Reserve  
23 Act or an uninsured State member bank;

24 “(2) any reference to the ‘Corporation’ (other  
25 than in section 11(e)(8)(D) of such Act), the ‘Cor-  
26 poration, whether acting as such or as conservator

1 or receiver’, a ‘receiver’, or a ‘conservator’ shall refer  
2 to the receiver or conservator appointed by the  
3 Comptroller of the Currency in the case of an unin-  
4 sured national bank or uninsured Federal branch or  
5 agency, or to the receiver or conservator appointed  
6 by the Board of Governors of the Federal Reserve  
7 System in the case of a corporation chartered under  
8 section 25A of the Federal Reserve Act or an unin-  
9 sured State member bank; and

10 “(3) any reference to an ‘insured depository in-  
11 stitution’ or ‘depository institution’ shall refer to an  
12 uninsured national bank, an uninsured Federal  
13 branch or Federal agency, a corporation chartered  
14 under section 25A of the Federal Reserve Act, or an  
15 uninsured State member bank which operates, or op-  
16 erates as, a multilateral clearing organization pursu-  
17 ant to section 409 of this Act.

18 “(b) LIABILITY.—The liability of a receiver or conser-  
19 vator of an uninsured national bank, uninsured Federal  
20 branch or agency, a corporation chartered under section  
21 25A of the Federal Reserve Act, or an uninsured State  
22 member bank which operates, or operates as, a multilat-  
23 eral clearing organization pursuant to section 409 of this  
24 Act, shall be determined in the same manner and subject  
25 to the same limitations that apply to receivers and con-

1 servators of insured depository institutions under section  
2 11(e) of the Federal Deposit Insurance Act.

3 “(c) REGULATORY AUTHORITY.—

4 “(1) IN GENERAL.—The Comptroller of the  
5 Currency in the case of an uninsured national bank  
6 or uninsured Federal branch or agency and the  
7 Board of Governors of the Federal Reserve System  
8 in the case of a corporation chartered under section  
9 25A of the Federal Reserve Act, or an uninsured  
10 State member bank that operates, or operates as, a  
11 multilateral clearing organization pursuant to sec-  
12 tion 409 of this Act, in consultation with the Fed-  
13 eral Deposit Insurance Corporation, may each pro-  
14 mulgate regulations solely to implement this section.

15 “(2) SPECIFIC REQUIREMENT.—In promul-  
16 gating regulations, limited solely to implementing  
17 paragraphs (8), (9), (10), and (11) of section 11(e)  
18 of the Federal Deposit Insurance Act, the Comp-  
19 troller of the Currency and the Board of Governors  
20 of the Federal Reserve System each shall ensure  
21 that the regulations generally are consistent with the  
22 regulations and policies of the Federal Deposit In-  
23 surance Corporation adopted pursuant to the Fed-  
24 eral Deposit Insurance Act.

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

5 **SEC. 8. BANKRUPTCY CODE AMENDMENTS.**

6       (a) DEFINITIONS OF FORWARD CONTRACT, REPUR-  
7 CHASE AGREEMENT, SECURITIES CLEARING AGENCY,  
8 SWAP AGREEMENT, COMMODITY CONTRACT, AND SECU-  
9 RITIES CONTRACT.—Title 11, United States Code, is  
10 amended—

11               (1) in section 101—

12                       (A) in paragraph (25)—

13                               (i) by striking “means a contract”  
14                               and inserting “means—

15                               “(A) a contract”;

16                               (ii) by striking “, or any combination  
17                               thereof or option thereon;” and inserting  
18                               “, or any other similar agreement;”; and

19                               (iii) by adding at the end the fol-  
20                               lowing:

21                               “(B) any combination of agreements or  
22                               transactions referred to in subparagraphs (A)  
23                               and (C);

1           “(C) any option to enter into an agreement  
2 or transaction referred to in subparagraph (A)  
3 or (B);

4           “(D) a master agreement that provides for  
5 an agreement or transaction referred to in sub-  
6 paragraph (A), (B), or (C), together with all  
7 supplements to any such master agreement,  
8 without regard to whether such master agree-  
9 ment provides for an agreement or transaction  
10 that is not a forward contract under this para-  
11 graph, except that such master agreement shall  
12 be considered to be a forward contract under  
13 this paragraph only with respect to each agree-  
14 ment or transaction under such master agree-  
15 ment that is referred to in subparagraph (A),  
16 (B), or (C); or

17           “(E) any security agreement or arrange-  
18 ment, or other credit enhancement related to  
19 any agreement or transaction referred to in  
20 subparagraph (A), (B), (C), or (D), including  
21 any guarantee or reimbursement obligation by  
22 or to a forward contract merchant or financial  
23 participant in connection with any agreement or  
24 transaction referred to in any such subpara-  
25 graph, but not to exceed the damages in con-

1 nection with any such agreement or transaction,  
2 measured in accordance with section 562 of this  
3 title;”;

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

7 (C) by amending paragraph (47) to read  
8 as follows:

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

11 “(A) means—

12 “(i) an agreement, including related  
13 terms, which provides for the transfer of  
14 one or more certificates of deposit, mort-  
15 gage related securities (as defined in sec-  
16 tion 3 of the Securities Exchange Act of  
17 1934), mortgage loans, interests in mort-  
18 gage related securities or mortgage loans,  
19 eligible bankers’ acceptances, qualified for-  
20 eign government securities (defined as a  
21 security that is a direct obligation of, or  
22 that is fully guaranteed by, the central  
23 government of a member of the Organiza-  
24 tion for Economic Cooperation and Devel-  
25 opment), or securities that are direct obli-

1 gations of, or that are fully guaranteed by,  
2 the United States or any agency of the  
3 United States against the transfer of funds  
4 by the transferee of such certificates of de-  
5 posit, eligible bankers' acceptances, securi-  
6 ties, mortgage loans, or interests, with a  
7 simultaneous agreement by such transferee  
8 to transfer to the transferor thereof certifi-  
9 cates of deposit, eligible bankers' accept-  
10 ance, securities, mortgage loans, or inter-  
11 ests of the kind described in this clause, at  
12 a date certain not later than 1 year after  
13 such transfer or on demand, against the  
14 transfer of funds;

15 “(ii) any combination of agreements  
16 or transactions referred to in clauses (i)  
17 and (iii);

18 “(iii) an option to enter into an agree-  
19 ment or transaction referred to in clause  
20 (i) or (ii);

21 “(iv) a master agreement that pro-  
22 vides for an agreement or transaction re-  
23 ferred to in clause (i), (ii), or (iii), together  
24 with all supplements to any such master  
25 agreement, without regard to whether such

1 master agreement provides for an agree-  
2 ment or transaction that is not a repur-  
3 chase agreement under this paragraph, ex-  
4 cept that such master agreement shall be  
5 considered to be a repurchase agreement  
6 under this paragraph only with respect to  
7 each agreement or transaction under the  
8 master agreement that is referred to in  
9 clause (i), (ii), or (iii); or

10 “(v) any security agreement or ar-  
11 rangement or other credit enhancement re-  
12 lated to any agreement or transaction re-  
13 ferred to in clause (i), (ii), (iii), or (iv), in-  
14 cluding any guarantee or reimbursement  
15 obligation by or to a repo participant or fi-  
16 nancial participant in connection with any  
17 agreement or transaction referred to in  
18 any such clause, but not to exceed the  
19 damages in connection with any such  
20 agreement or transaction, measured in ac-  
21 cordance with section 562 of this title; and

22 “(B) does not include a repurchase obliga-  
23 tion under a participation in a commercial  
24 mortgage loan;”;

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

5 (E) by amending paragraph (53B) to read  
6 as follows:

7 “(53B) ‘swap agreement’—

8 “(A) means—

9 “(i) any agreement, including the  
10 terms and conditions incorporated by ref-  
11 erence in such agreement, which is—

12 “(I) an interest rate swap, op-  
13 tion, future, or forward agreement, in-  
14 cluding a rate floor, rate cap, rate col-  
15 lar, cross-currency rate swap, and  
16 basis swap;

17 “(II) a spot, same day-tomorrow,  
18 tomorrow-next, forward, or other for-  
19 eign exchange or precious metals  
20 agreement;

21 “(III) a currency swap, option,  
22 future, or forward agreement;

23 “(IV) an equity index or equity  
24 swap, option, future, or forward  
25 agreement;

1           “(V) a debt index or debt swap,  
2           option, future, or forward agreement;

3           “(VI) a total return, credit  
4           spread or credit swap, option, future,  
5           or forward agreement;

6           “(VII) a commodity index or a  
7           commodity swap, option, future, or  
8           forward agreement; or

9           “(VIII) a weather swap, weather  
10          derivative, or weather option;

11          “(ii) any agreement or transaction  
12          that is similar to any other agreement or  
13          transaction referred to in this paragraph  
14          and that—

15               “(I) is of a type that has been, is  
16               presently, or in the future becomes,  
17               the subject of recurrent dealings in  
18               the swap markets (including terms  
19               and conditions incorporated by ref-  
20               erence therein); and

21               “(II) is a forward, swap, future,  
22               or option on one or more rates, cur-  
23               rencies, commodities, equity securities,  
24               or other equity instruments, debt se-  
25               curities or other debt instruments,

1 quantitative measures associated with  
2 an occurrence, extent of an occur-  
3 rence, or contingency associated with  
4 a financial, commercial, or economic  
5 consequence, or economic or financial  
6 indices or measures of economic or fi-  
7 nancial risk or value;

8 “(iii) any combination of agreements  
9 or transactions referred to in this subpara-  
10 graph;

11 “(iv) any option to enter into an  
12 agreement or transaction referred to in  
13 this subparagraph;

14 “(v) a master agreement that provides  
15 for an agreement or transaction referred to  
16 in clause (i), (ii), (iii), or (iv), together  
17 with all supplements to any such master  
18 agreement, and without regard to whether  
19 the master agreement contains an agree-  
20 ment or transaction that is not a swap  
21 agreement under this paragraph, except  
22 that the master agreement shall be consid-  
23 ered to be a swap agreement under this  
24 paragraph only with respect to each agree-  
25 ment or transaction under the master

1 agreement that is referred to in clause (i),  
2 (ii), (iii), or (iv); or

3 “(vi) any security agreement or ar-  
4 rangement or other credit enhancement re-  
5 lated to any agreements or transactions re-  
6 ferred to in clause (i) through (v), includ-  
7 ing any guarantee or reimbursement obli-  
8 gation by or to a swap participant or fi-  
9 nancial participant in connection with any  
10 agreement or transaction referred to in  
11 any such clause, but not to exceed the  
12 damages in connection with any such  
13 agreement or transaction, measured in ac-  
14 cordance with section 562 of this title; and

15 “(B) is applicable for purposes of this title  
16 only, and shall not be construed or applied so  
17 as to challenge or affect the characterization,  
18 definition, or treatment of any swap agreement  
19 under any other statute, regulation, or rule, in-  
20 cluding the Securities Act of 1933, the Securi-  
21 ties Exchange Act of 1934, the Public Utility  
22 Holding Company Act of 1935, the Trust In-  
23 denture Act of 1939, the Investment Company  
24 Act of 1940, the Investment Advisers Act of  
25 1940, the Securities Investor Protection Act of

1           1970, the Commodity Exchange Act, the  
2           Gramm-Leach-Bliley Act, and the Legal Cer-  
3           tainty for Bank Products Act of 2000;”;

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

6           “(7) ‘securities contract’—

7           “(A) means—

8                   “(i) a contract for the purchase, sale,  
9                   or loan of a security, a certificate of de-  
10                  posit, a mortgage loan or any interest in a  
11                  mortgage loan, a group or index of securi-  
12                  ties, certificates of deposit, or mortgage  
13                  loans or interests therein (including an in-  
14                  terest therein or based on the value there-  
15                  of), or option on any of the foregoing, in-  
16                  cluding an option to purchase or sell any  
17                  such security, certificate of deposit, mort-  
18                  gage loan, interest, group or index, or op-  
19                  tion, and including any repurchase or re-  
20                  verse repurchase transaction on any such  
21                  security, certificate of deposit, mortgage  
22                  loan, interest, group or index, or option;

23                   “(ii) any option entered into on a na-  
24                  tional securities exchange relating to for-  
25                  eign currencies;

1           “(iii) the guarantee by or to any secu-  
2           rities clearing agency of a settlement of  
3           cash, securities, certificates of deposit,  
4           mortgage loans or interests therein, group  
5           or index of securities, or mortgage loans or  
6           interests therein (including any interest  
7           therein or based on the value thereof), or  
8           option on any of the foregoing, including  
9           an option to purchase or sell any such se-  
10          curity, certificate of deposit, mortgage  
11          loan, interest, group or index, or option;

12           “(iv) any margin loan;

13           “(v) any other agreement or trans-  
14          action that is similar to an agreement or  
15          transaction referred to in this subpara-  
16          graph;

17           “(vi) any combination of the agree-  
18          ments or transactions referred to in this  
19          subparagraph;

20           “(vii) any option to enter into any  
21          agreement or transaction referred to in  
22          this subparagraph;

23           “(viii) a master agreement that pro-  
24          vides for an agreement or transaction re-  
25          ferred to in clause (i), (ii), (iii), (iv), (v),

1 (vi), or (vii), together with all supplements  
2 to any such master agreement, without re-  
3 gard to whether the master agreement pro-  
4 vides for an agreement or transaction that  
5 is not a securities contract under this sub-  
6 paragraph, except that such master agree-  
7 ment shall be considered to be a securities  
8 contract under this subparagraph only with  
9 respect to each agreement or transaction  
10 under such master agreement that is re-  
11 ferred to in clause (i), (ii), (iii), (iv), (v),  
12 (vi), or (vii); or

13 “(ix) any security agreement or ar-  
14 rangement or other credit enhancement re-  
15 lated to any agreement or transaction re-  
16 ferred to in this subparagraph, including  
17 any guarantee or reimbursement obligation  
18 by or to a stockbroker, securities clearing  
19 agency, financial institution, or financial  
20 participant in connection with any agree-  
21 ment or transaction referred to in this sub-  
22 paragraph, but not to exceed the damages  
23 in connection with any such agreement or  
24 transaction, measured in accordance with  
25 section 562 of this title; and

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

4           (3) in section 761(4)—

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

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

8           “(F) any other agreement or transaction  
9           that is similar to an agreement or transaction  
10          referred to in this paragraph;

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

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

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

1           respect to each agreement or transaction under  
2           the master agreement that is referred to in sub-  
3           paragraph (A), (B), (C), (D), (E), (F), (G), or  
4           (H); or

5           “(J) any security agreement or arrange-  
6           ment or other credit enhancement related to  
7           any agreement or transaction referred to in this  
8           paragraph, including any guarantee or reim-  
9           bursement obligation by or to a commodity  
10          broker or financial participant in connection  
11          with any agreement or transaction referred to  
12          in this paragraph, but not to exceed the dam-  
13          ages in connection with any such agreement or  
14          transaction, measured in accordance with sec-  
15          tion 562 of this title;”.

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

20                 (1) by striking paragraph (22) and inserting  
21          the following:

22                 “(22) ‘financial institution’ means—

23                         “(A) a Federal reserve bank, or an entity  
24                         (domestic or foreign) that is a commercial or  
25                         savings bank, industrial savings bank, savings

1 and loan association, trust company, federally-  
2 insured credit union, or receiver or conservator  
3 for such entity and, when any such Federal re-  
4 serve bank, receiver, conservator or entity is  
5 acting as agent or custodian for a customer in  
6 connection with a securities contract (as defined  
7 in section 741) such customer; or

8 “(B) in connection with a securities con-  
9 tract (as defined in section 741) an investment  
10 company registered under the Investment Com-  
11 pany Act of 1940;”;

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

14 “(22A) ‘financial participant’ means—

15 “(A) an entity that, at the time it enters  
16 into a securities contract, commodity contract,  
17 swap agreement, repurchase agreement, or for-  
18 ward contract, or at the time of the filing of the  
19 petition, has one or more agreements or trans-  
20 actions described in paragraph (1), (2), (3), (4),  
21 (5), or (6) of section 561(a) with the debtor or  
22 any other entity (other than an affiliate) of a  
23 total gross dollar value of not less than  
24 \$1,000,000,000 in notional or actual principal  
25 amount outstanding on any day during the pre-

1           vious 15-month period, or has gross mark-to-  
2           market positions of not less than \$100,000,000  
3           (aggregated across counterparties) in one or  
4           more such agreements or transactions with the  
5           debtor or any other entity (other than an affil-  
6           iate) on any day during the previous 15-month  
7           period; or

8                   “(B) a clearing organization (as defined in  
9                   section 402 of the Federal Deposit Insurance  
10                  Corporation Improvement Act of 1991);”;

11           (3) by striking paragraph (26) and inserting  
12           the following:

13                   “(26) ‘forward contract merchant’ means a  
14                   Federal reserve bank, or an entity the business of  
15                   which consists in whole or in part of entering into  
16                   forward contracts as or with merchants in a com-  
17                   modity (as defined in section 761) or any similar  
18                   good, article, service, right, or interest which is pres-  
19                   ently or in the future becomes the subject of dealing  
20                   in the forward contract trade;”.

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

1 “(38A) ‘master netting agreement’—

2 “(A) means an agreement providing for  
3 the exercise of rights, including rights of net-  
4 ting, setoff, liquidation, termination, accelera-  
5 tion, or close out, under or in connection with  
6 one or more contracts that are described in any  
7 one or more of paragraphs (1) through (5) of  
8 section 561(a), or any security agreement or ar-  
9 rangement or other credit enhancement related  
10 to one or more of the foregoing, including any  
11 guarantee or reimbursement obligation related  
12 to 1 or more of the foregoing; and

13 “(B) if the agreement contains provisions  
14 relating to agreements or transactions that are  
15 not contracts described in paragraphs (1)  
16 through (5) of section 561(a), shall be deemed  
17 to be a master netting agreement only with re-  
18 spect to those agreements or transactions that  
19 are described in any one or more of paragraphs  
20 (1) through (5) of section 561(a);

21 “(38B) ‘master netting agreement participant’  
22 means an entity that, at any time before the filing  
23 of the petition, is a party to an outstanding master  
24 netting agreement with the debtor;”.

1 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,  
2 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-  
3 CHASE AGREEMENTS, AND MASTER NETTING AGREE-  
4 MENTS UNDER THE AUTOMATIC-STAY.—

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

7 (A) in paragraph (6), by inserting  
8 “, pledged to, under the control of,” after “held  
9 by”;

10 (B) in paragraph (7), by inserting  
11 “, pledged to, under the control of,” after “held  
12 by”;

13 (C) by striking paragraph (17) and insert-  
14 ing the following:

15 “(17) under subsection (a), of the setoff by a  
16 swap participant or financial participant of a mutual  
17 debt and claim under or in connection with one or  
18 more swap agreements that constitutes the setoff of  
19 a claim against the debtor for any payment or other  
20 transfer of property due from the debtor under or in  
21 connection with any swap agreement against any  
22 payment due to the debtor from the swap partici-  
23 pant or financial participant under or in connection  
24 with any swap agreement or against cash, securities,  
25 or other property held by, pledged to, under the con-

1 trol of, or due from such swap participant or finan-  
2 cial participant to margin, guarantee, secure, or set-  
3 tle any swap agreement;”;

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

6 (E) by inserting after paragraph (18) the  
7 following new paragraph:

8 “(19) under subsection (a), of the setoff by a  
9 master netting agreement participant of a mutual  
10 debt and claim under or in connection with one or  
11 more master netting agreements or any contract or  
12 agreement subject to such agreements that con-  
13 stitutes the setoff of a claim against the debtor for  
14 any payment or other transfer of property due from  
15 the debtor under or in connection with such agree-  
16 ments or any contract or agreement subject to such  
17 agreements against any payment due to the debtor  
18 from such master netting agreement participant  
19 under or in connection with such agreements or any  
20 contract or agreement subject to such agreements or  
21 against cash, securities, or other property held by,  
22 pledged to, under the control of, or due from such  
23 master netting agreement participant to margin,  
24 guarantee, secure, or settle such agreements or any  
25 contract or agreement subject to such agreements,

1 to the extent that such participant is eligible to exer-  
2 cise such offset rights under paragraph (6), (7), or  
3 (17) for each individual contract covered by the mas-  
4 ter netting agreement in issue.”.

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

8 “(i) The exercise of rights not subject to the stay  
9 arising under subsection (a) pursuant to paragraph (6),  
10 (7), (17), or (19) of subsection (b) shall not be stayed  
11 by any order of a court or administrative agency in any  
12 proceeding under this title.”.

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

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

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

19 (B) by striking “in connection with a swap  
20 agreement” and inserting “under or in connec-  
21 tion with any swap agreement”; and

22 (C) by inserting “or financial participant”  
23 after “swap participant” each place such term  
24 appears; and

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

1       “(j) Notwithstanding sections 544, 545, 547,  
2 548(a)(1)(B), and 548(b) the trustee may not avoid a  
3 transfer made by or to a master netting agreement partici-  
4 pant under or in connection with any master netting  
5 agreement or any individual contract covered thereby that  
6 is made before the commencement of the case, except  
7 under section 548(a)(1)(A) and except to the extent that  
8 the trustee could otherwise avoid such a transfer made  
9 under an individual contract covered by such master net-  
10 ting agreement.”.

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

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

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

18           (3) by adding at the end the following new sub-  
19 paragraph:

20           “(E) a master netting agreement participant  
21 that receives a transfer in connection with a master  
22 netting agreement or any individual contract covered  
23 thereby takes for value to the extent of such trans-  
24 fer, except that, with respect to a transfer under any  
25 individual contract covered thereby, to the extent

1 that such master netting agreement participant oth-  
2 erwise did not take (or is otherwise not deemed to  
3 have taken) such transfer for value.”.

4 (g) TERMINATION OR ACCELERATION OF SECURITIES  
5 CONTRACTS.—Section 555 of title 11, United States Code,  
6 is amended—

7 (1) by amending the section heading to read as  
8 follows:

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

11 and

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

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

18 (1) by amending the section heading to read as  
19 follows:

20 **“§ 556. Contractual right to liquidate, terminate, or**  
21 **accelerate a commodities contract or for-**  
22 **ward contract”;**

23 (2) in the first sentence, by striking “liquida-  
24 tion” and inserting “liquidation, termination, or ac-  
25 celeration”; and

1           (3) in the second sentence, by striking “As  
2           used” and all that follows through “right,” and in-  
3           serting “As used in this section, the term ‘contractual  
4           right’ includes a right set forth in a rule or  
5           bylaw of a derivatives clearing organization (as de-  
6           fined in the Commodity Exchange Act), a multilat-  
7           eral clearing organization (as defined in the Federal  
8           Deposit Insurance Corporation Improvement Act of  
9           1991), a national securities exchange, a national se-  
10          curities association, a securities clearing agency, a  
11          contract market designated under the Commodity  
12          Exchange Act, a derivatives transaction execution  
13          facility registered under the Commodity Exchange  
14          Act, or a board of trade (as defined in the Com-  
15          modity Exchange Act) or in a resolution of the gov-  
16          erning board thereof and a right,”.

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

20                 (1) by amending the section heading to read as  
21          follows:

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

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

6 (3) in the third sentence, by striking “As used”  
 7 and all that follows through “right,” and inserting  
 8 “As used in this section, the term ‘contractual right’  
 9 includes a right set forth in a rule or bylaw of a de-  
 10 rivatives clearing organization (as defined in the  
 11 Commodity Exchange Act), a multilateral clearing  
 12 organization (as defined in the Federal Deposit In-  
 13 surance Corporation Improvement Act of 1991), a  
 14 national securities exchange, a national securities as-  
 15 sociation, a securities clearing agency, a contract  
 16 market designated under the Commodity Exchange  
 17 Act, a derivatives transaction execution facility reg-  
 18 istered under the Commodity Exchange Act, or a  
 19 board of trade (as defined in the Commodity Ex-  
 20 change Act) or in a resolution of the governing  
 21 board thereof and a right,”.

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

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

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

3 (2) in the first sentence, by striking “termi-  
4 nation of a swap agreement” and inserting “liquida-  
5 tion, termination, or acceleration of one or more  
6 swap agreements”;

7 (3) by striking “in connection with any swap  
8 agreement” and inserting “in connection with the  
9 termination, liquidation, or acceleration of one or  
10 more swap agreements”; and

11 (4) in the second sentence, by striking “As  
12 used” and all that follows through “right,” and in-  
13 serting “As used in this section, the term ‘contrac-  
14 tual right’ includes a right set forth in a rule or  
15 bylaw of a derivatives clearing organization (as de-  
16 fined in the Commodity Exchange Act), a multilat-  
17 eral clearing organization (as defined in the Federal  
18 Deposit Insurance Corporation Improvement Act of  
19 1991), a national securities exchange, a national se-  
20 curities association, a securities clearing agency, a  
21 contract market designated under the Commodity  
22 Exchange Act, a derivatives transaction execution fa-  
23 cility registered under the Commodity Exchange Act,  
24 or a board of trade (as defined in the Commodity Ex-  
25 change Act) or in a resolution of the governing board  
26 thereof and a right,”.

1 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR  
2 OFFSET UNDER A MASTER NETTING AGREEMENT AND  
3 ACROSS CONTRACTS.—

4 (1) IN GENERAL.—Title 11, United States  
5 Code, is amended by inserting after section 560 the  
6 following:

7 **“§ 561. Contractual right to terminate, liquidate, ac-**  
8 **celerate, or offset under a master netting**  
9 **agreement and across contracts; pro-**  
10 **ceedings under section 304**

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

18 “(1) securities contracts, as defined in section  
19 741(7);

20 “(2) commodity contracts, as defined in section  
21 761(4);

22 “(3) forward contracts;

23 “(4) repurchase agreements;

24 “(5) swap agreements; or

25 “(6) master netting agreements,

1 shall not be stayed, avoided, or otherwise limited by oper-  
2 ation of any provision of this title or by any order of a  
3 court or administrative agency in any proceeding under  
4 this title.

5 “(b)(1) A party may exercise a contractual right de-  
6 scribed in subsection (a) to terminate, liquidate, or accel-  
7 erate only to the extent that such party could exercise such  
8 a right under section 555, 556, 559, or 560 for each indi-  
9 vidual contract covered by the master netting agreement  
10 in issue.

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

13 “(A) a party may not net or offset an obligation  
14 to the debtor arising under, or in connection with,  
15 a commodity contract traded on or subject to the  
16 rules of a contract market designated under the  
17 Commodity Exchange Act or a derivatives trans-  
18 action execution facility registered under the Com-  
19modity Exchange Act against any claim arising  
20 under, or in connection with, other instruments, con-  
21 tracts, or agreements listed in subsection (a) except  
22 to the extent that the party has positive net equity  
23 in the commodity accounts at the debtor, as cal-  
24 culated under such subchapter; and

1           “(B) another commodity broker may not net or  
2           offset an obligation to the debtor arising under, or  
3           in connection with, a commodity contract entered  
4           into or held on behalf of a customer of the debtor  
5           and traded on or subject to the rules of a contract  
6           market designated under the Commodity Exchange  
7           Act or a derivatives transaction execution facility  
8           registered under the Commodity Exchange Act  
9           against any claim arising under, or in connection  
10          with, other instruments, contracts, or agreements  
11          listed in subsection (a).

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

15                 “(A) a cross-margining agreement or similar  
16                 arrangement that has been approved by the Com-  
17                 modity Futures Trading Commission or submitted  
18                 to the Commodity Futures Trading Commission  
19                 under paragraph (1) or (2) of section 5c(c) of the  
20                 Commodity Exchange Act and has not been abro-  
21                 gated or rendered ineffective by the Commodity Fu-  
22                 tures Trading Commission; or

23                 “(B) any other netting agreement between a  
24                 clearing organization (as defined in section 761) and

1 another entity that has been approved by the Com-  
2 modity Futures Trading Commission.

3 “(c) As used in this section, the term ‘contractual  
4 right’ includes a right set forth in a rule or bylaw of a  
5 derivatives clearing organization (as defined in the Com-  
6 modity Exchange Act), a multilateral clearing organiza-  
7 tion (as defined in the Federal Deposit Insurance Cor-  
8 poration Improvement Act of 1991), a national securities  
9 exchange, a national securities association, a securities  
10 clearing agency, a contract market designated under the  
11 Commodity Exchange Act, a derivatives transaction execu-  
12 tion facility registered under the Commodity Exchange  
13 Act, or a board of trade (as defined in the Commodity  
14 Exchange Act) or in a resolution of the governing board  
15 thereof, and a right, whether or not evidenced in writing,  
16 arising under common law, under law merchant, or by rea-  
17 son of normal business practice.

18 “(d) Any provisions of this title relating to securities  
19 contracts, commodity contracts, forward contracts, repur-  
20 chase agreements, swap agreements, or master netting  
21 agreements shall apply in a case under section 304, so  
22 that enforcement of contractual provisions of such con-  
23 tracts and agreements in accordance with their terms will  
24 not be stayed or otherwise limited by operation of any pro-  
25 vision of this title or by order of a court in any case under

1 this title, and to limit avoidance powers to the same extent  
2 as in a proceeding under chapter 7 or 11 of this title (such  
3 enforcement not to be limited based on the presence or  
4 absence of assets of the debtor in the United States).”.

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

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

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

12 **“§ 767. Commodity broker liquidation and forward**  
13 **contract merchants, commodity brokers,**  
14 **stockbrokers, financial institutions, fi-**  
15 **ancial participants, securities clearing**  
16 **agencies, swap participants, repo partici-**  
17 **pants, and master netting agreement par-**  
18 **ticipants**

19 “Notwithstanding any other provision of this title,  
20 the exercise of rights by a forward contract merchant,  
21 commodity broker, stockbroker, financial institution, fi-  
22 nancial participant, securities clearing agency, swap par-  
23 ticipant, repo participant, or master netting agreement  
24 participant under this title shall not affect the priority of

1 any unsecured claim it may have after the exercise of such  
2 rights.”.

3 (m) STOCKBROKER LIQUIDATIONS.—Title 11,  
4 United States Code, is amended by inserting after section  
5 752 the following:

6 **“§ 753. Stockbroker liquidation and forward contract**  
7 **merchants, commodity brokers, stock-**  
8 **brokers, financial institutions, financial**  
9 **participants, securities clearing agencies,**  
10 **swap participants, repo participants, and**  
11 **master netting agreement participants**

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

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

22 (1) in subsection (a)(2)(B)(ii), by inserting be-  
23 fore the semicolon the following: “(except for a  
24 setoff of a kind described in section 362(b)(6),

1 362(b)(7), 362(b)(17), 362(b)(19), 555, 556, 559,  
2 560, or 561”);

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

8 (3) in subsection (b)(1), by striking  
9 “362(b)(14),” and inserting “362(b)(17),  
10 362(b)(19), 555, 556, 559, 560, 561.”.

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

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

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

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

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

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

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

3           (7) in section 555—

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

6           (B) by striking the second sentence and in-  
7           serting the following: “As used in this section,  
8           the term ‘contractual right’ includes a right set  
9           forth in a rule or bylaw of a derivatives clearing  
10          organization (as defined in the Commodity Ex-  
11          change Act), a multilateral clearing organiza-  
12          tion (as defined in the Federal Deposit Insur-  
13          ance Corporation Improvement Act of 1991), a  
14          national securities exchange, a national securi-  
15          ties association, a securities clearing agency, a  
16          contract market designated under the Com-  
17          modity Exchange Act, a derivatives transaction  
18          execution facility registered under the Com-  
19          modity Exchange Act, or a board of trade (as  
20          defined in the Commodity Exchange Act), or in  
21          a resolution of the governing board thereof, and  
22          a right, whether or not in writing, arising under  
23          common law, under law merchant, or by reason  
24          of normal business practice”;

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

3 (9) in section 559, by inserting “or financial  
4 participant” after “repo participant” each place  
5 such term appears; and

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

8 (p) CONFORMING AMENDMENTS.—Title 11, United  
9 States Code, is amended—

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

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

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

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

13 and

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

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

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

16 and

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

18 (A) by inserting after the item relating to  
19 section 766 the following:

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

1 and

2 (B) by inserting after the item relating to  
3 section 752 the following:

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

4 **SEC. 9. RECORDKEEPING REQUIREMENTS.**

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

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

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

1           “(H) RECORDKEEPING REQUIREMENTS.—  
2           The Board, in consultation with the appropriate  
3           Federal banking agencies, may prescribe regula-  
4           tions requiring more detailed recordkeeping by  
5           any insured credit union with respect to quali-  
6           fied financial contracts (including market valu-  
7           ations) only if such insured credit union is in  
8           a troubled condition (as such term is defined by  
9           the Board pursuant to section 212).”.

10 **SEC. 10. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-**  
11 **TION REQUIREMENT.**

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

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

17           “(A) deposits of, or other credit extension  
18 by, a Federal, State, or local governmental enti-  
19 ty, or of any depositor referred to in section  
20 11(a)(2), including an agreement to provide col-  
21 lateral in lieu of a surety bond;

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

1           “(C) extensions of credit, including any  
2           overdraft, from a Federal reserve bank or Fed-  
3           eral home loan bank; or

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

12 **SEC. 11. DAMAGE MEASURE.**

13          (a) IN GENERAL.—Title 11, United States Code, is  
14          amended—

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

17 **“§ 562. Timing of damage measurement in connection**  
18                 **with swap agreements, securities con-**  
19                 **tracts, forward contracts, commodity con-**  
20                 **tracts, repurchase agreements, and mas-**  
21                 **ter netting agreements**

22          “(a) If the trustee rejects a swap agreement, securi-  
23          ties contract (as defined in section 741), forward contract,  
24          commodity contract (as defined in section 761), repur-  
25          chase agreement, or master netting agreement pursuant

1 to section 365(a), or if a forward contract merchant,  
2 stockbroker, financial institution, securities clearing agen-  
3 cy, repo participant, financial participant, master netting  
4 agreement participant, or swap participant liquidates, ter-  
5 minates, or accelerates such contract or agreement, dam-  
6 ages shall be measured as of the earlier of—

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

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

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

15          “(c) For the purposes of subsection (b), if damages  
16 are not measured as of the date or dates of rejection, liq-  
17 uidation, termination, or acceleration, and the forward  
18 contract merchant, stockbroker, financial institution, secu-  
19 rities clearing agency, repo participant, financial partici-  
20 pant, master netting agreement participant, or swap par-  
21 ticipant or the trustee objects to the timing of the meas-  
22 urement of damages—

23           “(1) the trustee, in the case of an objection by  
24 a forward contract merchant, stockbroker, financial  
25 institution, securities clearing agency, repo partici-

1       pant, financial participant, master netting agree-  
2       ment participant, or swap participant; or

3               “(2) the forward contract merchant, stock-  
4       broker, financial institution, securities clearing agen-  
5       cy, repo participant, financial participant, master  
6       netting agreement participant, or swap participant,  
7       in the case of an objection by the trustee,  
8       has the burden of proving that there were no commercially  
9       reasonable determinants of value as of such date or  
10      dates.”; and

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

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

15              (b) CLAIMS ARISING FROM REJECTION.—Section  
16      502(g) of title 11, United States Code, is amended—

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

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

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

1 **SEC. 12. SIPC STAY.**

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

5 “(C) EXCEPTION FROM STAY.—

6 “(i) Notwithstanding section 362 of  
7 title 11, United States Code, neither the  
8 filing of an application under subsection  
9 (a)(3) nor any order or decree obtained by  
10 SIPC from the court shall operate as a  
11 stay of any contractual rights of a creditor  
12 to liquidate, terminate, or accelerate a se-  
13 curities contract, commodity contract, for-  
14 ward contract, repurchase agreement, swap  
15 agreement, or master netting agreement,  
16 as those terms are defined in sections 101,  
17 741, and 761 of title 11, United States  
18 Code, to offset or net termination values,  
19 payment amounts, or other transfer obliga-  
20 tions arising under or in connection with  
21 one or more of such contracts or agree-  
22 ments, or to foreclose on any cash collat-  
23 eral pledged by the debtor, whether or not  
24 with respect to one or more of such con-  
25 tracts or agreements.

1           “(ii) Notwithstanding clause (i), such  
2 application, order, or decree may operate  
3 as a stay of the foreclosure on, or disposi-  
4 tion of, securities collateral pledged by the  
5 debtor, whether or not with respect to one  
6 or more of such contracts or agreements,  
7 securities sold by the debtor under a repur-  
8 chase agreement, or securities lent under a  
9 securities lending agreement.

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

22 **SEC. 13. APPLICABILITY OF OTHER SECTIONS TO**  
23 **CHAPTER 9.**

24           Section 901(a) of title 11, United States Code, is  
25 amended—

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

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

3 “557,”.

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

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

7 (b) **APPLICATION OF AMENDMENTS.**—The amend-  
8 ments made by this Act shall apply with respect to cases  
9 commenced or appointments made under any Federal or  
10 State law on or after the date of enactment of this Act,  
11 but shall not apply with respect to cases commenced or  
12 appointments made under any Federal or State law before  
13 the date of enactment of this Act.

14 **SEC. 15. SAVINGS CLAUSE.**

15 The meanings of terms used in this Act are applicable  
16 for purposes of this Act only, and shall not be construed  
17 or applied so as to challenge or affect the characterization,  
18 definition, or treatment of any similar terms under any  
19 other statute, regulation, or rule, including the Gramm-  
20 Leach-Bliley Act, the Legal Certainty for Bank Products  
21 Act of 2000, the securities laws (as that term is defined  
22 in section 3(a)(47) of the Securities Exchange Act of  
23 1934), and the Commodity Exchange Act.



Union Calendar No. 297

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 2120**

[Report No. 108-277, Part I]

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## **A BILL**

To revise the banking and bankruptcy insolvency laws with respect to the termination and netting of financial contracts, and for other purposes.

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JUNE 1, 2004

The Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed