

106TH CONGRESS
1ST SESSION

S. 958

To amend certain banking and securities laws with respect to financial contracts.

IN THE SENATE OF THE UNITED STATES

MAY 4, 1999

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

A BILL

To amend certain banking and securities laws with respect to financial contracts.

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 Institutions Insolvency Improvement Act of
6 1999”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
8 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. Recordkeeping requirements.
 Sec. 9. Exemptions from contemporaneous execution requirement.
 Sec. 10. SIPC stay.
 Sec. 11. Federal Reserve collateral requirements.
 Sec. 12. Effective date; application of amendments.

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.—Section 11(e)(8)(D)(i) of the Federal Deposit In-
 6 surance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by
 7 inserting “, resolution, or order” after “any similar agree-
 8 ment that the Corporation determines by regulation”.

9 (b) DEFINITION OF SECURITIES CONTRACT.—Sec-
 10 tion 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act
 11 (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as fol-
 12 lows:

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

15 “(I) means a contract for the
 16 purchase, sale, or loan of a security, a
 17 certificate of deposit, a mortgage loan,
 18 or any interest in a mortgage loan, a
 19 group or index of securities, certifi-
 20 cates of deposit, or mortgage loans or

1 interests therein (including any inter-
2 est therein or based on the value
3 thereof) or any option on any of the
4 foregoing, including any option to
5 purchase or sell any such security,
6 certificate of deposit, loan, interest,
7 group or index, or option;

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

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

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

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

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 (other than subclause
12 (II));

13 “(VII) means any combination of
14 the agreements or transactions re-
15 ferred to in this clause (other than
16 subclause (II));

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

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

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

13 “(X) means any security agree-
 14 ment or arrangement or other credit
 15 enhancement related to any agree-
 16 ment or transaction referred to in this
 17 clause (other than subclause (II)).”.

18 (c) DEFINITION OF COMMODITY CONTRACT.—Sec-
 19 tion 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act
 20 (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as fol-
 21 lows:

22 “(iii) COMMODITY CONTRACT.—The
 23 term ‘commodity contract’ means—

24 “(I) with respect to a futures
 25 commission merchant, a contract for

1 the purchase or sale of a commodity
2 for future delivery on, or subject to
3 the rules of, a contract market or
4 board of trade;

5 “(II) with respect to a foreign fu-
6 tures commission merchant, a foreign
7 future;

8 “(III) with respect to a leverage
9 transaction merchant, a leverage
10 transaction;

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

22 “(V) with respect to a commodity
23 options dealer, a commodity option;

24 “(VI) any other agreement or
25 transaction that is similar to any

1 agreement or transaction referred to
2 in this clause;

3 “(VII) any combination of the
4 agreements or transactions referred to
5 in this clause;

6 “(VIII) any option to enter into
7 any agreement or transaction referred
8 to in this clause;

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

1 (II), (III), (IV), (V), (VI), (VII), or
 2 (VIII); or

3 “(X) a security agreement or ar-
 4 rangement or other credit enhance-
 5 ment related to any agreement or
 6 transaction referred to in this
 7 clause.”.

8 (d) DEFINITION OF FORWARD CONTRACT.—Section
 9 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12
 10 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

11 “(iv) FORWARD CONTRACT.—The
 12 term ‘forward contract’ means—

13 “(I) a contract (other than a
 14 commodity contract) for the purchase,
 15 sale, or transfer of a commodity or
 16 any similar good, article, service,
 17 right, or interest which is presently or
 18 in the future becomes the subject of
 19 dealing in the forward contract trade,
 20 or product or byproduct thereof, with
 21 a maturity date that is more than 2
 22 days after the date on which the con-
 23 tract is entered into, including a re-
 24 purchase agreement, reverse repur-
 25 chase agreement, consignment, lease,

1 swap, hedge transaction, deposit, loan,
2 option, allocated transaction,
3 unallocated transaction, or any other
4 similar agreement;

5 “(II) any combination of agree-
6 ments or transactions referred to in
7 subclauses (I) and (III);

8 “(III) any option to enter into
9 any agreement or transaction referred
10 to in subclause (I) or (II);

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

1 “(V) a security agreement or ar-
2 rangement or other credit enhance-
3 ment related to any agreement or
4 transaction referred to in subclause
5 (I), (II), (III), or (IV).”.

6 (e) DEFINITION OF REPURCHASE AGREEMENT AND
7 REVERSE REPURCHASE AGREEMENT.—Section
8 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12
9 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

10 “(v) REPURCHASE AGREEMENT; RE-
11 VERSE REPURCHASE AGREEMENT.—The
12 terms ‘repurchase agreement’ and ‘reverse
13 repurchase agreement’—

14 “(I) mean an agreement, includ-
15 ing related terms, which provides for
16 the transfer of 1 or more certificates
17 of deposit, mortgage-related securities
18 (as such term is defined in the Securi-
19 ties Exchange Act of 1934), mortgage
20 loans, interests in mortgage-related
21 securities or mortgage loans, eligible
22 bankers’ acceptances, qualified foreign
23 government securities or securities
24 that are direct obligations of, or that
25 are fully guaranteed by, the United

1 States or any agency of the United
2 States against the transfer of funds
3 by the transferee of such certificates
4 of deposit, eligible bankers' accept-
5 ances, securities, loans, or interests
6 with a simultaneous agreement by
7 such transferee to transfer to the
8 transferor thereof certificates of de-
9 posit, eligible bankers' acceptances,
10 securities, loans, or interests as de-
11 scribed in this subclause, at a date
12 certain that is not later than 1 year
13 after the date of such transfers or on
14 demand, against the transfer of funds,
15 or any other similar agreement;

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

23 “(III) means any combination of
24 agreements or transactions referred to
25 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 a 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).

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

10 (f) DEFINITION OF SWAP AGREEMENT.—The Fed-
11 eral Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi))
12 is amended to read as follows:

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

15 “(I) means any agreement, in-
16 cluding the terms and conditions in-
17 corporated by reference in any such
18 agreement, that is—

19 “(aa) an interest rate swap,
20 option, future, or forward agree-
21 ment, including a rate floor, rate
22 cap, rate collar, cross-currency
23 rate swap, and basis swap;

24 “(bb) a spot, same day-to-
25 morrow, tomorrow-next, forward,

1 or other foreign exchange or pre-
2 cious metals agreement;
3 “(cc) a currency swap, op-
4 tion, future, or forward agree-
5 ment;
6 “(dd) an equity index or eq-
7 uity swap, option, future, or for-
8 ward agreement;
9 “(ee) a debt index or debt
10 swap, option, future, or forward
11 agreement;
12 “(ff) a credit spread or cred-
13 it swap, option, future, or for-
14 ward agreement; or
15 “(gg) a commodity index or
16 commodity swap, option, future,
17 or forward agreement;
18 “(II) means any agreement or
19 transaction that is similar to any
20 other agreement or transaction re-
21 ferred to in this clause, that is pres-
22 ently, or in the future becomes, regu-
23 larly entered into in the swap market
24 (including terms and conditions incor-
25 porated by reference in such agree-

1 ment), and that is a forward, swap,
2 future, or option on 1 or more rates,
3 currencies, commodities, equity securi-
4 ties or other equity instruments, debt
5 securities or other debt instruments,
6 or economic indices or measures of
7 economic risk or value;

8 “(III) means any combination of
9 agreements or transactions referred to
10 in this clause;

11 “(IV) means any option to enter
12 into any agreement or transaction re-
13 ferred to in this clause;

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

1 each agreement or transaction under
2 the master agreement that is referred
3 to in subclause (I), (II), (III), or (IV);

4 “(VI) means any security agree-
5 ment or arrangement or other credit
6 enhancement related to any agree-
7 ments or transactions referred to in
8 subparagraph (I), (II), (III), or (IV);
9 and

10 “(VII) is applicable for purposes
11 of this Act only, and shall not be con-
12 strued or applied so as to challenge or
13 affect the characterization, definition,
14 or treatment of any swap agreement
15 under any other statute, regulation, or
16 rule, including the Securities Act of
17 1933, the Securities Exchange Act of
18 1934, the Public Utility Holding Com-
19 pany Act of 1935, the Trust Inden-
20 ture Act of 1939, the Investment
21 Company Act of 1940, the Investment
22 Advisers Act of 1940, the Securities
23 Investor Protection Act of 1970, the
24 Commodity Exchange Act, and the
25 regulations promulgated by the Secu-

1 rities and Exchange Commission or
2 the Commodity Futures Trading
3 Commission.”.

4 (g) DEFINITION OF TRANSFER.—Section
5 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12
6 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

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

15 (h) TREATMENT OF QUALIFIED FINANCIAL CON-
16 TRACTS.—Section 11(e)(8) of the Federal Deposit Insur-
17 ance Act (12 U.S.C. 1821(e)(8)) is amended—

18 (1) in subparagraph (A), by striking “para-
19 graph (10)” and inserting “paragraphs (9) and
20 (10)”;

21 (2) in subparagraph (A)(i), by striking “to
22 cause the termination or liquidation” and inserting
23 “such person has to cause the termination, liquida-
24 tion, or acceleration”;

1 (3) by striking clause (ii) of subparagraph (A)
2 and inserting the following:

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

8 (4) by striking clause (ii) of subparagraph (E)
9 and inserting the following:

10 “(ii) any right under any security
11 agreement or arrangement or other credit
12 enhancement related to 1 or more qualified
13 financial contracts described in clause (i);
14 or”.

15 (i) AVOIDANCE OF TRANSFERS.—Section
16 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12
17 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section
18 5242 of the Revised Statutes (12 U.S.C. 91), or any other
19 Federal or State law relating to the avoidance of pref-
20 erential or fraudulent transfers,” before “the Corpora-
21 tion”.

1 **SEC. 3. AUTHORITY OF THE CORPORATION WITH RESPECT**
2 **TO FAILED AND FAILING INSTITUTIONS.**

3 (a) IN GENERAL.—Section 11(e)(8) of the Federal
4 Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is
5 amended—

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

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

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

20 “(G) WALKAWAY CLAUSES NOT EFFEC-
21 TIVE.—

22 “(i) IN GENERAL.—Notwithstanding
23 the provisions of subparagraphs (A) and
24 (E), and sections 403 and 404 of the Fed-
25 eral Deposit Insurance Corporation Im-
26 provement Act of 1991, no walkaway

1 clause shall be enforceable in a qualified fi-
2 nancial contract of an insured depository
3 institution in default.

4 “(ii) WALKAWAY CLAUSE DEFINED.—

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

18 (b) TECHNICAL AND CONFORMING AMENDMENT.—

19 Section 11(e)(12)(A) of the Federal Deposit Insurance
20 Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting
21 “or the exercise of rights or powers by” after “the ap-
22 pointment of”.

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

3 (a) TRANSFERS OF QUALIFIED FINANCIAL CON-
4 TRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9)
5 of the Federal Deposit Insurance Act (12 U.S.C.
6 1821(e)(9)) is amended to read as follows:

7 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
8 TRACTS.—

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

14 “(i) transfer to 1 financial institution,
15 other than a financial institution for which
16 a conservator, receiver, trustee in bank-
17 ruptcy, or other legal custodian has been
18 appointed or which is otherwise the subject
19 of a bankruptcy or insolvency proceeding—

20 “(I) all qualified financial con-
21 tracts between any person or any af-
22 filiate of such person and the deposi-
23 tory institution in default;

24 “(II) all claims of such person or
25 any affiliate of such person against
26 such depository institution under any

1 such contract (other than any claim
2 which, under the terms of any such
3 contract, is subordinated to the claims
4 of general unsecured creditors of such
5 institution);

6 “(III) all claims of such deposi-
7 tory institution against such person or
8 any affiliate of such person under any
9 such contract; and

10 “(IV) all property securing or
11 any other credit enhancement for any
12 contract described in subclause (I) or
13 any claim described in subclause (II)
14 or (III) under any such contract; or

15 “(ii) transfer none of the qualified fi-
16 nancial contracts, claims, property, or
17 other credit enhancement referred to in
18 clause (i) (with respect to such person and
19 any affiliate of such person).

20 “(B) TRANSFER TO FOREIGN BANK, FOR-
21 EIGN FINANCIAL INSTITUTION, OR BRANCH OR
22 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-
23 STITUTION.—In transferring any qualified fi-
24 nancial contract and related claims and prop-
25 erty pursuant to subparagraph (A)(i), the con-

1 servator or receiver for the depository institu-
2 tion shall not make such transfer to a foreign
3 bank, financial institution organized under the
4 laws of a foreign country, or a branch or agency
5 of a foreign bank or financial institution unless,
6 under the law applicable to such bank, financial
7 institution, branch, or agency, to the qualified
8 financial contract, and to any netting contract,
9 any security agreement or arrangement or other
10 credit enhancement related to 1 or more quali-
11 fied financial contracts the contractual rights of
12 the parties to such qualified financial contracts,
13 netting contracts, security agreements, or ar-
14 rangements, or other credit enhancements are
15 enforceable substantially to the same extent as
16 permitted under this section.

17 “(C) TRANSFER OF CONTRACT SUBJECT
18 TO THE RULES OF A CLEARING ORGANIZA-
19 TION.—If a conservator or receiver transfers
20 any qualified financial contract and related
21 claims, property, and credit enhancements pur-
22 suant to subparagraph (A)(i) and such contract
23 is subject to the rules of a clearing organiza-
24 tion, the clearing organization shall not be re-

1 required to accept the transferee as a member by
2 virtue of the transfer.

3 “(D) DEFINITION.—For purposes of this
4 paragraph, the term ‘financial institution’
5 means a broker or dealer, a depository institu-
6 tion, a futures commission merchant, or any
7 other institution that the Corporation deter-
8 mines, by regulation, to be a financial institu-
9 tion.”.

10 (b) NOTICE TO QUALIFIED FINANCIAL CONTRACT
11 COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal
12 Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is
13 amended by striking the flush material immediately fol-
14 lowing clause (ii) and inserting the following:

15 “the conservator or receiver shall notify any
16 person who is a party to any such contract of
17 such transfer by 5:00 p.m. (eastern time) on
18 the business day following the date of the ap-
19 pointment of the receiver in the case of a re-
20 ceivership, or the business day following such
21 transfer in the case of a conservatorship.”.

22 (c) RIGHTS AGAINST RECEIVER AND TREATMENT OF
23 BRIDGE BANKS.—Section 11(e)(10) of the Federal De-
24 posit Insurance Act (12 U.S.C. 1821(e)(10)) is
25 amended—

1 (1) by redesignating subparagraph (B) as sub-
2 paragraph (D); and

3 (2) by inserting after subparagraph (A) the fol-
4 lowing:

5 “(B) CERTAIN RIGHTS NOT ENFORCE-
6 ABLE.—

7 “(i) RECEIVERSHIP.—A person who is
8 a party to a qualified financial contract
9 with an insured depository institution may
10 not exercise any right such person has to
11 terminate, liquidate, or net such contract
12 under paragraph (8)(A) or section 403 or
13 404 of the Federal Deposit Insurance Cor-
14 poration Improvement Act of 1991, solely
15 by reason of or incidental to the appoint-
16 ment of a receiver for the depository insti-
17 tution (or the insolvency or financial condi-
18 tion of the depository institution for which
19 the receiver has been appointed)—

20 “(I) until 5:00 p.m. (eastern
21 time) on the business day following
22 the date of the appointment of the re-
23 ceiver; or

24 “(II) after the person has re-
25 ceived notice that the contract has

1 been transferred pursuant to para-
2 graph (9)(A).

3 “(ii) CONSERVATORSHIP.—A person
4 who is a party to a qualified financial con-
5 tract with an insured depository institution
6 may not exercise any right such person has
7 to terminate, liquidate, or net such con-
8 tract under paragraph (8)(E) or section
9 403 or 404 of the Federal Deposit Insur-
10 ance Corporation Improvement Act of
11 1991, solely by reason of or incidental to
12 the appointment of a conservator for the
13 depository institution (or the insolvency or
14 financial condition of the depository insti-
15 tution for which the conservator has been
16 appointed).

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

1 such person by the time specified in sub-
2 paragraph (A).

3 “(C) TREATMENT OF BRIDGE BANKS.—A
4 financial institution for which a conservator, re-
5 ceiver, trustee in bankruptcy, or other legal cus-
6 todian has been appointed or that is otherwise
7 the subject of a bankruptcy or insolvency pro-
8 ceeding for purposes of subsection (e)(9) does
9 not include—

10 “(i) a bridge bank; or

11 “(ii) a depository institution organized
12 by the Corporation, for which a conser-
13 vator is appointed either—

14 “(I) immediately upon the orga-
15 nization of the institution; or

16 “(II) at the time of a purchase
17 and assumption transaction between
18 such institution and the Corporation
19 as receiver for a depository institution
20 in default.”.

21 **SEC. 5. AMENDMENTS RELATING TO DISAFFIRMANCE OR**
22 **REPUDIATION OF QUALIFIED FINANCIAL**
23 **CONTRACTS.**

24 Section 11(e) of the Federal Deposit Insurance Act
25 (12 U.S.C. 1821(e)) is amended—

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

3 (2) in paragraph (8)(C)(i), by striking “(11)”
4 and inserting “(12)”;

5 (3) in paragraph (8)(E), by striking “(12)” and
6 inserting “(13)”;

7 (4) 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 right to disaffirm or repudiate with respect to
12 any qualified financial contract to which an insured
13 depository institution is a party, the conservator or
14 receiver for such institution shall either—

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

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

19 “(ii) the depository institution in de-
20 fault; 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).”.

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

3 Section 11(e)(8)(D)(vii) of the Federal Deposit In-
4 surance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to
5 read as follows:

6 “(vii) TREATMENT OF MASTER
7 AGREEMENT AS 1 AGREEMENT.—Any mas-
8 ter agreement for any contract or agree-
9 ment described in any preceding clause of
10 this subparagraph (or any master agree-
11 ment for such master agreement or agree-
12 ments), together with all supplements to
13 such master agreement, shall be treated as
14 a single agreement and a single qualified
15 financial contract. If a master agreement
16 contains provisions relating to agreements
17 or transactions that are not themselves
18 qualified financial contracts, the master
19 agreement shall be deemed to be a quali-
20 fied financial contract only with respect to
21 those transactions that are themselves
22 qualified financial contracts.”

1 **SEC. 7. FEDERAL DEPOSIT INSURANCE CORPORATION IM-**
2 **PROVEMENT ACT OF 1991.**

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

6 (1) in paragraph (6)—

7 (A) by redesignating subparagraphs (B)
8 through (D) as subparagraphs (C) through (E),
9 respectively;

10 (B) by inserting after subparagraph (A)
11 the following new subparagraph:

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

19 (C) by striking subparagraph (C) (as re-
20 designated) and inserting the following:

21 “(C) a branch or agency of a foreign bank,
22 a foreign bank and any branch or agency of the
23 foreign bank, or the foreign bank that estab-
24 lished the branch or agency, as those terms are
25 defined in section 1(b) of the International
26 Banking Act of 1978;”;

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

5 (3) in paragraph (14)(A), by striking clause (i)
6 and inserting the following:

7 “(i) means a contract or agreement
8 between 2 or more financial institutions,
9 clearing organizations, or members that
10 provides for netting present or future pay-
11 ment obligations or payment entitlements
12 (including liquidation or closeout values re-
13 lating to such obligations or entitlements)
14 among the parties to the agreement; and”;
15 and

16 (4) by adding at the end the following new
17 paragraph:

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

23 (b) ENFORCEABILITY OF BILATERAL NETTING CON-
24 TRACTS.—Section 403 of the Federal Deposit Insurance

1 Corporation Improvement Act of 1991 (12 U.S.C. 4403)
2 is amended—

3 (1) by striking subsection (a) and inserting the
4 following:

5 “(a) GENERAL RULE.—Notwithstanding any other
6 provision of Federal or State law (other than paragraphs
7 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal
8 Deposit Insurance Act or any order authorized under sec-
9 tion 5(b)(2) of the Securities Investor Protection Act of
10 1970, the covered contractual payment obligations and the
11 covered contractual payment entitlements between any 2
12 financial institutions shall be netted in accordance with,
13 and subject to the conditions of, the terms of any applica-
14 ble netting contract (except as provided in section
15 561(b)(2) of title 11, United States Code).”; and

16 (2) by adding at the end the following new sub-
17 section:

18 “(f) ENFORCEABILITY OF SECURITY AGREE-
19 MENTS.—The provisions of any security agreement or ar-
20 rangement or other credit enhancement related to 1 or
21 more netting contracts between any 2 financial institu-
22 tions shall be enforceable in accordance with their terms
23 (except as provided in section 561(b)(2) of title 11, United
24 States Code) and shall not be stayed, avoided, or otherwise
25 limited by any State or Federal law (other than para-

1 graphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the
2 Federal Deposit Insurance Act and section 5(b)(2) of the
3 Securities Investor 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 Federal or State law (other than paragraphs
12 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal
13 Deposit Insurance Act or any order authorized under sec-
14 tion 5(b)(2) of the Securities Investor Protection Act of
15 1970) the covered contractual payment obligations and the
16 covered contractual payment entitlements of a member of
17 a clearing organization to and from all other members of
18 the clearing organization shall be netted in accordance
19 with, and subject to the conditions of, the terms of any
20 applicable netting contract (except as provided in section
21 561(b)(2) of title 11, United States Code).”; and

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

24 “(h) ENFORCEABILITY OF SECURITY AGREE-
25 MENTS.—The provisions of any security agreement or ar-

1 rangement or other credit enhancement related to 1 or
 2 more netting contracts between any 2 members of a clear-
 3 ing organization shall be enforceable in accordance with
 4 their terms (except as provided in section 561(b)(2) of
 5 title 11, United States Code) and shall not be stayed,
 6 avoided, or otherwise limited by any State or Federal law
 7 (other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-
 8 tion 11(e) of the Federal Deposit Insurance Act and sec-
 9 tion 5(b)(2) of the Securities Investor Protection Act of
 10 1970).”.

11 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-
 12 SURED NATIONAL BANKS AND UNINSURED FEDERAL
 13 BRANCHES AND AGENCIES.—The Federal Deposit Insur-
 14 ance Corporation Improvement Act of 1991 (12 U.S.C.
 15 4401 et seq.) is amended by adding at the end the fol-
 16 lowing:

17 **“SEC. 408. TREATMENT OF CONTRACTS WITH UNINSURED**
 18 **NATIONAL BANKS AND UNINSURED FEDERAL**
 19 **BRANCHES AND AGENCIES.**

20 “(a) IN GENERAL.—Notwithstanding any other pro-
 21 vision of law, paragraphs (8), (9), (10), and (11) of section
 22 11(e) of the Federal Deposit Insurance Act shall apply
 23 to an uninsured national bank or uninsured Federal
 24 branch or Federal agency, except that for such purpose—

1 “(1) any reference to the ‘Corporation as re-
2 ceiver’ or ‘the receiver or the Corporation’ shall refer
3 to the receiver of an uninsured national bank or un-
4 insured Federal branch or Federal agency appointed
5 by the Comptroller of the Currency;

6 “(2) any reference to the ‘Corporation’ (other
7 than in section 11(e)(8)(D) of that Act), the ‘Cor-
8 poration, whether acting as such or as conservator
9 or receiver’, a ‘receiver’, or a ‘conservator’ shall refer
10 to the receiver or conservator of an uninsured na-
11 tional bank or uninsured Federal branch or Federal
12 agency appointed by the Comptroller of the Cur-
13 rency; and

14 “(3) any reference to an ‘insured depository in-
15 stitution’ or ‘depository institution’ shall refer to an
16 uninsured national bank or an uninsured Federal
17 branch or Federal agency.

18 “(b) LIABILITY.—The liability of a receiver or conser-
19 vator of an uninsured national bank or uninsured Federal
20 branch or agency shall be determined in the same manner
21 and subject to the same limitations that apply to receivers
22 and conservators of insured depository institutions under
23 section 11(e) of the Federal Deposit Insurance Act.

24 “(c) REGULATORY AUTHORITY.—

1 “(1) IN GENERAL.—The Comptroller of the
2 Currency, in consultation with the Federal Deposit
3 Insurance Corporation, may promulgate regulations
4 to implement this section.

5 “(2) SPECIFIC REQUIREMENT.—In promul-
6 gating regulations to implement this section, the
7 Comptroller of the Currency shall ensure that the
8 regulations generally are consistent with the regula-
9 tions and policies of the Federal Deposit Insurance
10 Corporation adopted pursuant to the Federal De-
11 posit Insurance Act.

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

16 **SEC. 8. RECORDKEEPING REQUIREMENTS.**

17 Section 11(e)(8) of the Federal Deposit Insurance
18 Act (12 U.S.C. 1821(e)(8)) is amended by adding at the
19 end the following new subparagraph:

20 “(H) RECORDKEEPING REQUIREMENTS.—
21 The Corporation, in consultation with the ap-
22 propriate Federal banking agencies, may pre-
23 scribe regulations requiring more detailed rec-
24 ordkeeping with respect to qualified financial

1 contracts (including market valuations) by in-
2 sured depository institutions.”.

3 **SEC. 9. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-**
4 **TION REQUIREMENT.**

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

7 “(2) EXEMPTIONS FROM CONTEMPORANEOUS
8 EXECUTION REQUIREMENT.—

9 “(A) IN GENERAL.—An agreement de-
10 scribed in subparagraph (B) shall not be
11 deemed to be invalid pursuant to paragraph
12 (1)(B) solely on the basis—

13 “(i) that the agreement was not exe-
14 cuted contemporaneously with the acquisi-
15 tion of the collateral; or

16 “(ii) of any pledge, delivery, or substi-
17 tution of the collateral made in accordance
18 with the agreement.

19 “(B) AGREEMENT DESCRIBED.—An agree-
20 ment is described in this subparagraph if it is
21 an agreement to provide for the lawful
22 collateralization of—

23 “(i) deposits of, or other credit exten-
24 sion by, a Federal, State, or local govern-
25 mental entity, or of any depositor referred

1 to in section 11(a)(2), including an agree-
 2 ment to provide collateral in lieu of a sur-
 3 ety bond;

4 “(ii) securities deposited under section
 5 345(b)(2) of title 11, United States Code;

6 “(iii) extensions of credit, including
 7 an overdraft, from a Federal reserve bank
 8 or Federal home loan bank; or

9 “(iv) 1 or more qualified financial
 10 contracts (as defined in section
 11 11(e)(8)(D)).”.

12 **SEC. 10. SIPC STAY.**

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

16 “(C) EXCEPTION FROM STAY.—

17 “(i) IN GENERAL.—Notwithstanding
 18 section 362 of title 11, United States
 19 Code, neither the filing of an application
 20 under subsection (a)(3) of this section nor
 21 any order or decree obtained by SIPC from
 22 the court shall operate as a stay of any
 23 contractual right of a creditor to liquidate,
 24 terminate, or accelerate a securities con-
 25 tract, commodity contract, forward con-

1 tract, repurchase agreement, swap agree-
2 ment, or master netting agreement, each
3 as defined in title 11, United States Code,
4 to offset or net termination values, pay-
5 ment amounts, or other transfer obliga-
6 tions arising under or in connection with 1
7 or more of such contracts or agreements,
8 or to foreclose on any cash collateral
9 pledged by the debtor, whether or not with
10 respect to 1 or more of such contracts or
11 agreements.

12 “(ii) STAYS ON FORECLOSURE.—Not-
13 withstanding clause (i), an application,
14 order, or decree described therein may op-
15 erate as a stay of the foreclosure on securi-
16 ties collateral pledged by the debtor,
17 whether or not with respect to 1 or more
18 of such contracts or agreements, securities
19 sold by the debtor under a repurchase
20 agreement or securities lent under a secu-
21 rities lending agreement.

22 “(iii) DEFINITION.—As used in this
23 section, the term ‘contractual right’
24 includes—

1 “(I) a right set forth in a rule or
2 bylaw of a national securities ex-
3 change, a national securities associa-
4 tion, or a securities clearing agency;

5 “(II) a right set forth in a bylaw
6 of a clearing organization or contract
7 market or in a resolution of the gov-
8 erning board thereof; and

9 “(III) a right, whether or not in
10 writing, arising under common law,
11 under law merchant, or by reason of
12 normal business practice.”.

13 **SEC. 11. FEDERAL RESERVE COLLATERAL REQUIREMENTS.**

14 Section 16 of the Federal Reserve Act (12 U.S.C.
15 412) is amended in the second sentence of the second un-
16 designated paragraph, by striking “acceptances acquired
17 under section 13 of this Act” and inserting “acceptances
18 acquired under section 10A, 10B, 13, or 13A”.

19 **SEC. 12. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

20 (a) SEVERABILITY.—If any provision of this Act or
21 any amendment made by this Act, or the application of
22 any such provision or amendment to any person or cir-
23 cumstance, is held to be unconstitutional, the remaining
24 provisions of and amendments made by this Act and the

1 application of such other provisions and amendments to
2 any person or circumstance shall not be affected thereby.

3 (b) EFFECTIVE DATE.—This Act and the amend-
4 ments made by this Act shall take effect on the date of
5 enactment of this Act.

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

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