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prepared by Robert J. Pfister for ease of reading and copying/pasting.
The authoritative text is the United States Statutes at Large.**

One Hundred Ninth Congress, Session II
Public Law 109-390 — 120 Stat. 2692 (H.R. 5585)
December 12, 2006

AN ACT *To improve the netting process for financial contracts, and for other purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Financial Netting Improvements Act of 2006".

SEC. 2. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF DEPOSITORY INSTITUTIONS.

(a) DEFINITION OF SECURITIES CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended—

(A) in subclause (I)—

(i) by striking "mortgage loan, or" and inserting "mortgage loan,"; and

(ii) by inserting before the semicolon "(whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in clause (v))";

(B) in subclause (IV)—

(i) by inserting "(including by novation)" after "the guarantee"; and

(ii) by inserting before the semicolon "(whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II))";

(C) in subclause (IX), by striking "or (VIII)" each place such term appears and inserting "(VIII), (IX), or (X)";

(D) by redesignating subclauses (VI), (VII), (VIII), (IX), and (X) as subclauses (VIII), (IX), (X), (XI), and (XII), respectively; and

(E) by inserting after subclause (V) the following new subparagraphs:

"(VI) means any extension of credit for the clearance or settlement of securities transactions;

"(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;".

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

(A) in subclause (I)—

(i) by striking "mortgage loan, or" and inserting "mortgage loan,"; and

(ii) by inserting before the semicolon "(whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in clause (v))";

(B) in subclause (IV)—

(i) by inserting "(including by novation)" after "the guarantee"; and

(ii) by inserting before the semicolon "(whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II))";

(C) in subclause (IX), by striking "or (VIII)" each place such term appears and inserting "(VIII), (IX), or (X)";

(D) by redesignating subclauses (VI), (VII), (VIII), (IX), and (X) as subclauses (VIII), (IX), (X), (XI), and (XII), respectively; and

(E) by inserting after subclause (V) the following new subparagraphs:

"(VI) means any extension of credit for the clearance or settlement of securities transactions;

"(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;".

(b) DEFINITION OF FORWARD CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(iv)(I) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)(I)) is amended by striking "transaction, reverse repurchase transaction" and inserting "or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in clause (v))".

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(iv)(I) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(iv)(I)) is amended by striking "transaction, reverse repurchase transaction" and inserting "or reverse repurchase transaction

(whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in clause (v))".

(c) DEFINITION OF SWAP AGREEMENT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended—

(A) in subclause (I)—

(i) by striking "or precious metals" and inserting ", precious metals, or other commodity"; and

(ii) by striking "or a weather swap, weather derivative, or weather option" and inserting "weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement";

(B) in subclause (II)—

(i) by inserting "or other derivatives" after "dealings in the swap"; and

(ii) by striking "future, or option" and inserting "future, option, or spot transaction"; and

(C) by striking "the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000" and inserting "the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is

defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act".

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

(A) in subclause (I)—

(i) by striking "or precious metals" and inserting ", precious metals, or other commodity"; and

(ii) by striking "or a weather swap, weather derivative, or weather option" and inserting "weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement";

(B) in subclause (II)—

(i) by inserting "or other derivatives" after "dealings in the swap"; and

(ii) by striking "future, or option" and inserting "future, option, or spot transaction"; and

(C) by striking "the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000" and inserting "the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is

defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act".

SEC. 3. CLARIFYING AMENDMENTS RELATING TO DEFINITION OF PERSON.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS DEFINITION OF PERSON.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended by adding at the end the following:

"(ix) PERSON.—The term 'person' includes any governmental entity in addition to any entity included in the definition of such term in section 1 of title 1, United States Code.".

(b) INSURED CREDIT UNIONS DEFINITION OF PERSON.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended by adding at the end the following:

"(ix) PERSON.—The term 'person' includes any governmental entity in addition to any entity included in the definition of such term in section 1 of title 1, United States Code.".

SEC. 4. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.

(a) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) in each of subsections (a) and (f), by striking "paragraphs (8)(E), (8)(F), and (10)(B) of" each place such term appears; and

(2) in subsection (a), by inserting "terminated, liquidated, accelerated, and" after "institutions shall be".

(b) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) in each of subsections (a) and (h), by striking "paragraphs (8)(E), (8)(F), and (10)(B) of" each place such term appears; and

(2) in subsection (a), by inserting "terminated, liquidated, accelerated, and" after "organization shall be".

SEC. 5. CONFORMING AMENDMENTS.

(a) CLARIFYING DEFINITIONS.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (22)(A)—

(i) by striking "(domestic or foreign)" after "an entity"; and

(ii) by inserting "(whether or not a 'customer', as defined in section 741)" after "custodian for a customer";

(B) in paragraph (22A)—

(i) by striking "on any day during the previous 15-month period" each place it appears and inserting "at such time or on any day during the 15-month period preceding the date of the filing of the petition"; and

(ii) by inserting "(aggregated across counterparties)" after "principal amount outstanding";

(C) in paragraph (25)(A)—

(i) by inserting ", as defined in section 761" after "commodity contract"; and

(ii) by striking "repurchase transaction, reverse repurchase transaction," and inserting "repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in this section)";

(D) in paragraph (53B)(A)—

(i) in clause (i)—

(I) in subclause (II), by striking "or precious metals" and inserting ", precious metals, or other commodity";

(II) in subclause (VII), by striking "or" at the end;

(III) in subclause (VIII), by striking "weather derivative, or weather option" and inserting "option, future, or forward agreement"; and

(IV) by adding at the end the following:

"(IX) an emissions swap, option, future, or forward agreement; or

"(X) an inflation swap, option, future, or forward agreement;"; and

(ii) in clause (ii)—

(I) in subclause (I), by inserting "or other derivatives" after "dealings in the swap"; and

(II) in subclause (II), by striking "future, or option" and inserting "future, option, or spot transaction"; and

(E) in paragraph (53B)(B), by striking "the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000" and inserting "the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act";

(2) in section 362(b)—

(A) by striking paragraphs (6) and (7) and inserting the following:

"(6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;

"(7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;";

(B) by striking paragraph (17) and inserting the following:

"(17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;"; and

(C) by striking paragraph (27) and inserting the following:

"(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or

(17) for each individual contract covered by the master netting agreement in issue; and"; and

(3) in section 741(7)(A)—

(A) in clause (i)—

(i) by striking "mortgage loan or" and inserting "mortgage loan,"; and

(ii) by inserting before the semicolon "(whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in section 101)";

(B) in clause (iii)—

(i) by inserting "(including by novation)" after "the guarantee"; and

(ii) by inserting before the semicolon "(whether or not such settlement is in connection with any agreement or transaction referred to in clauses (i) through (xi))";

(C) in clause (viii), by striking "or (vii)" each place it appears and inserting "(vii), (viii), or (ix)";

(D) by redesignating clauses (v) through (ix) as clauses (vii) through (xi), respectively; and

(E) by inserting after clause (iv) the following:

"(v) any extension of credit for the clearance or settlement of securities transactions;

"(vi) any loan transaction coupled with a securities collar transaction, any prepaid forward securities transaction, or any total return swap transaction coupled with a securities sale transaction;".

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

(1) in subsection (e)—

(A) by inserting "(or for the benefit of)" before "a commodity broker"; and

(B) by inserting "or that is a transfer made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, in connection with a securities contract, as defined in section 741(7), commodity contract, as defined in section 761(4), or forward contract," after "securities clearing agency,";

(2) in subsection (f)—

(A) by striking "that is a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title,"; and

(B) by inserting "(or for the benefit of)" before "a repo participant";

(3) in subsection (g), by inserting "(or for the benefit of)" before "a swap participant"; and

(4) in subsection (j), by inserting "(or for the benefit of)" after "made by or to".

(c) SIPC STAY.—Section 5(b)(2)(C)(iii) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)(C)(iii)) is amended—

(1) by inserting "a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991)," after "rule or bylaw of"; and

(2) by striking "or a securities clearance agency, a right set forth in a bylaw of a clearing organization or contract market" and inserting "a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act),".

(d) SAVINGS CLAUSE.—Title IX of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109-8, 119 Stat. 146) is amended by adding at the end the following:

"SEC. 912. SAVINGS CLAUSE.

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

SEC. 6. WALKAWAY CLAUSES.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(G)) is amended by striking clause (ii) and inserting the following new clauses:

> "(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the receiver is appointed until the earlier of—
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> > "(I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or
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> > "(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.
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> "(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party's status as a nondefaulting party in connection with the insolvency of an insured depository institution that is a party to the contract or the appointment of or the exercise of rights or powers by a conservator or receiver of such depository institution, and not as a result of a party's exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.".

(b) INSURED CREDIT UNIONS.—Section 207(c)(8)(G) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(G)) is amended by striking clause (ii) and inserting the following new clauses:

> "(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the liquidating agent is appointed until the earlier of—
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> > "(I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or
> >
> > "(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent.
>
> "(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party's status as a nondefaulting party in connection with the insolvency of an insured credit union or the appointment of or the exercise of rights or powers by a conservator or liquidating agent of such credit union, and not as a result of a party's exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.".

SEC. 7. SCOPE OF APPLICATION.

The amendments made by this Act shall not apply to any cases commenced under title 11, United States Code, or appointments made under any Federal or State law, before the date of the enactment of this Act.

APPROVED December 12, 2006.