

107TH CONGRESS  
1ST SESSION

# H. R. 11

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

JANUARY 3, 2001

Mr. LEACH introduced the following bill; which was referred to the Committee on Banking and 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

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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.**

4 This Act may be cited as the “Financial Contract  
5 Netting Improvement Act of 2001”.

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  
21 interests therein (including any inter-  
22 est therein or based on the value  
23 thereof) or any option on any of the  
24 foregoing, including any option to  
25 purchase or sell any such security,

1 certificate of deposit, loan, interest,  
2 group or index, or option;

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

11 “(III) means any option entered  
12 into on a national securities exchange  
13 relating to foreign currencies;

14 “(IV) means the guarantee by or  
15 to any securities clearing agency of  
16 any settlement of cash, securities, cer-  
17 tificates of deposit, mortgage loans or  
18 interests therein, group or index of se-  
19 curities, certificates of deposit, or  
20 mortgage loans or interests therein  
21 (including any interest therein or  
22 based on the value thereof) or option  
23 on any of the foregoing, including any  
24 option to purchase or sell any such se-

1                   curity, certificate of deposit, loan, in-  
2                   terest, group or index, or option;

3                   “ (V) means any margin loan;

4                   “ (VI) means any other agree-  
5                   ment or transaction that is similar to  
6                   any agreement or transaction referred  
7                   to in this clause;

8                   “ (VII) means any combination of  
9                   the agreements or transactions re-  
10                  ferred to in this clause;

11                  “ (VIII) means any option to  
12                  enter into any agreement or trans-  
13                  action referred to in this clause;

14                  “ (IX) means a master agreement  
15                  that provides for an agreement or  
16                  transaction referred to in subclause  
17                  (I), (III), (IV), (V), (VI), (VII), or  
18                  (VIII), together with all supplements  
19                  to any such master agreement, with-  
20                  out regard to whether the master  
21                  agreement provides for an agreement  
22                  or transaction that is not a securities  
23                  contract under this clause, except that  
24                  the master agreement shall be consid-  
25                  ered to be a securities contract under

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

6 “(X) means any security agree-  
7 ment or arrangement or other credit  
8 enhancement related to any agree-  
9 ment or transaction referred to in this  
10 clause.”.

11 (c) DEFINITION OF COMMODITY CONTRACT.—Sec-  
12 tion 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act  
13 (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as fol-  
14 lows:

15 “(iii) COMMODITY CONTRACT.—The  
16 term ‘commodity contract’ means—

17 “(I) with respect to a futures  
18 commission merchant, a contract for  
19 the purchase or sale of a commodity  
20 for future delivery on, or subject to  
21 the rules of, a contract market or  
22 board of trade;

23 “(II) with respect to a foreign fu-  
24 tures commission merchant, a foreign  
25 future;

1           “(III) with respect to a leverage  
2 transaction merchant, a leverage  
3 transaction;

4           “(IV) with respect to a clearing  
5 organization, a contract for the pur-  
6 chase or sale of a commodity for fu-  
7 ture delivery on, or subject to the  
8 rules of, a contract market or board  
9 of trade that is cleared by such clear-  
10 ing organization, or commodity option  
11 traded on, or subject to the rules of,  
12 a contract market or board of trade  
13 that is cleared by such clearing orga-  
14 nization;

15           “(V) with respect to a commodity  
16 options dealer, a commodity option;

17           “(VI) any other agreement or  
18 transaction that is similar to any  
19 agreement or transaction referred to  
20 in this clause;

21           “(VII) any combination of the  
22 agreements or transactions referred to  
23 in this clause;

1           “(VIII) any option to enter into  
2           any agreement or transaction referred  
3           to in this clause;

4           “(IX) a master agreement that  
5           provides for an agreement or trans-  
6           action referred to in subclause (I),  
7           (II), (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 com-  
13          modity contract under this clause, ex-  
14          cept that the master agreement shall  
15          be considered to be a commodity con-  
16          tract under this clause only with re-  
17          spect to each agreement or trans-  
18          action under the master agreement  
19          that is referred to in subclause (I),  
20          (II), (III), (IV), (V), (VI), (VII), or  
21          (VIII); or

22          “(X) any security agreement or  
23          arrangement or other credit enhance-  
24          ment related to any agreement or

1 transaction referred to in this  
2 clause.”.

3 (d) DEFINITION OF FORWARD CONTRACT.—Section  
4 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12  
5 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

6 “(iv) FORWARD CONTRACT.—The  
7 term ‘forward contract’ means—

8 “(I) a contract (other than a  
9 commodity contract) for the purchase,  
10 sale, or transfer of a commodity or  
11 any similar good, article, service,  
12 right, or interest which is presently or  
13 in the future becomes the subject of  
14 dealing in the forward contract trade,  
15 or product or byproduct thereof, with  
16 a maturity date more than 2 days  
17 after the date the contract is entered  
18 into, including a repurchase trans-  
19 action, reverse repurchase transaction,  
20 consignment, lease, swap, hedge  
21 transaction, deposit, loan, option, allo-  
22 cated transaction, unallocated trans-  
23 action, or any other similar agree-  
24 ment;



1           “(II) any combination of agree-  
2           ments or transactions referred to in  
3           subclauses (I) and (III);

4           “(III) any option to enter into  
5           any agreement or transaction referred  
6           to in subclause (I) or (II);

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

22          “(V) any security agreement or  
23          arrangement or other credit enhance-  
24          ment related to any agreement or

1 transaction referred to in subclause  
2 (I), (II), (III), or (IV).”.

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

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

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

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

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

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

22 “(IV) means any option to enter  
23 into any agreement or transaction re-  
24 ferred to in subclause (I) or (III);

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

17           “(VI) means any security agree-  
18          ment or arrangement or other credit  
19          enhancement related to any agree-  
20          ment or transaction referred to in  
21          subclause (I), (III), (IV), or (V).

22          For purposes of this clause, the term  
23          ‘qualified foreign government security’  
24          means a security that is a direct obligation  
25          of, or that is fully guaranteed by, the cen-

1           tral government of a member of the Orga-  
2           nization for Economic Cooperation and  
3           Development (as determined by regulation  
4           or order adopted by the appropriate Fed-  
5           eral banking authority).”.

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

9                   “(vi) SWAP AGREEMENT.—The term  
10           ‘swap agreement’ means—

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

1 forward agreement; a credit spread or  
2 credit swap, option, future, or forward  
3 agreement; a commodity index or  
4 commodity swap, option, future, or  
5 forward agreement; or a weather  
6 swap, weather derivative, or a weather  
7 option;

8 “(II) any agreement or trans-  
9 action similar to any other agreement  
10 or transaction referred to in this  
11 clause that is presently, or in the fu-  
12 ture becomes, regularly entered into  
13 in the swap market (including terms  
14 and conditions incorporated by ref-  
15 erence in such agreement) and that is  
16 a forward, swap, future, or option on  
17 1 or more rates, currencies, commod-  
18 ities, equity securities or other equity  
19 instruments, debt securities or other  
20 debt instruments, or economic indices  
21 or measures of economic risk or value;

22 “(III) any combination of agree-  
23 ments or transactions referred to in  
24 this clause;

1           “(IV) any option to enter into  
2           any agreement or transaction referred  
3           to in this clause;

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

20          “(VI) any security agreement or  
21          arrangement or other credit enhance-  
22          ment related to any agreements or  
23          transactions referred to in subpara-  
24          graph (I), (II), (III), (IV), or (V).

1           Such term is applicable for purposes of  
2           this title only and shall not be construed or  
3           applied so as to challenge or affect the  
4           characterization, definition, or treatment of  
5           any swap agreement under any other stat-  
6           ute, regulation, or rule, including the Secu-  
7           rities Act of 1933, the Securities Exchange  
8           Act of 1934, the Public Utility Holding  
9           Company Act of 1935, the Trust Indenture  
10          Act of 1939, the Investment Company Act  
11          of 1940, the Investment Advisers Act of  
12          1940, the Securities Investor Protection  
13          Act of 1970, the Commodity Exchange  
14          Act, and the regulations promulgated by  
15          the Securities and Exchange Commission  
16          or the Commodity Futures Trading Com-  
17          mission.”.

18          (g)     DEFINITION     OF     TRANSFER.—Section  
19     11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12  
20     U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

21                     “(viii) TRANSFER.—The term ‘trans-  
22                     fer’ means every mode, direct or indirect,  
23                     absolute or conditional, voluntary or invol-  
24                     untary, of disposing of or parting with  
25                     property or with an interest in property,



1 including retention of title as a security in-  
2 terest and foreclosure of the depository  
3 institutions’s equity of redemption.”.

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

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

10 (2) in subparagraph (A)(i), by striking “to  
11 cause the termination or liquidation” and inserting  
12 “such person has to cause the termination, liquida-  
13 tion, or acceleration”;

14 (3) by amending subparagraph (A)(ii) to read  
15 as follows:

16 “(ii) any right under any security  
17 agreement or arrangement or other credit  
18 enhancement related to 1 or more qualified  
19 financial contracts described in clause  
20 (i);” and

21 (4) by amending subparagraph (E)(ii) to read  
22 as follows:

23 “(ii) any right under any security  
24 agreement or arrangement or other credit  
25 enhancement related to 1 or more qualified

1 financial contracts described in clause  
2 (i);”.

3 (i) AVOIDANCE OF TRANSFERS.—Section  
4 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12  
5 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section  
6 5242 of the Revised Statutes of the United States (12  
7 U.S.C. 91) or any other Federal or State law relating to  
8 the avoidance of preferential or fraudulent transfers,” be-  
9 fore “the Corporation”.

10 **SEC. 3. AUTHORITY OF THE CORPORATION WITH RESPECT**  
11 **TO FAILED AND FAILING INSTITUTIONS.**

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

15 (1) in subparagraph (E), by striking “other  
16 than paragraph (12) of this subsection, subsection  
17 (d)(9)” and inserting “other than subsections (d)(9)  
18 and (e)(10)”; and

19 (2) by adding at the end the following new sub-  
20 paragraphs:

21 “(F) CLARIFICATION.—No provision of law  
22 shall be construed as limiting the right or  
23 power of the Corporation, or authorizing any  
24 court or agency to limit or delay, in any man-  
25 ner, the right or power of the Corporation to

1 transfer any qualified financial contract in ac-  
2 cordance with paragraphs (9) and (10) of this  
3 subsection or to disaffirm or repudiate any such  
4 contract in accordance with paragraph (1).

5 “(G) WALKAWAY CLAUSES NOT EFFEC-  
6 TIVE.—

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

15 “(ii) WALKAWAY CLAUSE DEFINED.—  
16 For purposes of this subparagraph, the  
17 term ‘walkaway clause’ means a provision  
18 in a qualified financial contract that, after  
19 calculation of a value of a party’s position  
20 or an amount due to or from 1 of the par-  
21 ties in accordance with its terms upon ter-  
22 mination, liquidation, or acceleration of the  
23 qualified financial contract, either does not  
24 create a payment obligation of a party or  
25 extinguishes a payment obligation of a

1 party in whole or in part solely because of  
2 such party's status as a nondefaulting  
3 party.”.

4 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—  
5 Section 11(e)(12)(A) of the Federal Deposit Insurance  
6 Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting  
7 “or the exercise of rights or powers” after “the appoint-  
8 ment”.

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

11 (a) **TRANSFERS OF QUALIFIED FINANCIAL CON-**  
12 **TRACTS TO FINANCIAL INSTITUTIONS.**—Section 11(e)(9)  
13 of the Federal Deposit Insurance Act (12 U.S.C.  
14 1821(e)(9)) is amended to read as follows:

15 “(9) **TRANSFER OF QUALIFIED FINANCIAL CON-**  
16 **TRACTS.**—

17 “(A) **IN GENERAL.**—In making any trans-  
18 fer of assets or liabilities of a depository institu-  
19 tion in default which includes any qualified fi-  
20 nancial contract, the conservator or receiver for  
21 such depository institution shall either—

22 “(i) transfer to 1 financial institution,  
23 other than a financial institution for which  
24 a conservator, receiver, trustee in bank-  
25 ruptcy, or other legal custodian has been

1 appointed or which is otherwise the subject  
2 of a bankruptcy or insolvency proceeding—

3 “(I) all qualified financial con-  
4 tracts between any person or any af-  
5 filiate of such person and the deposi-  
6 tory institution in default;

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

15 “(III) all claims of such deposi-  
16 tory institution against such person or  
17 any affiliate of such person under any  
18 such contract; and

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

24 “(ii) transfer none of the qualified fi-  
25 nancial contracts, claims, property or other

1 credit enhancement referred to in clause (i)  
2 (with respect to such person and any affil-  
3 iate of such person).

4 “(B) TRANSFER TO FOREIGN BANK, FOR-  
5 EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
6 AGENCY OF A FOREIGN BANK OR FINANCIAL IN-  
7 STITUTION.—In transferring any qualified fi-  
8 nancial contracts and related claims and prop-  
9 erty pursuant to subparagraph (A)(i), the con-  
10 servator or receiver for such depository institu-  
11 tion shall not make such transfer to a foreign  
12 bank, financial institution organized under the  
13 laws of a foreign country, or a branch or agency  
14 of a foreign bank or financial institution unless,  
15 under the law applicable to such bank, financial  
16 institution, branch or agency, to the qualified  
17 financial contracts, and to any netting contract,  
18 any security agreement or arrangement or other  
19 credit enhancement related to 1 or more quali-  
20 fied financial contracts, the contractual rights  
21 of the parties to such qualified financial con-  
22 tracts, netting contracts, security agreements or  
23 arrangements, or other credit enhancements are  
24 enforceable substantially to the same extent as  
25 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 re-  
4 ceiver transfers any qualified financial contract  
5 and related claims, property and credit en-  
6 hancements pursuant to subparagraph (A)(i)  
7 and such contract is subject to the rules of a  
8 clearing organization, the clearing organization  
9 shall not be required to accept the transferee as  
10 a member by virtue of the transfer.

11           “(D) DEFINITION.—For purposes of this  
12 section, the term ‘financial institution’ means a  
13 broker or dealer, a depository institution, a fu-  
14 tures commission merchant, or any other insti-  
15 tution as determined by the Corporation by reg-  
16 ulation to be a financial institution.”.

17       (b) NOTICE TO QUALIFIED FINANCIAL CONTRACT  
18 COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal  
19 Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is  
20 amended by amending the flush material following clause  
21 (ii) to read as follows: “the conservator or receiver shall  
22 notify any person who is a party to any such contract of  
23 such transfer by 5:00 p.m. (eastern time) on the business  
24 day following the date of the appointment of the receiver,

1 in the case of a receivership, or the business day following  
2 such transfer, in the case of a conservatorship.”.

3 (c) RIGHTS AGAINST RECEIVER AND TREATMENT OF  
4 BRIDGE BANKS.—Section 11(e)(10) of the Federal De-  
5 posit Insurance Act (12 U.S.C. 1821(e)(10)) is further  
6 amended—

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

9 (2) by inserting after subparagraph (A) the fol-  
10 lowing new subparagraphs:

11 “(B) CERTAIN RIGHTS NOT ENFORCE-  
12 ABLE.—

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



1                   “(I) until 5:00 p.m. (eastern  
2                   time) on the business day following  
3                   the date of the appointment of the re-  
4                   ceiver; or

5                   “(II) after the person has re-  
6                   ceived notice that the contract has  
7                   been transferred pursuant to para-  
8                   graph (9)(A).

9                   “(ii) CONSERVATORSHIP.—A person  
10                  who is a party to a qualified financial con-  
11                  tract with an insured depository institution  
12                  may not exercise any right such person has  
13                  to terminate, liquidate, or net such con-  
14                  tract under paragraph (8)(E) or section  
15                  403 or 404 of the Federal Deposit Insur-  
16                  ance Corporation Improvement Act of  
17                  1991, solely by reason of or incidental to  
18                  the appointment of a conservator for the  
19                  depository institution (or the insolvency or  
20                  financial condition of the depository insti-  
21                  tution for which the conservator has been  
22                  appointed).

23                  “(iii) NOTICE.—For purposes of this  
24                  subsection, the Corporation as receiver or  
25                  conservator of an insured depository insti-

1           tution shall be deemed to have notified a  
2           person who is a party to a qualified finan-  
3           cial contract with such depository institu-  
4           tion if the Corporation has taken steps  
5           reasonably calculated to provide notice to  
6           such person by the time specified in sub-  
7           paragraph (A) of this subsection.

8           “(C) TREATMENT OF BRIDGE BANKS.—

9           The following institutions shall not be consid-  
10          ered a financial institution for which a conser-  
11          vator, receiver, trustee in bankruptcy, or other  
12          legal custodian has been appointed or which is  
13          otherwise the subject of a bankruptcy or insol-  
14          vency proceeding for purposes of paragraph  
15          (9)—

16                 “(i) a bridge bank; or

17                 “(ii) a depository institution organized  
18                 by the Corporation, for which a conser-  
19                 vator is appointed either—

20                         “(I) immediately upon the orga-  
21                         nization of the institution; or

22                         “(II) at the time of a purchase  
23                         and assumption transaction between  
24                         such institution and the Corporation

1 as receiver for a depository institution  
2 in default.”.

3 **SEC. 5. AMENDMENTS RELATING TO DISAFFIRMANCE OR**  
4 **REPUDIATION OF QUALIFIED FINANCIAL**  
5 **CONTRACTS.**

6 (a) IN GENERAL.—Section 11(e) of the Federal De-  
7 posit Insurance Act (12 U.S.C. 1821(e)) is further  
8 amended—

9 (1) by redesignating paragraphs (11) through  
10 (15) as paragraphs (12) through (16), respectively;  
11 and

12 (2) by inserting after paragraph (10) the fol-  
13 lowing new paragraph:

14 “(11) DISAFFIRMANCE OR REPUDIATION OF  
15 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
16 the rights of disaffirmance or repudiation of a con-  
17 servator or receiver with respect to any qualified fi-  
18 nancial contract to which an insured depository in-  
19 stitution is a party, the conservator or receiver for  
20 such institution shall either—

21 “(A) disaffirm or repudiate all qualified fi-  
22 nancial contracts between—

23 “(i) any person or any affiliate of  
24 such person; and

1 “(ii) the depository institution in de-  
2 fault; or

3 “(B) disaffirm or repudiate none of the  
4 qualified financial contracts referred to in sub-  
5 paragraph (A) (with respect to such person or  
6 any affiliate of such person).”.

7 (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
8 Section 11(e)(8) of the Federal Deposit Insurance Act (12  
9 U.S.C. 1821(e)(8)), as amended by section 2(i), is further  
10 amended in subparagraph (C)(i), by striking “(11)” and  
11 inserting “(12)”.

12 **SEC. 6. CLARIFYING AMENDMENT RELATING TO MASTER**  
13 **AGREEMENTS.**

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

17 “(vii) TREATMENT OF MASTER  
18 AGREEMENT AS 1 AGREEMENT.—Any mas-  
19 ter agreement for any contract or agree-  
20 ment described in any preceding clause of  
21 this subparagraph (or any master agree-  
22 ment for such master agreement or agree-  
23 ments), together with all supplements to  
24 such master agreement, shall be treated as  
25 a single agreement and a single qualified

1 financial contract. If a master agreement  
2 contains provisions relating to agreements  
3 or transactions that are not themselves  
4 qualified financial contracts, the master  
5 agreement shall be deemed to be a quali-  
6 fied financial contract only with respect to  
7 those transactions that are themselves  
8 qualified financial contracts.”.

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

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

14 (1) in paragraph (2)—

15 (A) by inserting “or exempt from such reg-  
16 istration pursuant to an order of the Securities  
17 and Exchange Commission” before the semi-  
18 colon at the end of subparagraph (A)(ii); and

19 (B) by inserting “or that has been granted  
20 an exemption pursuant to section 4(c)(1) of  
21 such Act” before the period at the end of sub-  
22 paragraph (B);

23 (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 adding before the pe-  
22 riod “and any other clearing organization with which  
23 such clearing organization has a netting contract”;

24 (4) by amending paragraph (14)(A)(i) to read  
25 as follows:

1                   “(i) means a contract or agreement  
2                   between two or more financial institutions,  
3                   clearing organizations, or members that  
4                   provides for netting present or future pay-  
5                   ment obligations or payment entitlements  
6                   (including liquidation or closeout values re-  
7                   lating to such obligations or entitlements)  
8                   among the parties to the agreement; and”;  
9                   and

10                   (5) by adding at the end the following new  
11                   paragraph:

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

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

21                   (1) by amending subsection (a) to read as fol-  
22                   lows:

23                   “(a) GENERAL RULE.—Notwithstanding any other  
24                   provision of State or Federal law (other than paragraphs  
25                   (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal

1 Deposit Insurance Act or any order authorized under sec-  
2 tion 5(b)(2) of the Securities Investor Protection Act of  
3 1970), the covered contractual payment obligations and  
4 the covered contractual payment entitlements between any  
5 two financial institutions shall be netted in accordance  
6 with, and subject to the conditions of, the terms of any  
7 applicable netting contract (except as provided in section  
8 561(b)(2) of title 11, United States Code).”;

9 (2) by adding at the end the following new sub-  
10 section:

11 “(f) ENFORCEABILITY OF SECURITY AGREE-  
12 MENTS.—The provisions of any security agreement or ar-  
13 rangement or other credit enhancement related to 1 or  
14 more netting contracts between any two financial institu-  
15 tions shall be enforceable in accordance with their terms  
16 (except as provided in section 561(b)(2) of title 11, United  
17 States Code) and shall not be stayed, avoided, or otherwise  
18 limited by any State or Federal law (other than para-  
19 graphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the  
20 Federal Deposit Insurance Act and section 5(b)(2) of the  
21 Securities Investor Protection Act of 1970).”.

22 (c) ENFORCEABILITY OF CLEARING ORGANIZATION  
23 NETTING CONTRACTS.—Section 404 of the Federal De-  
24 posit Insurance Corporation Improvement Act of 1991 (12  
25 U.S.C. 4404) is amended—



1           (1) by amending subsection (a) to read as fol-  
2           lows:

3           “(a) GENERAL RULE.—Notwithstanding any other  
4           provision of State or Federal law (other than paragraphs  
5           (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
6           Deposit Insurance Act and any order authorized under  
7           section 5(b)(2) of the Securities Investor Protection Act  
8           of 1970), the covered contractual payment obligations and  
9           the covered contractual payment entitlements of a member  
10          of a clearing organization to and from all other members  
11          of a clearing organization shall be netted in accordance  
12          with and subject to the conditions of any applicable net-  
13          ting contract (except as provided in section 561(b)(2) of  
14          title 11, United States Code).”;

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

17          “(h) ENFORCEABILITY OF SECURITY AGREE-  
18          MENTS.—The provisions of any security agreement or ar-  
19          rangement or other credit enhancement related to 1 or  
20          more netting contracts between any two members of a  
21          clearing organization shall be enforceable in accordance  
22          with their terms (except as provided in section 561(b)(2)  
23          of title 11, United States Code) and shall not be stayed,  
24          avoided, or otherwise limited by any State or Federal law  
25          (other than paragraphs (8)(E), (8)(F), and (10)(B) of sec-

1 tion 11(e) of the Federal Deposit Insurance Act and sec-  
2 tion 5(b)(2) of the Securities Investor Protection Act of  
3 1970).”.

4 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-  
5 SURED NATIONAL BANKS AND UNINSURED FEDERAL  
6 BRANCHES AND AGENCIES.—The Federal Deposit Insur-  
7 ance Corporation Improvement Act of 1991 (12 U.S.C.  
8 4401 et seq.) is amended—

9 (1) by redesignating section 407 as section  
10 407A; and

11 (2) by adding after section 406 the following  
12 new section:

13 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**  
14 **NATIONAL BANKS AND UNINSURED FEDERAL**  
15 **BRANCHES AND AGENCIES.**

16 “(a) IN GENERAL.—Notwithstanding any other pro-  
17 vision of law, paragraphs (8), (9), (10), and (11) of section  
18 11(e) of the Federal Deposit Insurance Act shall apply  
19 to an uninsured national bank or uninsured Federal  
20 branch or Federal agency except—

21 “(1) any reference to the ‘Corporation as re-  
22 ceiver’ or ‘the receiver or the Corporation’ shall refer  
23 to the receiver of an uninsured national bank or un-  
24 insured Federal branch or Federal agency appointed  
25 by the Comptroller of the Currency;

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

9           “(3) any reference to an ‘insured depository in-  
10 stitution’ or ‘depository institution’ shall refer to an  
11 uninsured national bank or an uninsured Federal  
12 branch or Federal agency.

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

19           “(c) REGULATORY AUTHORITY.—

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

24           “(2) SPECIFIC REQUIREMENT.—In promul-  
25 gating regulations to implement this section, the

1 Comptroller of the Currency shall ensure that the  
 2 regulations generally are consistent with the regula-  
 3 tions and policies of the Federal Deposit Insurance  
 4 Corporation adopted pursuant to the Federal De-  
 5 posit Insurance Act.

6 “(d) DEFINITIONS.—For purposes of this section, the  
 7 terms ‘Federal branch’, ‘Federal agency’, and ‘foreign  
 8 bank’ have the same meaning as in section 1(b) of the  
 9 International Banking Act.”.

10 **SEC. 8. BANKRUPTCY CODE AMENDMENTS.**

11 (a) DEFINITIONS OF FORWARD CONTRACT, REPUR-  
 12 CHASE AGREEMENT, SECURITIES CLEARING AGENCY,  
 13 SWAP AGREEMENT, COMMODITY CONTRACT, AND SECUR-  
 14 RITIES CONTRACT.—Title 11, United States Code, is  
 15 amended—

16 (1) in section 101—

17 (A) in paragraph (25)—

18 (i) by striking “means a contract”  
 19 and inserting “means—  
 20 “(A) a contract”;

21 (ii) by striking “, or any combination  
 22 thereof or option thereon;” and inserting  
 23 “, or any other similar agreement;”; and

24 (iii) by adding at the end the fol-  
 25 lowing:

1           “(B) any combination of agreements or  
2 transactions referred to in subparagraphs (A)  
3 and (C);

4           “(C) any option to enter into an agreement  
5 or transaction referred to in subparagraph (A)  
6 or (B);

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

20           “(E) any security agreement or arrange-  
21 ment, or other credit enhancement related to  
22 any agreement or transaction referred to in  
23 subparagraph (A), (B), (C), or (D), but not to  
24 exceed the actual value of such contract on the  
25 date of the filing of the petition;”;

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

4 (C) by amending paragraph (47) to read  
5 as follows:

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

8 “(A) means—

9 “(i) an agreement, including related  
10 terms, which provides for the transfer of 1  
11 or more certificates of deposit, mortgage-  
12 related securities (as defined in the Securi-  
13 ties Exchange Act of 1934), mortgage  
14 loans, interests in mortgage-related securi-  
15 ties or mortgage loans, eligible bankers’ ac-  
16 ceptances, qualified foreign government se-  
17 curities, or securities that are direct obliga-  
18 tions of, or that are fully guaranteed by,  
19 the United States or any agency of the  
20 United States against the transfer of funds  
21 by the transferee of such certificates of de-  
22 posit, eligible bankers’ acceptances, securi-  
23 ties, loans, or interests, with a simulta-  
24 neous agreement by such transferee to  
25 transfer to the transferor thereof certifi-

1 cates of deposit, eligible bankers' accept-  
2 ance, securities, loans, or interests of the  
3 kind described above, at a date certain not  
4 later than 1 year after such transfer or on  
5 demand, against the transfer of funds;

6 “(ii) any combination of agreements  
7 or transactions referred to in clauses (i)  
8 and (iii);

9 “(iii) an option to enter into an agree-  
10 ment or transaction referred to in clause  
11 (i) or (ii);

12 “(iv) a master agreement that pro-  
13 vides for an agreement or transaction re-  
14 ferred to in clause (i), (ii), or (iii), together  
15 with all supplements to any such master  
16 agreement, without regard to whether such  
17 master agreement provides for an agree-  
18 ment or transaction that is not a repur-  
19 chase agreement under this paragraph, ex-  
20 cept that such master agreement shall be  
21 considered to be a repurchase agreement  
22 under this paragraph only with respect to  
23 each agreement or transaction under the  
24 master agreement that is referred to in  
25 clause (i), (ii), or (iii); or

1           “(v) any security agreement or ar-  
2           rangement or other credit enhancement re-  
3           lated to any agreement or transaction re-  
4           ferred to in clause (i), (ii), (iii), or (iv), but  
5           not to exceed the actual value of such con-  
6           tract on the date of the filing of the peti-  
7           tion; and

8           “(B) does not include a repurchase obliga-  
9           tion under a participation in a commercial  
10          mortgage loan,

11          and, for purposes of this paragraph, the term ‘quali-  
12          fied foreign government security’ means a security  
13          that is a direct obligation of, or that is fully guaran-  
14          teed by, the central government of a member of the  
15          Organization for Economic Cooperation and Devel-  
16          opment;”;

17          (D) in paragraph (48) by inserting “or ex-  
18          empt from such registration under such section  
19          pursuant to an order of the Securities and Ex-  
20          change Commission” after “1934”; and

21          (E) by amending paragraph (53B) to read  
22          as follows:

23          “(53B) ‘swap agreement’—

24          “(A) means—



1           “(i) any agreement, including the  
2 terms and conditions incorporated by ref-  
3 erence in such agreement, which is an in-  
4 terest rate swap, option, future, or forward  
5 agreement, including a rate floor, rate cap,  
6 rate collar, cross-currency rate swap, and  
7 basis swap; a spot, same day-tomorrow, to-  
8 morrow-next, forward, or other foreign ex-  
9 change or precious metals agreement; a  
10 currency swap, option, future, or forward  
11 agreement; an equity index or an equity  
12 swap, option, future, or forward agree-  
13 ment; a debt index or a debt swap, option,  
14 future, or forward agreement; a credit  
15 spread or a credit swap, option, future, or  
16 forward agreement; a commodity index or  
17 a commodity swap, option, future, or for-  
18 ward agreement; or a weather swap,  
19 weather derivative, or weather option;

20           “(ii) any agreement or transaction  
21 similar to any other agreement or trans-  
22 action referred to in this paragraph that—

23                   “(I) is presently, or in the future  
24 becomes, regularly entered into in the  
25 swap market (including terms and

1 conditions incorporated by reference  
2 therein); and

3 “(II) is a forward, swap, future,  
4 or option on 1 or more rates, cur-  
5 rencies, commodities, equity securities,  
6 or other equity instruments, debt se-  
7 curities or other debt instruments, or  
8 economic indices or measures of eco-  
9 nomic risk or value;

10 “(iii) any combination of agreements  
11 or transactions referred to in this para-  
12 graph;

13 “(iv) any option to enter into an  
14 agreement or transaction referred to in  
15 this paragraph;

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

1 paragraph only with respect to each agree-  
2 ment or transaction under the master  
3 agreement that is referred to in clause (i),  
4 (ii), (iii), or (iv); or

5 “(B) any security agreement or arrange-  
6 ment or other credit enhancement related to  
7 any agreements or transactions referred to in  
8 subparagraph (A), but not to exceed the actual  
9 value of such contract on the date of the filing  
10 of the petition; and

11 “(C) is applicable for purposes of this title  
12 only and shall not be construed or applied so as  
13 to challenge or affect the characterization, defi-  
14 nition, or treatment of any swap agreement  
15 under any other statute, regulation, or rule, in-  
16 cluding the Securities Act of 1933, the Securi-  
17 ties Exchange Act of 1934, the Public Utility  
18 Holding Company Act of 1935, the Trust In-  
19 denture Act of 1939, the Investment Company  
20 Act of 1940, the Investment Advisers Act of  
21 1940, the Securities Investor Protection Act of  
22 1970, the Commodity Exchange Act, and the  
23 regulations prescribed by the Securities and Ex-  
24 change Commission or the Commodity Futures  
25 Trading Commission.”;

1           (2) by amending section 741(7) to read as fol-  
2           lows:

3           “(7) ‘securities contract’—

4           “(A) means—

5                   “(i) a contract for the purchase, sale,  
6                   or loan of a security, a certificate of de-  
7                   posit, a mortgage loan or any interest in a  
8                   mortgage loan, a group or index of securi-  
9                   ties, certificates of deposit or mortgage  
10                  loans or interests therein (including an in-  
11                  terest therein or based on the value there-  
12                  of), or option on any of the foregoing, in-  
13                  cluding an option to purchase or sell any  
14                  such security, certificate of deposit, loan,  
15                  interest, group or index, or option;

16                  “(ii) any option entered into on a na-  
17                  tional securities exchange relating to for-  
18                  eign currencies;

19                  “(iii) the guarantee by or to any secu-  
20                  rities clearing agency of a settlement of  
21                  cash, securities, certificates of deposit,  
22                  mortgage loans or interests therein, group  
23                  or index of securities, or mortgage loans or  
24                  interests therein (including any interest  
25                  therein or based on the value thereof), or

1 option on any of the foregoing, including  
2 an option to purchase or sell any such se-  
3 curity, certificate of deposit, loan, interest,  
4 group or index, or option;

5 “(iv) any margin loan;

6 “(v) any other agreement or trans-  
7 action that is similar to an agreement or  
8 transaction referred to in this paragraph;

9 “(vi) any combination of the agree-  
10 ments or transactions referred to in this  
11 paragraph;

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

15 “(viii) a master agreement that pro-  
16 vides for an agreement or transaction re-  
17 ferred to in clause (i), (ii), (iii), (iv), (v),  
18 (vi), or (vii), together with all supplements  
19 to any such master agreement, without re-  
20 gard to whether the master agreement pro-  
21 vides for an agreement or transaction that  
22 is not a securities contract under this  
23 paragraph, except that such master agree-  
24 ment shall be considered to be a securities  
25 contract under this paragraph only with

1           respect to each agreement or transaction  
2           under such master agreement that is re-  
3           ferred to in clause (i), (ii), (iii), (iv), (v),  
4           (vi), or (vii); or

5           “(ix) any security agreement or ar-  
6           rangement or other credit enhancement re-  
7           lated to any agreement or transaction re-  
8           ferred to in this paragraph, but not to ex-  
9           ceed the actual value of such contract on  
10          the date of the filing of the petition; and

11          “(B) does not include any purchase, sale,  
12          or repurchase obligation under a participation  
13          in a commercial mortgage loan.”; and

14          (3) in section 761(4)—

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

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

18                         “(F) any other agreement or transaction  
19                         that is similar to an agreement or transaction  
20                         referred to in this paragraph;

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

23                         “(H) any option to enter into an agree-  
24                         ment or transaction referred to in this para-  
25                         graph;

1           “(I) a master agreement that provides for  
2           an agreement or transaction referred to in sub-  
3           paragraph (A), (B), (C), (D), (E), (F), (G), or  
4           (H), together with all supplements to such mas-  
5           ter agreement, without regard to whether the  
6           master agreement provides for an agreement or  
7           transaction that is not a commodity contract  
8           under this paragraph, except that the master  
9           agreement shall be considered to be a com-  
10          modity contract under this paragraph only with  
11          respect to each agreement or transaction under  
12          the master agreement that is referred to in sub-  
13          paragraph (A), (B), (C), (D), (E), (F), (G), or  
14          (H); or

15           “(J) any security agreement or arrange-  
16          ment or other credit enhancement related to  
17          any agreement or transaction referred to in this  
18          paragraph, but not to exceed the actual value of  
19          such contract on the date of the filing of the pe-  
20          tition;”.

21          (b) DEFINITIONS OF FINANCIAL INSTITUTION, FI-  
22          NANCIAL PARTICIPANT, AND FORWARD CONTRACT MER-  
23          CHANT.—Section 101 of title 11, United States Code, is  
24          amended—

1           (1) by striking paragraph (22) and inserting  
2 the following new paragraph:

3           “(22) the term ‘financial institution’—

4                   “(A) means a Federal reserve bank or an  
5 entity (domestic or foreign) that is a commer-  
6 cial or savings bank, industrial savings bank,  
7 savings and loan association, trust company, a  
8 bank or a corporation organized under section  
9 25A of the Federal Reserve Act and, when any  
10 such bank or entity is acting as agent or custo-  
11 dian for a customer in connection with a securi-  
12 ties contract, as defined in section 741, such  
13 customer; and

14                   “(B) includes any person described in sub-  
15 paragraph (A) which operates, or operates as, a  
16 multilateral clearing organization pursuant to  
17 section 409 of the Federal Deposit Insurance  
18 Corporation Improvement Act of 1991;”;

19           (2) by inserting after paragraph (22) the fol-  
20 lowing:

21           “(22A) ‘financial participant’ means an entity  
22 that, at the time it enters into a securities contract,  
23 commodity contract or forward contract, or at the  
24 time of the filing of the petition, has 1 or more  
25 agreements or transactions described in paragraph



1 (1), (2), (3), (4), (5), or (6) of section 561(a) with  
2 the debtor or any other entity (other than an affil-  
3 iate) of a total gross dollar value of at least  
4 \$1,000,000,000 in notional or actual principal  
5 amount outstanding on any day during the previous  
6 15-month period, or has gross mark-to-market posi-  
7 tions of at least \$100,000,000 (aggregated across  
8 counterparties) in 1 or more such agreement or  
9 transaction with the debtor or any other entity  
10 (other than an affiliate) on any day during the pre-  
11 vious 15-month period;” and

12 (3) by amending paragraph (26) to read as fol-  
13 lows:

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

22 (c) DEFINITION OF MASTER NETTING AGREEMENT  
23 AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-  
24 tion 101 of title 11, United States Code, is amended by

1 inserting after paragraph (38) the following new para-  
2 graphs:

3           “(38A) ‘master netting agreement’ means an  
4 agreement providing for the exercise of rights, in-  
5 cluding rights of netting, setoff, liquidation, termi-  
6 nation, acceleration, or closeout, under or in connec-  
7 tion with 1 or more contracts that are described in  
8 any 1 or more of paragraphs (1) through (5) of sec-  
9 tion 561(a), or any security agreement or arrange-  
10 ment or other credit enhancement related to 1 or  
11 more of the foregoing. If a master netting agreement  
12 contains provisions relating to agreements or trans-  
13 actions that are not contracts described in para-  
14 graphs (1) through (5) of section 561(a), the master  
15 netting agreement shall be deemed to be a master  
16 netting agreement only with respect to those agree-  
17 ments or transactions that are described in any 1 or  
18 more of the paragraphs (1) through (5) of section  
19 561(a);

20           “(38B) ‘master netting agreement participant’  
21 means an entity that, at any time before the filing  
22 of the petition, is a party to an outstanding master  
23 netting agreement with the debtor;”.

24           (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,  
25 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-

1 CHASE AGREEMENTS, AND MASTER NETTING AGREE-  
2 MENTS UNDER THE AUTOMATIC-STAY.—

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

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

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

11 (C) by amending paragraph (17) to read  
12 as follows:

13 “(17) under subsection (a), of the setoff by a  
14 swap participant of a mutual debt and claim under  
15 or in connection with 1 or more swap agreements  
16 that constitutes the setoff of a claim against the  
17 debtor for any payment or other transfer of property  
18 due from the debtor under or in connection with any  
19 swap agreement against any payment due to the  
20 debtor from the swap participant under or in con-  
21 nection with any swap agreement or against cash,  
22 securities, or other property held by, pledged to and  
23 under the control of, or due from such swap partici-  
24 pant to margin, guarantee, secure, or settle any  
25 swap agreement;”;

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

3 (E) by inserting after paragraph (18) the  
4 following new paragraph:

5 “(19) under subsection (a), of the setoff by a  
6 master netting agreement participant of a mutual  
7 debt and claim under or in connection with 1 or  
8 more master netting agreements or any contract or  
9 agreement subject to such agreements that con-  
10 stitutes the setoff of a claim against the debtor for  
11 any payment or other transfer of property due from  
12 the debtor under or in connection with such agree-  
13 ments or any contract or agreement subject to such  
14 agreements against any payment due to the debtor  
15 from such master netting agreement participant  
16 under or in connection with such agreements or any  
17 contract or agreement subject to such agreements or  
18 against cash, securities, or other property held by,  
19 pledged to and under the control of, or due from  
20 such master netting agreement participant to mar-  
21 gin, guarantee, secure, or settle such agreements or  
22 any contract or agreement subject to such agree-  
23 ments, to the extent such participant is eligible to  
24 exercise such offset rights under paragraph (6), (7),

1 or (17) for each individual contract covered by the  
2 master netting agreement in issue.”.

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

6 “(i) LIMITATION.—The exercise of rights not subject  
7 to the stay arising under subsection (a) pursuant to para-  
8 graph (6), (7), or (17), or (32) of subsection (b) shall not  
9 be stayed by any order of a court or administrative agency  
10 in any proceeding under this title.”.

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

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

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

17 and

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

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

22 “(j) Notwithstanding sections 544, 545, 547,  
23 548(a)(1)(B), and 548(b), the trustee may not avoid a  
24 transfer made by or to a master netting agreement partici-  
25 pant under or in connection with any master netting

1 agreement or any individual contract covered thereby that  
2 is made before the commencement of the case, except  
3 under section 548(a)(1)(A), and except to the extent the  
4 trustee could otherwise avoid such a transfer made under  
5 an individual contract covered by such master netting  
6 agreement.”.

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

10 (1) in subparagraph (C), by striking “and”;

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

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

15 “(E) a master netting agreement participant  
16 that receives a transfer in connection with a master  
17 netting agreement or any individual contract covered  
18 thereby takes for value to the extent of such trans-  
19 fer, except, with respect to a transfer under any in-  
20 dividual contract covered thereby, to the extent such  
21 master netting agreement participant otherwise did  
22 not take (or is otherwise not deemed to have taken)  
23 such transfer for value.”.

1 (g) TERMINATION OR ACCELERATION OF SECURITIES  
2 CONTRACTS.—Section 555 of title 11, United States Code,  
3 is amended—

4 (1) by amending the section heading to read as  
5 follows:

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

8 and

9 (2) in the first sentence, by striking “liquida-  
10 tion” and inserting “liquidation, termination, or ac-  
11 celeration”.

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

15 (1) by amending the section heading to read as  
16 follows:

17 **“§ 556. Contractual right to liquidate, terminate, or**  
18 **accelerate a commodities contract or for-**  
19 **ward contract”;**

20 and

21 (2) in the first sentence, by striking “liquida-  
22 tion” and inserting “liquidation, termination, or ac-  
23 celeration”.

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

4 (1) by amending the section heading to read as  
5 follows:

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

8 and

9 (2) in the first sentence, by striking “liquida-  
10 tion” and inserting “liquidation, termination, or ac-  
11 celeration”.

12 (j) LIQUIDATION, TERMINATION, OR ACCELERATION  
13 OF SWAP AGREEMENTS.—Section 560 of title 11, United  
14 States Code, is amended—

15 (1) by amending the section heading to read as  
16 follows:

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

19 (2) in the first sentence, by striking “termi-  
20 nation of a swap agreement” and inserting “liquida-  
21 tion, termination, or acceleration of 1 or more swap  
22 agreements”; and

23 (3) by striking “in connection with any swap  
24 agreement” and inserting “in connection with the



1 termination, liquidation, or acceleration of 1 or more  
2 swap agreements”.

3 (k) LIQUIDATION, TERMINATION, ACCELERATION, OR  
4 OFFSET UNDER A MASTER NETTING AGREEMENT AND  
5 ACROSS CONTRACTS.—(1) Title 11, United States Code,  
6 is amended by inserting after section 560 the following:

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

10 “(a) IN GENERAL.—Subject to subsection (b), the ex-  
11 ercise of any contractual right, because of a condition of  
12 the kind specified in section 365(e)(1), to cause the termi-  
13 nation, liquidation, or acceleration of or to offset or net  
14 termination values, payment amounts or other transfer ob-  
15 ligations arising under or in connection with 1 or more  
16 (or the termination, liquidation, or acceleration of 1 or  
17 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) EXCEPTION.—

6 “(1) A party may exercise a contractual right  
7 described in subsection (a) to terminate, liquidate, or  
8 accelerate only to the extent that such party could  
9 exercise such a right under section 555, 556, 559,  
10 or 560 for each individual contract covered by the  
11 master netting agreement in issue.

12 “(2) If a debtor is a commodity broker subject  
13 to subchapter IV of chapter 7—

14 “(A) a party may not net or offset an obli-  
15 gation to the debtor arising under, or in con-  
16 nection with, a commodity contract against any  
17 claim arising under, or in connection with,  
18 other instruments, contracts, or agreements  
19 listed in subsection (a), except to the extent the  
20 party has positive net equity in the commodity  
21 accounts at the debtor, as calculated under such  
22 subchapter; and

23 “(B) another commodity broker may not  
24 net or offset an obligation to the debtor arising  
25 under, or in connection with, a commodity con-

1           tract entered into or held on behalf of a cus-  
2           tomer of the debtor against any claim arising  
3           under, or in connection with, other instruments,  
4           contracts, or agreements listed in subsection  
5           (a).

6           “(c) RULE OF APPLICATION.—Subparagraphs (A)  
7           and (B) of subsection (b)(2) shall not be construed as pro-  
8           hibiting the offset of claims and obligations arising pursu-  
9           ant to—

10           “(1) a cross-margining arrangement that has  
11           been approved by the Commodity Futures Trading  
12           Commission or that has been submitted to such  
13           Commission pursuant to section 5a(a)(12) of the  
14           Commodity Exchange Act and has been permitted to  
15           go into effect; or

16           “(2) another netting arrangement, between a  
17           clearing organization (as defined in section 761) and  
18           another entity, that has been approved by the Com-  
19           modity Futures Trading Commission.

20           “(d) DEFINITION.—As used in this section, the term  
21           ‘contractual right’ includes a right set forth in a rule or  
22           bylaw of a national securities exchange, a national securi-  
23           ties association, or a securities clearing agency, a right  
24           set forth in a bylaw of a clearing organization or contract  
25           market or in a resolution of the governing board thereof,

1 and a right, whether or not evidenced in writing, arising  
2 under common law, under law merchant, or by reason of  
3 normal business practice.”.

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

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

8 (1) MUNICIPAL BANKRUPTCIES.—Section 901(a) of  
9 title 11, United States Code, is amended—

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

11 (2) by inserting “559, 560, 561, 562,” after  
12 “557,”.

13 (m) ANCILLARY PROCEEDINGS.—Section 304 of title  
14 11, United States Code, is amended by adding at the end  
15 the following new subsection:

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

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

5 (n) COMMODITY BROKER LIQUIDATIONS.—Title 11,  
6 United States Code, is amended by inserting after section  
7 766 the following:

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

15 “Notwithstanding any other provision of this title,  
16 the exercise of rights by a forward contract merchant,  
17 commodity broker, stockbroker, financial institution, fi-  
18 nancial participant, securities clearing agency, swap par-  
19 ticipant, repo participant, or master netting agreement  
20 participant under this title shall not affect the priority of  
21 any unsecured claim it may have after the exercise of such  
22 rights.”.

23 (o) STOCKBROKER LIQUIDATIONS.—Title 11, United  
24 States Code, is amended by inserting after section 752 the  
25 following:

1 **“§ 753. Stockbroker liquidation and forward contract**  
2 **merchants, commodity brokers, stock-**  
3 **brokers, financial institutions, financial**  
4 **participants, securities clearing agencies,**  
5 **swap participants, repo participants, and**  
6 **master netting agreement participants**

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

15 (p) SETOFF.—Section 553 of title 11, United States  
16 Code, is amended—

17 (1) in subsection (a)(3)(C), by inserting “(ex-  
18 cept for a setoff of a kind described in section  
19 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(32), 555,  
20 556, 559, 560 or 561)” before the period; and

21 (2) in subsection (b)(1), by striking  
22 “362(b)(14)” and inserting “362(b)(17),  
23 362(b)(32), 555, 556, 559, 560, 561”.

24 (q) SECURITIES CONTRACTS, COMMODITY CON-  
25 TRACTS, AND FORWARD CONTRACTS.—Title 11, United  
26 States Code, is amended—

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

4           (2) in section 546(e), by inserting “financial  
5 participant,” after “financial institution,”;

6           (3) in section 548(d)(2)(B), by inserting “fi-  
7 nancial participant,” after “financial institution,”;

8           (4) in section 555—

9                 (A) by inserting “financial participant,”  
10 after “financial institution,”; and

11                 (B) by inserting before the period at the  
12 end “, a right set forth in a bylaw of a clearing  
13 organization or contract market or in a resolu-  
14 tion of the governing board thereof, and a right,  
15 whether or not in writing, arising under com-  
16 mon law, under law merchant, or by reason of  
17 normal business practice”; and

18           (5) in section 556, by inserting “, financial par-  
19 ticipant” after “commodity broker”.

20           (r) CONFORMING AMENDMENTS.—Title 11, United  
21 States Code, is amended—

22           (1) in the table of sections of chapter 5—

23                 (A) by amending the items relating to sec-  
24 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 contract or forward contract.”;

1           and

2                   (B) by amending the items relating to sec-  
3           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 agreement.”;

4           and

5                   (2) in the table of sections of chapter 7—

6                   (A) by inserting after the item relating to  
7           section 766 the following:

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

8           and

9                   (B) by inserting after the item relating to  
10          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.”.

11 **SEC. 9. RECORDKEEPING REQUIREMENTS.**

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

15                   “(H) RECORDKEEPING REQUIREMENTS.—  
16          The Corporation, in consultation with the ap-  
17          propriate Federal banking agencies, may pre-



1           scribe regulations requiring more detailed rec-  
2           ordkeeping with respect to qualified financial  
3           contracts (including market valuations) by in-  
4           sured depository institutions.”.

5 **SEC. 10. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-**  
6                                   **TION REQUIREMENT.**

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

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

12                           “(A) deposits of, or other credit extension  
13 by, a Federal, State, or local governmental enti-  
14 ty, or of any depositor referred to in section  
15 11(a)(2), including an agreement to provide col-  
16 lateral in lieu of a surety bond;

17                           “(B) bankruptcy estate funds pursuant to  
18 section 345(b)(2) of title 11, United States  
19 Code;

20                           “(C) extensions of credit, including any  
21 overdraft, from a Federal reserve bank or Fed-  
22 eral home loan bank; or

23                           “(D) 1 or more qualified financial con-  
24 tracts, as defined in section 11(e)(8)(D),

1 shall not be deemed invalid pursuant to paragraph  
2 (1)(B) solely because such agreement was not exe-  
3 cuted contemporaneously with the acquisition of the  
4 collateral or because of pledges, delivery, or substi-  
5 tution of the collateral made in accordance with such  
6 agreement.”.

7 **SEC. 11. DAMAGE MEASURE.**

8 (a) IN GENERAL.—Title 11, United States Code, is  
9 amended—

10 (1) by inserting after section 561 the following:

11 **“§ 562. Damage measure in connection with swap**  
12 **agreements, securities contracts, forward**  
13 **contracts, commodity contracts, repur-**  
14 **chase agreements, or master netting**  
15 **agreements**

16 “If the trustee rejects a swap agreement, securities  
17 contract as defined in section 741, forward contract, com-  
18 modity contract (as defined in section 761) repurchase  
19 agreement, or master netting agreement pursuant to sec-  
20 tion 365(a), or if a forward contract merchant, stock-  
21 broker, financial institution, securities clearing agency,  
22 repo participant, financial participant, master netting  
23 agreement participant, or swap participant liquidates, ter-  
24 minates, or accelerates such contract or agreement, dam-  
25 ages shall be measured as of the earlier of—

1 “(1) the date of such rejection; or

2 “(2) the date of such liquidation, termination,  
3 or acceleration.”; and

4 (2) in the table of sections of chapter 5 by in-  
5 sserting after the item relating to section 561 the fol-  
6 lowing:

“562. Damage measure in connection with swap agreements, securities con-  
tracts, forward contracts, commodity contracts, repurchase  
agreements, or master netting agreements.”.

7 (b) CLAIMS ARISING FROM REJECTION.—Section  
8 502(g) of title 11, United States Code, is amended—

9 (1) by designating the existing text as para-  
10 graph (1); and

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

12 “(2) A claim for damages calculated in accordance  
13 with section 562 shall be allowed under subsection (a), (b),  
14 or (c), or disallowed under subsection (d) or (e), as if such  
15 claim had arisen before the date of the filing of the peti-  
16 tion.”.

17 **SEC. 12. SIPC STAY.**

18 Section 5(b)(2) of the Securities Investor Protection  
19 Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding  
20 after subparagraph (B) the following new subparagraph:

21 “(C) EXCEPTION FROM STAY.—

22 “(i) Notwithstanding section 362 of  
23 title 11, United States Code, neither the  
24 filing of an application under subsection

1 (a)(3) nor any order or decree obtained by  
2 the Securities Investor Protection Corpora-  
3 tion from the court shall operate as a stay  
4 of any contractual rights of a creditor to  
5 liquidate, terminate, or accelerate a securi-  
6 ties contract, commodity contract, forward  
7 contract, repurchase agreement, swap  
8 agreement, or master netting agreement,  
9 each as defined in title 11 United States  
10 Code, to offset or net termination values,  
11 payment amounts, or other transfer obliga-  
12 tions arising under or in connection with 1  
13 or more of such contracts or agreements,  
14 or to foreclose on any cash collateral  
15 pledged by the debtor whether or not with  
16 respect to 1 or more of such contracts or  
17 agreements.

18 “(ii) Notwithstanding clause (i), such  
19 application, order, or decree may operate  
20 as a stay of the foreclosure on or disposi-  
21 tion of securities collateral pledged by the  
22 debtor, whether or not with respect to 1 or  
23 more of such contracts or agreements, se-  
24 curities sold by the debtor under a repur-

1 chase agreement or securities lent under a  
2 securities lending agreement.

3 “(iii) As used in this section, the term  
4 ‘contractual right’ includes a right set  
5 forth in a rule or bylaw of a national secu-  
6 rities exchange, a national securities asso-  
7 ciation, or a securities clearing agency, a  
8 right set forth in a bylaw of a clearing or-  
9 ganization or contract market or in a reso-  
10 lution of the governing board thereof, and  
11 a right, whether or not in writing, arising  
12 under common law, under law merchant,  
13 or by reason of normal business practice.”.

14 **SEC. 13. ASSET-BACKED SECURITIZATIONS.**

15 Section 541 of title 11, United States Code, is  
16 amended—

17 (1) in subsection (b)—

18 (A) by striking “or” at the end of para-  
19 graph (4)(B)(ii);

20 (B) by redesignating paragraph (5) as  
21 paragraph (6); and

22 (C) by inserting after paragraph (4) the  
23 following new paragraph:

24 “(5) any eligible asset (or proceeds thereof), to  
25 the extent that such eligible asset was transferred by

1 the debtor before the date of commencement of the  
2 case, to an eligible entity in connection with an  
3 asset-backed securitization, except to the extent such  
4 asset (or proceeds or value thereof) may be recov-  
5 ered by the trustee under section 550 by virtue of  
6 avoidance under section 548(a)(1); or”;

7 (2) by adding at the end the following new sub-  
8 section:

9 “(e) For purposes of this section, the following defini-  
10 tions shall apply:

11 “(1) the term ‘asset-backed securitization’  
12 means a transaction in which eligible assets trans-  
13 ferred to an eligible entity are used as the source of  
14 payment on securities, including all securities issued  
15 by governmental units, at least 1 class or tranche of  
16 which is rated investment grade by 1 or more na-  
17 tionally recognized securities rating organizations,  
18 when the securities are initially issued by an issuer;

19 “(2) the term ‘eligible asset’ means—

20 “(A) financial assets (including interests  
21 therein and proceeds thereof), either fixed or re-  
22 volving, whether or not such assets are in exist-  
23 ence as of the date of the transfer, including  
24 residential and commercial mortgage loans, con-  
25 sumer receivables, trade receivables, assets of

1 governmental units (including payment obliga-  
2 tions relating to taxes, receipts, fines, tickets,  
3 and other sources of revenue), and lease receiv-  
4 ables, that, by their terms, convert into cash  
5 within a finite time period, plus any residual in-  
6 terest in property subject to receivables in-  
7 cluded in such financial assets plus any rights  
8 or other assets designed to assure the servicing  
9 or timely distribution of proceeds to security  
10 holders;

11 “(B) cash; and

12 “(C) securities, including all securities  
13 issued by governmental units.

14 “(3) the term ‘eligible entity’ means—

15 “(A) an issuer; or

16 “(B) a trust, corporation, partnership, gov-  
17 ernmental unit, limited liability company (in-  
18 cluding a single member limited liability com-  
19 pany), or other entity engaged exclusively in the  
20 business of acquiring and transferring eligible  
21 assets directly or indirectly to an issuer and  
22 taking actions ancillary thereto;

23 “(4) the term ‘issuer’ means a trust, corpora-  
24 tion, partnership, governmental unit, limited liability  
25 company (including a single member limited liability

1 company), or other entity engaged exclusively in the  
2 business of acquiring and holding eligible assets,  
3 issuing securities backed by eligible assets, and tak-  
4 ing actions ancillary thereto; and

5 “(5) the term ‘transferred’ means the debtor,  
6 pursuant to a written agreement, represented and  
7 warranted that eligible assets were sold, contributed,  
8 or otherwise conveyed with the intention of removing  
9 them from the estate of the debtor pursuant to sub-  
10 section (b)(5) (whether or not reference is made to  
11 this title or any section of this title), irrespective,  
12 without limitation, of—

13 “(A) whether the debtor directly or indi-  
14 rectly obtained or held an interest in the issuer  
15 or in any securities issued by the issuer;

16 “(B) whether the debtor had an obligation  
17 to repurchase or to service or supervise the  
18 servicing of all or any portion of such eligible  
19 assets; or

20 “(C) the characterization of such sale, con-  
21 tribution, or other conveyance for tax, account-  
22 ing, regulatory reporting, or other purposes.”.

23 **SEC. 14. APPLICATION OF AMENDMENTS.**

24 The amendments made by this Act shall apply with  
25 respect to cases commenced or appointments made under



1 any Federal or State law after the date of the enactment  
2 of this Act, but shall not apply with respect to cases com-  
3 menced or appointments made under any Federal or State  
4 law before the date of the enactment of this Act.

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