

**Amendment in the Nature of a Substitute  
to H.R. 1161**

**Offered by Mr. Leach**

Strike out all after the enacting clause and insert  
the following:

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Financial Contract  
3 Netting Improvement Act of 2000”.

4 **SEC. 2. TREATMENT OF CERTAIN AGREEMENTS BY CON-**  
5 **SERVATORS OR RECEIVERS OF INSURED DE-**  
6 **POSITORY INSTITUTIONS.**

7       (a) **DEFINITION OF QUALIFIED FINANCIAL CON-**  
8 **TRACT.**—Section 11(e)(8)(D)(i) of the Federal Deposit In-  
9 surance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by  
10 inserting “, resolution or order” after “any similar agree-  
11 ment that the Corporation determines by regulation”.

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

1                   “(ii) SECURITIES CONTRACT.—The  
2                   term ‘securities contract’—

3                   “(I) means a contract for the  
4                   purchase, sale, or loan of a security, a  
5                   certificate of deposit, a mortgage loan,  
6                   or any interest in a mortgage loan, a  
7                   group or index of securities, certifi-  
8                   cates of deposit, or mortgage loans or  
9                   interests therein (including any inter-  
10                  est therein or based on the value  
11                  thereof) or any option on any of the  
12                  foregoing, including any option to  
13                  purchase or sell any such security,  
14                  certificate of deposit, loan, interest,  
15                  group or index, or option;

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

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

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

17                  “(V) means any margin loan;

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

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

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

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

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

1 (c) DEFINITION OF COMMODITY CONTRACT.—Sec-  
2 tion 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act  
3 (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as fol-  
4 lows:

5 “(iii) COMMODITY CONTRACT.—The  
6 term ‘commodity contract’ means—

7 “(I) with respect to a futures  
8 commission merchant, a contract for  
9 the purchase or sale of a commodity  
10 for future delivery on, or subject to  
11 the rules of, a contract market or  
12 board of trade;

13 “(II) with respect to a foreign fu-  
14 tures commission merchant, a foreign  
15 future;

16 “(III) with respect to a leverage  
17 transaction merchant, a leverage  
18 transaction;

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

1 traded on, or subject to the rules of,  
2 a contract market or board of trade  
3 that is cleared by such clearing orga-  
4 nization;

5 “(V) with respect to a commodity  
6 options dealer, a commodity option;

7 “(VI) any other agreement or  
8 transaction that is similar to any  
9 agreement or transaction referred to  
10 in this clause;

11 “(VII) any combination of the  
12 agreements or transactions referred to  
13 in this clause;

14 “(VIII) any option to enter into  
15 any agreement or transaction referred  
16 to in this clause;

17 “(IX) a master agreement that  
18 provides for an agreement or trans-  
19 action referred to in subclause (I),  
20 (II), (III), (IV), (V), (VI), (VII), or  
21 (VIII), together with all supplements  
22 to any such master agreement, with-  
23 out regard to whether the master  
24 agreement provides for an agreement  
25 or transaction that is not a com-

1 commodity contract under this clause, ex-  
2 cept that the master agreement shall  
3 be considered to be a commodity con-  
4 tract under this clause only with re-  
5 spect to each agreement or trans-  
6 action under the master agreement  
7 that is referred to in subclause (I),  
8 (II), (III), (IV), (V), (VI), (VII), or  
9 (VIII); or

10 “(X) any security agreement or  
11 arrangement or other credit enhance-  
12 ment related to any agreement or  
13 transaction referred to in this  
14 clause.”.

15 (d) DEFINITION OF FORWARD CONTRACT.—Section  
16 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12  
17 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

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

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

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

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

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

18 “(IV) a master agreement that  
19 provides for an agreement or trans-  
20 action referred to in subclauses (I),  
21 (II), or (III), together with all supple-  
22 ments to any such master agreement,  
23 without regard to whether the master  
24 agreement provides for an agreement  
25 or transaction that is not a forward

1 contract under this clause, except that  
2 the master agreement shall be consid-  
3 ered to be a forward contract under  
4 this clause only with respect to each  
5 agreement or transaction under the  
6 master agreement that is referred to  
7 in subclause (I), (II), or (III); or

8 “(V) any security agreement or  
9 arrangement or other credit enhance-  
10 ment related to any agreement or  
11 transaction referred to in subclause  
12 (I), (II), (III), or (IV).”.

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

17 “(v) REPURCHASE AGREEMENT.—The  
18 term ‘repurchase agreement’ (which defini-  
19 tion also applies to the term “reverse re-  
20 purchase agreement”)—

21 “(I) means an agreement, includ-  
22 ing related terms, which provides for  
23 the transfer of 1 or more certificates  
24 of deposit, mortgage-related securities  
25 (as such term is defined in the Securi-

1 ties Exchange Act of 1934), mortgage  
2 loans, interests in mortgage-related  
3 securities or mortgage loans, eligible  
4 bankers' acceptances, qualified foreign  
5 government securities or securities  
6 that are direct obligations of, or that  
7 are fully guaranteed by, the United  
8 States or any agency of the United  
9 States against the transfer of funds  
10 by the transferee of such certificates  
11 of deposit, eligible bankers' accept-  
12 ances, securities, loans, or interests  
13 with a simultaneous agreement by  
14 such transferee to transfer to the  
15 transferor thereof certificates of de-  
16 posit, eligible bankers' acceptances,  
17 securities, loans, or interests as de-  
18 scribed above, at a date certain not  
19 later than 1 year after such transfers  
20 or on demand, against the transfer of  
21 funds, or any other similar agreement;

22 “(II) does not include any repur-  
23 chase obligation under a participation  
24 in a commercial mortgage loan unless  
25 the Corporation determines by regula-

1 tion, resolution, or order to include  
2 any such participation within the  
3 meaning of such term;

4 “(III) means any combination of  
5 agreements or transactions referred to  
6 in subclauses (I) and (IV);

7 “(IV) means any option to enter  
8 into any agreement or transaction re-  
9 ferred to in subclause (I) or (III);

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

1                   “(VI) means any security agree-  
2                   ment or arrangement or other credit  
3                   enhancement related to any agree-  
4                   ment or transaction referred to in  
5                   subclause (I), (III), (IV), or (V).

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

15                  (f) DEFINITION OF SWAP AGREEMENT.—Section  
16 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12  
17 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

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

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

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

17 “(II) any agreement or trans-  
18 action similar to any other agreement  
19 or transaction referred to in this  
20 clause that is presently, or in the fu-  
21 ture becomes, regularly entered into  
22 in the swap market (including terms  
23 and conditions incorporated by ref-  
24 erence in such agreement) and that is  
25 a forward, swap, future, or option on

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1 1 or more rates, currencies, commod-  
2 ities, equity securities or other equity  
3 instruments, debt securities or other  
4 debt instruments, or economic indices  
5 or measures of economic risk or value;

6 “(III) any combination of agree-  
7 ments or transactions referred to in  
8 this clause;

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

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

1 to in subclause (I), (II), (III), or (IV);  
2 and

3 “(VI) any security agreement or  
4 arrangement or other credit enhance-  
5 ment related to any agreements or  
6 transactions referred to in subpara-  
7 graph (I), (II), (III), (IV), or (V).

8 Such term is applicable for purposes of  
9 this title only and shall not be construed or  
10 applied so as to challenge or affect the  
11 characterization, definition, or treatment of  
12 any swap agreement under any other stat-  
13 ute, regulation, or rule, including the Secu-  
14 rities Act of 1933, the Securities Exchange  
15 Act of 1934, the Public Utility Holding  
16 Company Act of 1935, the Trust Indenture  
17 Act of 1939, the Investment Company Act  
18 of 1940, the Investment Advisers Act of  
19 1940, the Securities Investor Protection  
20 Act of 1970, the Commodity Exchange  
21 Act, and the regulations promulgated by  
22 the Securities and Exchange Commission  
23 or the Commodity Futures Trading Com-  
24 mission.”.

1 (g) DEFINITION OF TRANSFER.—Section  
2 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12  
3 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

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

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

15 (1) in subparagraph (A), by striking “para-  
16 graph (10)” and inserting “paragraphs (9) and  
17 (10)”;

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

22 (3) by amending subparagraph (A)(ii) to read  
23 as follows:

24 “(ii) any right under any security  
25 agreement or arrangement or other credit

1 enhancement related to 1 or more qualified  
2 financial contracts described in clause  
3 (i);” and

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

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

11 (i) AVOIDANCE OF TRANSFERS.—Section  
12 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12  
13 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting “section  
14 5242 of the Revised Statutes of the United States (12  
15 U.S.C. 91) or any other Federal or State law relating to  
16 the avoidance of preferential or fraudulent transfers,” be-  
17 fore “the Corporation”.

18 **SEC. 3. AUTHORITY OF THE CORPORATION WITH RESPECT**  
19 **TO FAILED AND FAILING INSTITUTIONS.**

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

23 (1) in subparagraph (E), by striking “other  
24 than paragraph (12) of this subsection, subsection

1 (d)(9)” and inserting “other than subsections (d)(9)  
2 and (e)(10)”;

3 (2) by adding at the end the following new sub-  
4 paragraphs:

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

15 “(G) WALKAWAY CLAUSES NOT EFFEC-  
16 TIVE.—

17 “(i) IN GENERAL.—Notwithstanding  
18 the provisions of subparagraphs (A) and  
19 (E), and sections 403 and 404 of the Fed-  
20 eral Deposit Insurance Corporation Im-  
21 provement Act of 1991, no walkaway  
22 clause shall be enforceable in a qualified fi-  
23 nancial contract of an insured depository  
24 institution in default.

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

15               (b) TECHNICAL AND CONFORMING AMENDMENT.—  
16               Section 11(e)(12)(A) of the Federal Deposit Insurance  
17               Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting  
18               “or the exercise of rights or powers” after “the appoint-  
19               ment”.

20               **SEC. 4. AMENDMENTS RELATING TO TRANSFERS OF QUALI-**  
21               **IFIED FINANCIAL CONTRACTS.**

22               (a) TRANSFERS OF QUALIFIED FINANCIAL CON-  
23               TRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9)  
24               of the Federal Deposit Insurance Act (12 U.S.C.  
25               1821(e)(9)) is amended to read as follows:

1           “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
2 TRACTS.—

3           “(A) IN GENERAL.—In making any trans-  
4 fer of assets or liabilities of a depository institu-  
5 tion in default which includes any qualified fi-  
6 nancial contract, the conservator or receiver for  
7 such depository institution shall either—

8           “(i) transfer to 1 financial institution,  
9 other than a financial institution for which  
10 a conservator, receiver, trustee in bank-  
11 ruptcy, or other legal custodian has been  
12 appointed or which is otherwise the subject  
13 of a bankruptcy or insolvency proceeding—

14           “(I) all qualified financial con-  
15 tracts between any person or any af-  
16 filiate of such person and the deposi-  
17 tory institution in default;

18           “(II) all claims of such person or  
19 any affiliate of such person against  
20 such depository institution under any  
21 such contract (other than any claim  
22 which, under the terms of any such  
23 contract, is subordinated to the claims  
24 of general unsecured creditors of such  
25 institution);

1                   “(III) all claims of such deposi-  
2                   tory institution against such person or  
3                   any affiliate of such person under any  
4                   such contract; and

5                   “(IV) all property securing or  
6                   any other credit enhancement for any  
7                   contract described in subclause (I) or  
8                   any claim described in subclause (II)  
9                   or (III) under any such contract; or

10                  “(ii) transfer none of the qualified fi-  
11                  nancial contracts, claims, property or other  
12                  credit enhancement referred to in clause (i)  
13                  (with respect to such person and any affil-  
14                  iate of such person).

15                  “(B) TRANSFER TO FOREIGN BANK, FOR-  
16                  EIGN FINANCIAL INSTITUTION, OR BRANCH OR  
17                  AGENCY OF A FOREIGN BANK OR FINANCIAL IN-  
18                  STITUTION.—In transferring any qualified fi-  
19                  nancial contracts and related claims and prop-  
20                  erty pursuant to subparagraph (A)(i), the con-  
21                  servator or receiver for such depository institu-  
22                  tion shall not make such transfer to a foreign  
23                  bank, financial institution organized under the  
24                  laws of a foreign country, or a branch or agency  
25                  of a foreign bank or financial institution unless,

1 under the law applicable to such bank, financial  
2 institution, branch or agency, to the qualified  
3 financial contracts, and to any netting contract,  
4 any security agreement or arrangement or other  
5 credit enhancement related to 1 or more quali-  
6 fied financial contracts, the contractual rights  
7 of the parties to such qualified financial con-  
8 tracts, netting contracts, security agreements or  
9 arrangements, or other credit enhancements are  
10 enforceable substantially to the same extent as  
11 permitted under this section.

12 “(C) TRANSFER OF CONTRACTS SUBJECT  
13 TO THE RULES OF A CLEARING ORGANIZA-  
14 TION.—In the event that a conservator or re-  
15 ceiver transfers any qualified financial contract  
16 and related claims, property and credit en-  
17 hancements pursuant to subparagraph (A)(i)  
18 and such contract is subject to the rules of a  
19 clearing organization, the clearing organization  
20 shall not be required to accept the transferee as  
21 a member by virtue of the transfer.

22 “(D) DEFINITION.—For purposes of this  
23 section, the term ‘financial institution’ means a  
24 broker or dealer, a depository institution, a fu-  
25 tures commission merchant, or any other insti-

1           tution as determined by the Corporation by reg-  
2           ulation to be a financial institution.”.

3           (b) NOTICE TO QUALIFIED FINANCIAL CONTRACT  
4 COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal  
5 Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is  
6 amended by amending the flush material following clause  
7 (ii) to read as follows: “the conservator or receiver shall  
8 notify any person who is a party to any such contract of  
9 such transfer by 5:00 p.m. (eastern time) on the business  
10 day following the date of the appointment of the receiver,  
11 in the case of a receivership, or the business day following  
12 such transfer, in the case of a conservatorship.”.

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

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

19           (2) by inserting after subparagraph (A) the fol-  
20           lowing new subparagraphs:

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

23                           “(i) RECEIVERSHIP.—A person who is  
24                   a party to a qualified financial contract  
25                   with an insured depository institution may

1 not exercise any right such person has to  
2 terminate, liquidate, or net such contract  
3 under paragraph (8)(A) or section 403 or  
4 404 of the Federal Deposit Insurance Cor-  
5 poration Improvement Act of 1991 solely  
6 by reason of or incidental to the appoint-  
7 ment of a receiver for the depository insti-  
8 tution (or the insolvency or financial condi-  
9 tion of the depository institution for which  
10 the receiver has been appointed)—

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

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

19 “(ii) CONSERVATORSHIP.—A person  
20 who is a party to a qualified financial con-  
21 tract with an insured depository institution  
22 may not exercise any right such person has  
23 to terminate, liquidate, or net such con-  
24 tract under paragraph (8)(E) or sections  
25 403 or 404 of the Federal Deposit Insur-

1                   ance Corporation Improvement Act of  
2                   1991, solely by reason of or incidental to  
3                   the appointment of a conservator for the  
4                   depository institution (or the insolvency or  
5                   financial condition of the depository insti-  
6                   tution for which the conservator has been  
7                   appointed).

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

18                  “(C) TREATMENT OF BRIDGE BANKS.—  
19                  The following institutions shall not be consid-  
20                  ered a financial institution for which a conser-  
21                  vator, receiver, trustee in bankruptcy, or other  
22                  legal custodian has been appointed or which is  
23                  otherwise the subject of a bankruptcy or insol-  
24                  veny proceeding for purposes of subsection  
25                  (e)(9)—

1 “(i) a bridge bank; or

2 “(ii) a depository institution organized  
3 by the Corporation, for which a conser-  
4 vator is appointed either—

5 “(I) immediately upon the orga-  
6 nization of the institution; or

7 “(II) at the time of a purchase  
8 and assumption transaction between  
9 such institution and the Corporation  
10 as receiver for a depository institution  
11 in default.”.

12 **SEC. 5. AMENDMENTS RELATING TO DISAFFIRMANCE OR**  
13 **REPUDIATION OF QUALIFIED FINANCIAL**  
14 **CONTRACTS.**

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

18 (1) by redesignating paragraphs (11) through  
19 (15) as paragraphs (12) through (16), respectively;  
20 and

21 (2) by inserting after paragraph (10) the fol-  
22 lowing new paragraph:

23 “(11) DISAFFIRMANCE OR REPUDIATION OF  
24 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
25 the rights of disaffirmance or repudiation of a con-

1 servator or receiver with respect to any qualified fi-  
2 nancial contract to which an insured depository in-  
3 stitution is a party, the conservator or receiver for  
4 such institution shall either—

5 “(A) disaffirm or repudiate all qualified fi-  
6 nancial contracts between—

7 “(i) any person or any affiliate of  
8 such person; and

9 “(ii) the depository institution in de-  
10 fault; or

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

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
16 Section 11(e)(8) of the Federal Deposit Insurance Act (12  
17 U.S.C. 1821(e)(8)) is amended—

18 (1) in subparagraph (C)(i), by striking “(11)”  
19 and inserting “(12)”; and

20 (2) in subparagraph (E), by striking “(12)”  
21 and inserting “(13)”.

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 (2)—

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

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

15 (2) in paragraph (6)—

16 (A) by redesignating subparagraphs (B)  
17 through (D) as subparagraphs (C) through (E),  
18 respectively;

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

21 “(B) an uninsured national bank or an un-  
22 insured State bank that is a member of the  
23 Federal Reserve System if the national bank or  
24 State member bank is not eligible to make ap-  
25 plication to become an insured bank under sec-

1           tion 5 of the Federal Deposit Insurance Act;”;  
2           and

3                   (C) by amending subparagraph (C) (as re-  
4           designated) to read as follows:

5                   “(C) a branch or agency of a foreign bank,  
6           a foreign bank and any branch or agency of the  
7           foreign bank, or the foreign bank that estab-  
8           lished the branch or agency, as those terms are  
9           defined in section 1(b) of the International  
10          Banking Act of 1978;”;

11          (3) in paragraph (11), by adding before the pe-  
12          riod “and any other clearing organization with which  
13          such clearing organization has a netting contract”;

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

16                   “(i) means a contract or agreement  
17                  between two or more financial institutions,  
18                  clearing organizations, or members that  
19                  provides for netting present or future pay-  
20                  ment obligations or payment entitlements  
21                  (including liquidation or closeout values re-  
22                  lating to such obligations or entitlements)  
23                  among the parties to the agreement; and”;  
24          and

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

3           “(15) PAYMENT.—The term ‘payment’ means a  
4 payment of United States dollars, another currency,  
5 or a composite currency, and a noncash delivery, in-  
6 cluding a payment or delivery to liquidate an  
7 unmatured obligation.”.

8           (b) ENFORCEABILITY OF BILATERAL NETTING CON-  
9 TRACTS.—Section 403 of the Federal Deposit Insurance  
10 Corporation Improvement Act of 1991 (12 U.S.C. 4403)  
11 is amended—

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

14           “(a) GENERAL RULE.—Notwithstanding any other  
15 provision of State or Federal law (other than paragraphs  
16 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
17 Deposit Insurance Act or any order authorized under sec-  
18 tion 5(b)(2) of the Securities Investor Protection Act of  
19 1970), the covered contractual payment obligations and  
20 the covered contractual payment entitlements between any  
21 two financial institutions shall be netted in accordance  
22 with, and subject to the conditions of, the terms of any  
23 applicable netting contract (except as provided in section  
24 561(b)(2) of title 11, United States Code).”; and

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

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

14           (c) ENFORCEABILITY OF CLEARING ORGANIZATION  
15 NETTING CONTRACTS.—Section 404 of the Federal De-  
16 posit Insurance Corporation Improvement Act of 1991 (12  
17 U.S.C. 4404) is amended—

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

20           “(a) GENERAL RULE.—Notwithstanding any other  
21 provision of State or Federal law (other than paragraphs  
22 (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal  
23 Deposit Insurance Act and any order authorized under  
24 section 5(b)(2) of the Securities Investor Protection Act  
25 of 1970), the covered contractual payment obligations and

1 the covered contractual payment entitlements of a member  
2 of a clearing organization to and from all other members  
3 of a clearing organization shall be netted in accordance  
4 with and subject to the conditions of any applicable net-  
5 ting contract (except as provided in section 561(b)(2) of  
6 title 11, United States Code).”; and

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

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

21 (d) ENFORCEABILITY OF CONTRACTS WITH UNIN-  
22 SURED NATIONAL BANKS AND UNINSURED FEDERAL  
23 BRANCHES AND AGENCIES.—The Federal Deposit Insur-  
24 ance Corporation Improvement Act of 1991 (12 U.S.C.  
25 4401 et seq.) is amended—

1 (1) by redesignating section 407 as section 408;

2 and

3 (2) by adding after section 406 the following

4 new section:

5 **“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED**

6 **NATIONAL BANKS AND UNINSURED FEDERAL**

7 **BRANCHES AND AGENCIES.**

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

13 “(1) any reference to the ‘Corporation as re-  
14 ceiver’ or ‘the receiver or the Corporation’ shall refer  
15 to the receiver of an uninsured national bank or un-  
16 insured Federal branch or Federal agency appointed  
17 by the Comptroller of the Currency;

18 “(2) any reference to the ‘Corporation’ (other  
19 than in section 11(e)(8)(D) of such Act), the ‘Cor-  
20 poration, whether acting as such or as conservator  
21 or receiver’, a ‘receiver’, or a ‘conservator’ shall refer  
22 to the receiver or conservator of an uninsured na-  
23 tional bank or uninsured Federal branch or Federal  
24 agency appointed by the Comptroller of the Cur-  
25 rency; and

1           “(3) any reference to an ‘insured depository in-  
2           stitution’ or ‘depository institution’ shall refer to an  
3           uninsured national bank or an uninsured Federal  
4           branch or Federal agency.

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

11          “(c) REGULATORY AUTHORITY.—

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

16           “(2) SPECIFIC REQUIREMENT.—In promul-  
17           gating regulations to implement this section, the  
18           Comptroller of the Currency shall ensure that the  
19           regulations generally are consistent with the regula-  
20           tions and policies of the Federal Deposit Insurance  
21           Corporation adopted pursuant to the Federal De-  
22           posit Insurance Act.

23          “(d) DEFINITIONS.—For purposes of this section, the  
24          terms ‘Federal branch’, ‘Federal agency’, and ‘foreign

1 bank' have the same meaning as in section 1(b) of the  
2 International Banking Act.”.

3 **SEC. 8. BANKRUPTCY CODE AMENDMENTS.**

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

9 (1) in section 101—

10 (A) in paragraph (25)—

11 (i) by striking “means a contract”

12 and inserting “means—

13 “(A) a contract”;

14 (ii) by striking “, or any combination

15 thereof or option thereon;” and inserting

16 “, or any other similar agreement;”; and

17 (iii) by adding at the end the fol-

18 lowing:

19 “(B) any combination of agreements or

20 transactions referred to in subparagraphs (A)

21 and (C);

22 “(C) any option to enter into an agreement

23 or transaction referred to in subparagraph (A)

24 or (B);

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

14          “(E) any security agreement or arrange-  
15          ment, or other credit enhancement related to  
16          any agreement or transaction referred to in  
17          subparagraph (A), (B), (C), or (D), but not to  
18          exceed the actual value of such contract on the  
19          date of the filing of the petition;”;

20          (B) in paragraph (46), by striking “on any  
21          day during the period beginning 90 days before  
22          the date of” and replacing it with “at any time  
23          before”;

24          (C) by amending paragraph (47) to read  
25          as follows:

1           “(47) ‘repurchase agreement’ (which definition  
2           also applies to a reverse repurchase agreement)  
3           means—

4                   “(i) an agreement, including related  
5                   terms, which provides for the transfer of 1  
6                   or more certificates of deposit, mortgage-  
7                   related securities (as defined in the Securi-  
8                   ties Exchange Act of 1934), mortgage  
9                   loans, interests in mortgage-related securi-  
10                  ties or mortgage loans, eligible bankers’ ac-  
11                  ceptances, qualified foreign government se-  
12                  curities, or securities that are direct obliga-  
13                  tions of, or that are fully guaranteed by,  
14                  the United States or any agency of the  
15                  United States against the transfer of funds  
16                  by the transferee of such certificates of de-  
17                  posit, eligible bankers’ acceptances, securi-  
18                  ties, loans, or interests, with a simulta-  
19                  neous agreement by such transferee to  
20                  transfer to the transferor thereof certifi-  
21                  cates of deposit, eligible bankers’ accept-  
22                  ance, securities, loans, or interests of the  
23                  kind described above, at a date certain not  
24                  later than 1 year after such transfer or on  
25                  demand, against the transfer of funds;

1           “(ii) any combination of agreements  
2           or transactions referred to in clauses (i)  
3           and (iii);

4           “(iii) an option to enter into an agree-  
5           ment or transaction referred to in clause  
6           (i) or (ii);

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

21          “(v) any security agreement or ar-  
22          rangement or other credit enhancement re-  
23          lated to any agreement or transaction re-  
24          ferred to in clause (i), (ii), (iii), or (iv), but  
25          not to exceed the actual value of such con-

1                   tract on the date of the filing of the peti-  
2                   tion; and

3                   “(B) does not include a repurchase obliga-  
4                   tion under a participation in a commercial  
5                   mortgage loan,

6                   and, for purposes of this paragraph, the term ‘quali-  
7                   fied foreign government security’ means a security  
8                   that is a direct obligation of, or that is fully guaran-  
9                   teed by, the central government of a member of the  
10                  Organization for Economic Cooperation and Devel-  
11                  opment;”;

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

16                  (E) by amending paragraph (53B) to read  
17                  as follows:

18                  “(53B) ‘swap agreement’—

19                  “(A) means—

20                  “(i) any agreement, including the  
21                  terms and conditions incorporated by ref-  
22                  erence in such agreement, which is an in-  
23                  terest rate swap, option, future, or forward  
24                  agreement, including a rate floor, rate cap,  
25                  rate collar, cross-currency rate swap, and

1 basis swap; a spot, same day-tomorrow, to-  
2 morrow-next, forward, or other foreign ex-  
3 change or precious metals agreement; a  
4 currency swap, option, future, or forward  
5 agreement; an equity index or an equity  
6 swap, option, future, or forward agree-  
7 ment; a debt index or a debt swap, option,  
8 future, or forward agreement; a credit  
9 spread or a credit swap, option, future, or  
10 forward agreement; a commodity index or  
11 a commodity swap, option, future, or for-  
12 ward agreement; or a weather swap,  
13 weather derivative, or weather option;

14 “(ii) any agreement or transaction  
15 similar to any other agreement or trans-  
16 action referred to in this paragraph that—

17 “(I) is presently, or in the future  
18 becomes, regularly entered into in the  
19 swap market (including terms and  
20 conditions incorporated by reference  
21 therein); and

22 “(II) is a forward, swap, future,  
23 or option on 1 or more rates, cur-  
24 rencies, commodities, equity securities,  
25 or other equity instruments, debt se-

1 curities or other debt instruments, or  
2 economic indices or measures of eco-  
3 nomic risk or value;

4 “(iii) any combination of agreements  
5 or transactions referred to in this para-  
6 graph;

7 “(iv) any option to enter into an  
8 agreement or transaction referred to in  
9 this paragraph;

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

24 “(B) any security agreement or arrange-  
25 ment or other credit enhancement related to

1 any agreements or transactions referred to in  
2 subparagraph (A), but not to exceed the actual  
3 value of such contract on the date of the filing  
4 of the petition; and

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

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

22 “(7) ‘securities contract’—

23 “(A) means—

24 “(i) a contract for the purchase, sale,  
25 or loan of a security, a certificate of de-

1           posit, a mortgage loan or any interest in a  
2           mortgage loan, a group or index of securi-  
3           ties, certificates of deposit or mortgage  
4           loans or interests therein (including an in-  
5           terest therein or based on the value there-  
6           of), or option on any of the foregoing, in-  
7           cluding an option to purchase or sell any  
8           such security, certificate of deposit, loan,  
9           interest, group or index, or option;

10           “(ii) any option entered into on a na-  
11           tional securities exchange relating to for-  
12           eign currencies;

13           “(iii) the guarantee by or to any secu-  
14           rities clearing agency of a settlement of  
15           cash, securities, certificates of deposit,  
16           mortgage loans or interests therein, group  
17           or index of securities, or mortgage loans or  
18           interests therein (including any interest  
19           therein or based on the value thereof), or  
20           option on any of the foregoing, including  
21           an option to purchase or sell any such se-  
22           curity, certificate of deposit, loan, interest,  
23           group or index, or option;

24           “(iv) any margin loan;

1           “(v) any other agreement or trans-  
2           action that is similar to an agreement or  
3           transaction referred to in this paragraph;

4           “(vi) any combination of the agree-  
5           ments or transactions referred to in this  
6           paragraph;

7           “(vii) any option to enter into any  
8           agreement or transaction referred to in  
9           this paragraph;

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

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

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

10          (3) in section 761(4)—

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

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

14           “(F) any other agreement or transaction  
15           that is similar to an agreement or transaction  
16           referred to in this paragraph;

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

19           “(H) any option to enter into an agree-  
20           ment or transaction referred to in this para-  
21           graph;

22           “(I) a master agreement that provides for  
23           an agreement or transaction referred to in sub-  
24           paragraph (A), (B), (C), (D), (E), (F), (G), or  
25           (H), together with all supplements to such mas-

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

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

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

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

23                   “(22) ‘financial institution’ means—

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

1 savings bank, industrial savings bank, savings  
2 and loan association, trust company, or receiver  
3 or conservator for such entity and, when any  
4 such Federal reserve bank, receiver, conservator  
5 or entity is acting as agent or custodian for a  
6 customer in connection with a securities con-  
7 tract, as defined in section 741 of this title,  
8 such customer; or

9 “(B) in connection with a securities con-  
10 tract, as defined in section 741 of this title, an  
11 investment company registered under the In-  
12 vestment Company Act of 1940;”;

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

15 “(22A) ‘financial participant’ means an entity  
16 that, at the time it enters into a securities contract,  
17 commodity contract or forward contract, or at the  
18 time of the filing of the petition, has 1 or more  
19 agreements or transactions described in paragraph  
20 (1), (2), (3), (4), (5), or (6) of section 561(a) with  
21 the debtor or any other entity (other than an affil-  
22 iate) of a total gross dollar value of at least  
23 \$1,000,000,000 in notional or actual principal  
24 amount outstanding on any day during the previous  
25 15-month period, or has gross mark-to-market posi-

1 tions of at least \$100,000,000 (aggregated across  
2 counterparties) in 1 or more such agreement or  
3 transaction with the debtor or any other entity  
4 (other than an affiliate) on any day during the pre-  
5 vious 15-month period;” and

6 (3) by amending paragraph (26) to read as fol-  
7 lows:

8 “(26) ‘forward contract merchant’ means a  
9 Federal reserve bank, or an entity whose business  
10 consists in whole or in part of entering into forward  
11 contracts as or with merchants or in a commodity,  
12 as defined or in section 761 of this title, or any simi-  
13 lar good, article, service, right, or interest which is  
14 presently or in the future becomes the subject of  
15 dealing or in the forward contract trade;”.

16 (c) DEFINITION OF MASTER NETTING AGREEMENT  
17 AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-  
18 tion 101 of title 11, United States Code, is amended by  
19 inserting after paragraph (38) the following new para-  
20 graphs:

21 “(38A) ‘master netting agreement’ means an  
22 agreement providing for the exercise of rights, in-  
23 cluding rights of netting, setoff, liquidation, termi-  
24 nation, acceleration, or closeout, under or in connec-  
25 tion with 1 or more contracts that are described in

1 any 1 or more of paragraphs (1) through (5) of sec-  
2 tion 561(a), or any security agreement or arrange-  
3 ment or other credit enhancement related to 1 or  
4 more of the foregoing. If a master netting agreement  
5 contains provisions relating to agreements or trans-  
6 actions that are not contracts described in para-  
7 graphs (1) through (5) of section 561(a), the master  
8 netting agreement shall be deemed to be a master  
9 netting agreement only with respect to those agree-  
10 ments or transactions that are described in any 1 or  
11 more of the paragraphs (1) through (5) of section  
12 561(a);

13 “(38B) ‘master netting agreement participant’  
14 means an entity that, at any time before the filing  
15 of the petition, is a party to an outstanding master  
16 netting agreement with the debtor;”.

17 (d) SWAP AGREEMENTS, SECURITIES CONTRACTS,  
18 COMMODITY CONTRACTS, FORWARD CONTRACTS, REPUR-  
19 CHASE AGREEMENTS, AND MASTER NETTING AGREE-  
20 MENTS UNDER THE AUTOMATIC-STAY.—

21 (1) IN GENERAL.—Section 362(b) of title 11,  
22 United States Code, as amended by sections 118,  
23 132, 136, 142, 203, and 818, is amended—

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

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

7 (C) by amending paragraph (17) to read  
8 as follows:

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

22 (D) in paragraph (30) by striking “or” at  
23 the end;

24 (E) in paragraph (31) by striking the pe-  
25 riod at the end and inserting “; or”; and

1 (F) by inserting after paragraph (31) the  
2 following new paragraph:

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

1           (2) LIMITATION.—Section 362 of title 11,  
2           United States Code, as amended by sections 120,  
3           302, and 412, is amended by adding at the end the  
4           following:

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

10          (e) LIMITATION OF AVOIDANCE POWERS UNDER  
11          MASTER NETTING AGREEMENT.—Section 546 of title 11,  
12          United States Code, as amended by sections 207 and 302,  
13          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) of this title, the trustee may not  
24                 avoid a transfer made by or to a master netting agreement  
25                 participant 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) of this title, and except to the  
4 extent the trustee could otherwise avoid such a transfer  
5 made under an individual contract covered by such master  
6 netting 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 and

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

24 (3) by striking “in connection with any swap  
25 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; pro-**  
10 **ceedings under chapter 15**

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

19 “(1) securities contracts, as defined in section  
20 741(7);

21 “(2) commodity contracts, as defined in section  
22 761(4);

23 “(3) forward contracts;

24 “(4) repurchase agreements;

25 “(5) swap agreements; or

1           “(6) master netting agreements,  
2 shall not be stayed, avoided, or otherwise limited by oper-  
3 ation of any provision of this title or by any order of a  
4 court or administrative agency in any proceeding under  
5 this title.

6           “(b) EXCEPTION.—

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

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

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

24           “(B) another commodity broker may not  
25 net or offset an obligation to the debtor arising

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

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

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

17 “(2) another netting arrangement, between a  
18 clearing organization (as defined in section 761) and  
19 another entity, that has been approved by the Com-  
20modity Futures Trading Commission.

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

1 market or in a resolution of the governing board thereof,  
2 and a right, whether or not evidenced in writing, arising  
3 under common law, under law merchant, or by reason of  
4 normal business practice.

5 “(e) APPLICATION IN CHAPTER 15 CASES.—Any pro-  
6 visions of this title relating to securities contracts, com-  
7 modity contracts, forward contracts, repurchase agree-  
8 ments, swap agreements, or master netting agreements  
9 shall apply in a case under chapter 15, so that enforce-  
10 ment of contractual provisions of such contracts and  
11 agreements in accordance with their terms will not be  
12 stayed or otherwise limited by operation of any provision  
13 of this title or by order of a court in any case under this  
14 title, and to limit avoidance powers to the same extent as  
15 in a proceeding under chapter 7 or 11 of this title (such  
16 enforcement not to be limited based on the presence or  
17 absence of assets of the debtor in the United States).”.

18 (2) CONFORMING AMENDMENT.—The table of sec-  
19 tions of chapter 5 of title 11, United States Code, is  
20 amended by inserting after the item relating to section  
21 560 the following:

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

22 (1) COMMODITY BROKER LIQUIDATIONS.—Title 11,  
23 United States Code, is amended by inserting after section  
24 766 the following:

1 **“§ 767. Commodity broker liquidation and forward**  
2 **contract merchants, commodity brokers,**  
3 **stockbrokers, financial institutions, fi-**  
4 **nancial participants, securities clearing**  
5 **agencies, swap participants, repo partici-**  
6 **pants, and master netting agreement par-**  
7 **ticipants**

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

16 (m) STOCKBROKER LIQUIDATIONS.—Title 11,  
17 United States Code, is amended by inserting after section  
18 752 the following:

19 **“§ 753. Stockbroker liquidation and forward contract**  
20 **merchants, commodity brokers, stock-**  
21 **brokers, financial institutions, financial**  
22 **participants, securities clearing agencies,**  
23 **swap participants, repo participants, and**  
24 **master netting agreement participants**

25 “Notwithstanding any other provision of this title,  
26 the exercise of rights by a forward contract merchant,

1 commodity broker, stockbroker, financial institution, secu-  
2 rities clearing agency, swap participant, repo participant,  
3 financial participant, or master netting agreement partici-  
4 pant under this title shall not affect the priority of any  
5 unsecured claim it may have after the exercise of such  
6 rights.”.

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

9 (1) in subsection (a)(3)(C), by inserting “(ex-  
10 cept for a setoff of a kind described in section  
11 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(32), 555,  
12 556, 559, 560 or 561 of this title)” before the pe-  
13 riod; and

14 (2) in subsection (b)(1), by striking  
15 “362(b)(14),” and inserting “362(b)(17),  
16 362(b)(32), 555, 556, 559, 560, 561”.

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

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

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

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

3           (4) in section 555—

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

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

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

15          (p) CONFORMING AMENDMENTS.—Title 11, United  
16          States Code, is amended—

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

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

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

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

20           and

21                         (B) by amending the items relating to sec-  
22           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.”;

1 and

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

3 (A) by inserting after the item relating to  
4 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.”;

5 and

6 (B) by inserting after the item relating to  
7 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.”.

## 8 **SEC. 9. RECORDKEEPING REQUIREMENTS.**

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

12 “(H) RECORDKEEPING REQUIREMENTS.—

13 The Corporation, in consultation with the ap-  
14 propriate Federal banking agencies, may pre-  
15 scribe regulations requiring more detailed rec-  
16 ordkeeping with respect to qualified financial  
17 contracts (including market valuations) by in-  
18 sured depository institutions.”.

1 **SEC. 10. EXEMPTIONS FROM CONTEMPORANEOUS EXECU-**  
2 **TION REQUIREMENT.**

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

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

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

13 “(B) bankruptcy estate funds pursuant to  
14 section 345(b)(2) of title 11, United States  
15 Code;

16 “(C) extensions of credit, including any  
17 overdraft, from a Federal reserve bank or Fed-  
18 eral home loan bank; or

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

21 shall not be deemed invalid pursuant to paragraph  
22 (1)(B) solely because such agreement was not exe-  
23 cuted contemporaneously with the acquisition of the  
24 collateral or because of pledges, delivery, or substi-  
25 tution of the collateral made in accordance with such  
26 agreement.”.

1 **SEC. 11. DAMAGE MEASURE.**

2 (a) Title 11, United States Code, as amended by sec-  
3 tion 8, is amended—

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

5 **“§ 562. Damage measure in connection with swap**  
6 **agreements, securities contracts, forward**  
7 **contracts, commodity contracts, repur-**  
8 **chase agreements, or master netting**  
9 **agreements**

10 “If the trustee rejects a swap agreement, securities  
11 contract as defined in section 741 of this title, forward  
12 contract, commodity contract (as defined in section 761  
13 of this title) repurchase agreement, or master netting  
14 agreement pursuant to section 365(a) of this title, or if  
15 a forward contract merchant, stockbroker, financial insti-  
16 tution, securities clearing agency, repo participant, finan-  
17 cial participant, master netting agreement participant, or  
18 swap participant liquidates, terminates, or accelerates  
19 such contract or agreement, damages shall be measured  
20 as of the earlier of—

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

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

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

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

1 (b) CLAIMS ARISING FROM REJECTION.—Section  
2 502(g) of title 11, United States Code, is amended—

3 (1) by designating the existing text as para-  
4 graph (1); and

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

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

11 **SEC. 12. SIPC STAY.**

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

15 “(C) EXCEPTION FROM STAY.—

16 “(i) Notwithstanding section 362 of  
17 title 11, United States Code, neither the  
18 filing of an application under subsection  
19 (a)(3) nor any order or decree obtained by  
20 the Securities Investor Protection Corpora-  
21 tion from the court shall operate as a stay  
22 of any contractual rights of a creditor to  
23 liquidate, terminate, or accelerate a securi-  
24 ties contract, commodity contract, forward

1 contract, repurchase agreement, swap  
2 agreement, or master netting agreement,  
3 each as defined in title 11, to offset or net  
4 termination values, payment amounts, or  
5 other transfer obligations arising under or  
6 in connection with 1 or more of such con-  
7 tracts or agreements, or to foreclose on  
8 any cash collateral pledged by the debtor  
9 whether or not with respect to 1 or more  
10 of such contracts or agreements.

11 “(ii) Notwithstanding clause (i), such  
12 application, order, or decree may operate  
13 as a stay of the foreclosure on or disposi-  
14 tion of securities collateral pledged by the  
15 debtor, whether or not with respect to 1 or  
16 more of such contracts or agreements, se-  
17 curities sold by the debtor under a repur-  
18 chase agreement or securities lent under a  
19 securities lending agreement.

20 “(iii) As used in this section, the term  
21 ‘contractual right’ includes a right set  
22 forth in a rule or bylaw of a national secu-  
23 rities exchange, a national securities asso-  
24 ciation, or a securities clearing agency, a  
25 right set forth in a bylaw of a clearing or-

1           ganization or contract market or in a reso-  
2           lution of the governing board thereof, and  
3           a right, whether or not in writing, arising  
4           under common law, under law merchant,  
5           or by reason of normal business practice.”.

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

7           Section 541 of title 11, United States Code, as  
8           amended by section 150, is amended—

9                   (1) by redesignating paragraph (5) of sub-  
10           section (b) as paragraph (6);

11                   (2) by inserting after paragraph (4) of sub-  
12           section (b) the following new paragraph:

13                   “(5) any eligible asset (or proceeds thereof), to  
14           the extent that such eligible asset was transferred by  
15           the debtor before the date of commencement of the  
16           case, to an eligible entity in connection with an  
17           asset-backed securitization, except to the extent such  
18           asset (or proceeds or value thereof) may be recov-  
19           ered by the trustee under section 550 by virtue of  
20           avoidance under section 548(a)(1);”;

21                   (3) by adding at the end the following new sub-  
22           section:

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

1           “(1) the term ‘asset-backed securitization’  
2 means a transaction in which eligible assets trans-  
3 ferred to an eligible entity are used as the source of  
4 payment on securities, including all securities issued  
5 by governmental units, at least 1 class or tranche of  
6 which is rated investment grade by 1 or more na-  
7 tionally recognized securities rating organizations,  
8 when the securities are initially issued by an issuer;

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

10           “(A) financial assets (including interests  
11 therein and proceeds thereof), either fixed or re-  
12 volving, whether or not such assets are in exist-  
13 ence as of the date of the transfer, including  
14 residential and commercial mortgage loans, con-  
15 sumer receivables, trade receivables, assets of  
16 governmental units (including payment obliga-  
17 tions relating to taxes, receipts, fines, tickets,  
18 and other sources of revenue), and lease receiv-  
19 ables, that, by their terms, convert into cash  
20 within a finite time period, plus any residual in-  
21 terest in property subject to receivables in-  
22 cluded in such financial assets plus any rights  
23 or other assets designed to assure the servicing  
24 or timely distribution of proceeds to security  
25 holders;

1 “(B) cash; and

2 “(C) securities, including all securities  
3 issued by governmental units.

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

5 “(A) an issuer; or

6 “(B) a trust, corporation, partnership, gov-  
7 ernmental unit, limited liability company (in-  
8 cluding a single member limited liability com-  
9 pany), or other entity engaged exclusively in the  
10 business of acquiring and transferring eligible  
11 assets directly or indirectly to an issuer and  
12 taking actions ancillary thereto;

13 “(4) the term ‘issuer’ means a trust, corpora-  
14 tion, partnership, governmental unit, limited liability  
15 company (including a single member limited liability  
16 company), or other entity engaged exclusively in the  
17 business of acquiring and holding eligible assets,  
18 issuing securities backed by eligible assets, and tak-  
19 ing actions ancillary thereto; and

20 “(5) the term ‘transferred’ means the debtor,  
21 pursuant to a written agreement, represented and  
22 warranted that eligible assets were sold, contributed,  
23 or otherwise conveyed with the intention of removing  
24 them from the estate of the debtor pursuant to sub-  
25 section (b)(5) (whether or not reference is made to

1       this title or any section of this title), irrespective,  
2       without limitation, of—

3               “(A) whether the debtor directly or indi-  
4               rectly obtained or held an interest in the issuer  
5               or in any securities issued by the issuer;

6               “(B) whether the debtor had an obligation  
7               to repurchase or to service or supervise the  
8               servicing of all or any portion of such eligible  
9               assets; or

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

13   **SEC. 14. APPLICATION OF AMENDMENTS.**

14       The amendments made by this Act shall apply with  
15       respect to cases commenced or appointments made under  
16       any Federal or State law after the date of the enactment  
17       of this Act, but shall not apply with respect to cases com-  
18       menced or appointments made under any Federal or State  
19       law before the date of the enactment of this Act.