

106TH CONGRESS  
1ST SESSION

# S. 958

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

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IN THE SENATE OF THE UNITED STATES

MAY 4, 1999

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

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## A BILL

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

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

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

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Financial Institutions Insolvency Improvement Act of  
6       1999”.

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

Sec. 1. Short title; table of contents.

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

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

- Sec. 4. Amendments relating to transfers of qualified financial contracts.
- Sec. 5. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
- Sec. 6. Clarifying amendment relating to master agreements.
- Sec. 7. Federal Deposit Insurance Corporation Improvement Act of 1991.
- Sec. 8. Recordkeeping requirements.
- Sec. 9. Exemptions from contemporaneous execution requirement.
- Sec. 10. SIPC stay.
- Sec. 11. Federal Reserve collateral requirements.
- Sec. 12. Effective date; application of amendments.

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

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

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

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

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

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

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

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

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

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

7 “(V) means any margin loan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 agreement or transaction referred to  
2 in this clause;

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

For purposes of this clause, the term ‘qualified foreign government security’ means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).”.

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

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

“(I) means any agreement, including the terms and conditions incorporated by reference in any such agreement, that is—

“(aa) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

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

1 or other foreign exchange or pre-  
2 cious metals agreement;

3 “(cc) a currency swap, op-  
4 tion, future, or forward agree-  
5 ment;

6 “(dd) an equity index or eq-  
7 uity swap, option, future, or for-  
8 ward agreement;

9 “(ee) a debt index or debt  
10 swap, option, future, or forward  
11 agreement;

12 “(ff) a credit spread or cred-  
13 it swap, option, future, or for-  
14 ward agreement; or

15 “(gg) a commodity index or  
16 commodity swap, option, future,  
17 or forward agreement;

18 “(II) means any agreement or  
19 transaction that is similar to any  
20 other agreement or transaction re-  
21 ferred to in this clause, that is pres-  
22 ently, or in the future becomes, regu-  
23 larly entered into in the swap market  
24 (including terms and conditions incor-  
25 porated by reference in such agree-

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(ii) WALKAWAY CLAUSE DEFINED.—

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

18 (b) TECHNICAL AND CONFORMING AMENDMENT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

quired to accept the transferee as a member by virtue of the transfer.

“(D) DEFINITION.—For purposes of this paragraph, the term ‘financial institution’ means a broker or dealer, a depository institution, a futures commission merchant, or any other institution that the Corporation determines, by regulation, to be a financial institution.”.

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

“the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.”.

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is amended—



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

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

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

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

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

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

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

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

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

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

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

10                   “(i) a bridge bank; or

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

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

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

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

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

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

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

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

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

9           “(11) DISAFFIRMANCE OR REPUDIATION OF  
10          QUALIFIED FINANCIAL CONTRACTS.—In exercising  
11          the right to disaffirm or repudiate with respect to  
12          any qualified financial contract to which an insured  
13          depository institution is a party, the conservator or  
14          receiver for such institution shall either—

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

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

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

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

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

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

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

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

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

6 (1) in paragraph (6)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 graphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the  
 2 Federal Deposit Insurance Act and section 5(b)(2) of the  
 3 Securities Investor Protection Act of 1970).”.

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

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

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

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

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

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

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

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

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

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

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

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

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

24          “(c) REGULATORY AUTHORITY.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

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

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

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

**SEC. 10. SIPC STAY.**

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

“(C) EXCEPTION FROM STAY.—

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

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

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

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

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

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

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

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

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

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

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



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

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

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

○