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2^D SESSION

H. R. 4503

To enhance the supervision and regulation of derivatives activities of financial institutions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 1994

Mr. GONZALEZ (for himself, Mr. LEACH, Mr. NEAL of North Carolina, Mr. FRANK of Massachusetts, Mr. KANJORSKI, Mr. HINCHEY, and Mr. KENNEDY) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

A BILL

To enhance the supervision and regulation of derivatives activities of financial institutions, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Derivatives Safety and Soundness Supervision Act of
6 1994”.

7 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—ENHANCED SUPERVISION OF DERIVATIVES ACTIVITIES

- Sec. 101. Increased agency oversight of financial institution activities involving derivative financial instruments.
- Sec. 102. Disclosure of amounts, nature, and terms of derivative financial instruments in financial institution call reports.
- Sec. 103. Inclusion of FDIC and OCC as principals in interagency task force.
- Sec. 104. Training for examiners and assistant examiners.
- Sec. 105. State liaisons.

TITLE II—SUPERVISORY IMPROVEMENTS

- Sec. 201. Unsafe or unsound practices.
- Sec. 202. Confidential emergency management reporting.
- Sec. 203. Internal controls.
- Sec. 204. Foreign bank supervision.

TITLE III—FINANCIAL INSTITUTION INSOLVENCY REFORMS

- Sec. 301. Treatment of certain swap agreements by conservators or receivers of insured depository institutions.
- Sec. 302. Authority of the corporation with respect to failed and failing institutions.
- Sec. 303. Amendments relating to transfers of qualified financial contracts.
- Sec. 304. Clarifying amendment relating to master agreements.
- Sec. 305. Technical amendments relating to qualified financial contracts.

TITLE IV—INTERNATIONAL REGULATORY COOPERATION

- Sec. 401. Study of international regulation and supervision of derivatives activities of financial institutions.
- Sec. 402. International negotiations.

TITLE V—GAO STUDY

- Sec. 501. Study of speculation and margin and collateral requirements with respect to derivatives activities of financial institutions.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act the following definitions
3 shall apply:

4 (1) **ACTIVE END-USER.**—The term “active end-
5 user” means any financial institution which buys or
6 sells a significant amount (as defined by the appro-
7 priate Federal regulatory agencies) of derivative fi-
8 nancial instruments, or conducts transactions in a
9 wide variety of derivative financial instruments.

1 (2) APPROPRIATE FEDERAL BANKING AGEN-
2 CY.—The term “appropriate Federal banking agen-
3 cy” has the same meaning as in section 3(q) of the
4 Federal Deposit Insurance Act.

5 (3) APPROPRIATE FEDERAL REGULATORY
6 AGENCY.—The term “appropriate Federal regulatory
7 agency” means—

8 (A) any appropriate Federal banking agen-
9 cy, in the case of any insured depository institu-
10 tion or other entity described in section 3(q) of
11 the Federal Deposit Insurance Act;

12 (B) the National Credit Union Administra-
13 tion, in the case of any insured credit union;

14 (C) the Office of Federal Housing Enter-
15 prise Oversight of the Department of Housing
16 and Urban Development, in the case of any fi-
17 nancial institution which is subject to the over-
18 sight of such office;

19 (D) the Federal Housing Finance Board,
20 in the case of any Federal home loan bank or
21 the Office of Finance of the Federal home loan
22 banks; and

23 (E) the Board of Governors of the Federal
24 Reserve System, in the case of any financial in-

1 stitution which is not described in subpara-
2 graph (A), (B), (C), or (D).

3 (4) DEPOSITORY INSTITUTION.—The term “de-
4 pository institution”—

5 (A) has the same meaning as in section
6 3(c) of the Federal Deposit Insurance Act; and

7 (B) includes any Federal credit union and
8 any State credit union (as such terms are de-
9 fined in section 101 of the Federal Credit
10 Union Act).

11 (5) DERIVATIVES ACTIVITIES.—The term “de-
12 rivatives activities” means any activity in which a fi-
13 nancial institution is engaged as a dealer in deriva-
14 tive financial instruments or as an active end-user.

15 (6) DERIVATIVE FINANCIAL INSTRUMENT.—
16 The term “derivative financial instrument” means
17 any appropriate qualified financial contract (as de-
18 fined in section 11(e)(8)(D) of the Federal Deposit
19 Insurance Act).

20 (7) FINANCIAL INSTITUTION.—The term “fi-
21 nancial institution”—

22 (A) means—

23 (i) any depository institution;

24 (ii) any affiliate of any depository in-
25 stitution;

1 (iii) any entity described in any sub-
2 paragraph of section 3(q)(2) of the Federal
3 Deposit Insurance Act;

4 (iv) any institution which is subject to
5 the oversight of the Office of Federal
6 Housing Enterprise Oversight of the De-
7 partment of Housing and Urban Develop-
8 ment; and

9 (v) any Federal home loan bank and
10 the Office of Finance of the Federal home
11 loan banks; and

12 (B) does not include any company which is
13 regulated by the Securities and Exchange Com-
14 mission or the Commodities Futures Trading
15 Commission.

16 (8) INSURED CREDIT UNION.—The term “in-
17 sured credit union” has the same meaning as in sec-
18 tion 101(7) of the Federal Credit Union Act.

19 (9) INSURED DEPOSITORY INSTITUTION.—The
20 term “insured depository institution”—

21 (A) has the same meaning as in section 3(c)(2)
22 of the Federal Deposit Insurance Act; and

23 (B) includes an insured credit union.

1 **TITLE I—ENHANCED SUPER-**
2 **VISION OF DERIVATIVES AC-**
3 **TIVITIES**

4 **SEC. 101. INCREASED AGENCY OVERSIGHT OF FINANCIAL**
5 **INSTITUTION ACTIVITIES INVOLVING DERIV-**
6 **ATIVE FINANCIAL INSTRUMENTS.**

7 (a) ESTABLISHMENT OF PRINCIPLES AND STAND-
8 ARDS.—The appropriate Federal regulatory agencies shall
9 jointly establish principles and standards relating to cap-
10 ital, accounting, disclosure, suitability, or other appro-
11 priate regulatory actions for the supervision of financial
12 institutions engaged in derivatives activities by such agen-
13 cies.

14 (b) ADMINISTRATIVE PROVISIONS.—

15 (1) ENHANCED REGULATORY COOPERATION.—
16 For purposes of implementing the principles and
17 standards established pursuant to subsection (a) and
18 the recommendations made pursuant to subsection
19 (c) and consistent with section 37 of the Federal De-
20 posit Insurance Act, the appropriate Federal regu-
21 latory agencies shall jointly—

22 (A) issue substantially similar definitions,
23 reporting requirements, capital standards, and
24 examination guidelines and procedures with re-

1 spect to any derivatives activity of any financial
2 institution; and

3 (B) prescribe such other regulations gov-
4 erning derivatives activities of financial institu-
5 tions as the agencies have identified or rec-
6 ommended as appropriate for carrying out the
7 purposes of this Act.

8 (2) REPORTS TO BANKING COMMITTEES.—Dur-
9 ing the 5-year period beginning on the date of the
10 enactment of this Act, section 37(c) of the Federal
11 Deposit Insurance Act shall apply with respect to
12 the principles, standards, requirements, guidelines,
13 and procedures adopted, prescribed, or issued by any
14 appropriate Federal regulatory agency pursuant to
15 this Act in the same manner such section applies
16 with respect to accounting and capital standards
17 used by appropriate Federal banking agencies.

18 (c) RECOMMENDATIONS REGARDING SUPERVISORY
19 ACTIONS.—In establishing principles and standards under
20 subsection (a), the appropriate Federal regulatory agen-
21 cies shall consider and may make recommendations for
22 comparable regulatory action by all such agencies in other
23 matters relating to financial institutions engaged in de-
24 rivatives activities, including the need to establish prin-
25 ciples and standards to provide for the following:

1 (1) Strong capital requirements (with particular
2 attention to a leverage ratio where appropriate) to
3 guard generally against risks at financial institu-
4 tions, including added risks that may be posed by
5 derivatives activities.

6 (2) Comprehensive risk management systems
7 that—

8 (A) are commensurate in scope, size, and
9 complexity to the levels of activities and risks
10 assumed by financial institutions;

11 (B) include limits and controls with respect
12 to any level of risk regarding counterparty cred-
13 it, concentration, and other relevant market fac-
14 tors;

15 (C) ensure that market factors affecting
16 risk exposures are adequately measured, mon-
17 itored, and controlled; and

18 (D) adequately control potential losses and
19 undue risks arising from system deficiencies.

20 (3) To the extent practicable, joint regulatory
21 examinations by the appropriate Federal banking
22 agencies of financial institutions which engage in de-
23 rivatives activities.

24 (4) The prudent use of collateral by
25 counterparties to derivatives transactions.

1 (5) Appropriate parameters, models, and sim-
2 ulations for the purpose of evaluating a financial in-
3 stitution's exposure to derivatives activities and rel-
4 evant economic scenarios and further specifics re-
5 garding stress tests.

6 (6) Appropriate credit risk reserves in connec-
7 tion with derivatives activities.

8 (7) Protection against legal risk, including for-
9 eign legal risk.

10 (8) Protection against systemic risk.

11 (9) Assurance that a financial institution does
12 not recommend or engage in derivatives activities
13 that the institution knows or has reason to believe
14 would be inappropriate for a customer on the basis
15 of available information.

16 (10) Effective senior management supervision
17 and oversight by the board of directors of a financial
18 institution to ensure that derivatives activities are
19 conducted in a safe and sound manner and are con-
20 sistent with the board of director's overall risk man-
21 agement philosophy and the institution's business
22 strategy.

1 **SEC. 102. DISCLOSURE OF AMOUNTS, NATURE, AND TERMS**
2 **OF DERIVATIVE FINANCIAL INSTRUMENTS IN**
3 **FINANCIAL INSTITUTION CALL REPORTS.**

4 (a) INSURED DEPOSITORY INSTITUTIONS.—The Fed-
5 eral Deposit Insurance Act (12 U.S.C. 1811 et seq.) is
6 amended by adding at the end the following new section:

7 **“SEC. 44. DISCLOSURE REQUIREMENTS FOR DERIVATIVE**
8 **FINANCIAL INSTRUMENTS.**

9 “(a) INFORMATION REQUIRED TO BE INCLUDED IN
10 CALL REPORTS.—Each appropriate Federal banking
11 agency shall consider, and may require, disclosures in any
12 report of condition made by any insured depository insti-
13 tution in accordance with section 7(a) with respect to any
14 period beginning after December 31, 1994, of the follow-
15 ing information:

16 “(1) QUANTITATIVE INFORMATION WITH RE-
17 SPECT TO ALL DERIVATIVE FINANCIAL INSTRU-
18 MENTS.—

19 “(A) GROSS NOTIONAL VALUE.—The gross
20 notional value of each class of derivative finan-
21 cial instruments.

22 “(B) REVENUE, GAINS, AND LOSSES.—All
23 revenue, gains, and losses of the institution at-
24 tributable to each class of derivative financial
25 instruments.

1 “(C) EXPOSURE UNDER BILATERAL NET-
2 TING CONTRACT.—The net current credit expo-
3 sure of the institution under legally enforceable
4 bilateral arrangements with respect to each
5 class of derivative financial instruments.

6 “(2) TERMS TO MATURITY.—Information on
7 the remaining term to maturity of each class of de-
8 rivative financial instruments.

9 “(3) QUANTITATIVE INFORMATION WITH RE-
10 SPECT TO DERIVATIVE FINANCIAL INSTRUMENTS
11 HELD FOR TRADING PURPOSES.—

12 “(A) AVERAGE FAIR VALUE BALANCES.—
13 The average maximum and minimum fair value
14 balances of the insured depository institution
15 with respect to each class of derivative financial
16 instruments used by the institution for trading
17 purposes.

18 “(B) REVENUE, GAINS, AND LOSSES.—All
19 revenue, gains, and losses of the institution at-
20 tributable to trading account operations with
21 respect to each class of derivative financial in-
22 struments.

23 “(4) ADDITIONAL INFORMATION.—Any addi-
24 tional information that any appropriate Federal
25 banking agency may consider to be appropriate.

1 “(b) SEPARATE REPORTING FOR EXCHANGE AND
2 OTC TRADING.—To the maximum extent possible, infor-
3 mation reported pursuant to subsection (a) with respect
4 to transactions which are conducted on an exchange, and
5 each class of derivative financial instruments which are
6 the subjects of such transactions, shall be provided sepa-
7 rately from information relating to transactions which are
8 conducted over the counter, and the classes of derivative
9 financial instruments which are the subjects of such trans-
10 actions.

11 “(c) QUALITATIVE REPORTING REQUIREMENTS.—
12 The Federal banking agencies shall take such action as
13 may be appropriate to encourage insured depository insti-
14 tutions to publicly report the following information with
15 such frequency as the agencies determine to be appro-
16 priate:

17 “(1) NATURE OF DERIVATIVE FINANCIAL IN-
18 STRUMENTS.—A description of—

19 “(A) the purposes for which each class of
20 derivative financial instruments has been ac-
21 quired by the institution, including the specific
22 objectives of the institution; and

23 “(B) the overall operating and investment
24 strategies of the institution which provide the
25 context for acquiring or taking any such hold-

1 ing, position, or other interest in any derivative
2 financial instrument.

3 “(2) ACCOUNTING POLICIES.—A description of
4 the accounting policy and principles and the meth-
5 odologies used by the institution to determine the
6 value of the various classes of derivative financial in-
7 struments.

8 “(d) DEFINITIONS.—For purposes of this section, the
9 terms ‘active end-user’ and ‘derivative financial instru-
10 ment’ have the same meanings as in section 2 of the De-
11 rivatives Safety and Soundness Supervision Act of 1994.”.

12 (b) INSURED CREDIT UNIONS.—Section 202(a) of
13 the Federal Credit Union Act (12 U.S.C. 1782(a)) is
14 amended by adding at the end the following new para-
15 graph:

16 “(8) DERIVATIVE FINANCIAL INSTRUMENTS.—

17 “(A) IN GENERAL.—The reports of condi-
18 tion made by insured credit unions under this
19 section shall include all the information with re-
20 spect to derivative financial instruments which
21 is required, under section 44 of the Federal De-
22 posit Insurance Act, to be included in reports of
23 condition made by insured depository institu-
24 tions (as defined in section 3 of such Act).

1 “(B) APPLICABILITY OF SECTION 44 OF
2 THE FEDERAL DEPOSIT INSURANCE ACT.—Sec-
3 tion 44 of the Federal Deposit Insurance Act
4 shall apply with respect to insured credit unions
5 and the Board in the same manner such section
6 applies to insured depository institutions and
7 Federal banking agencies (as such terms are
8 defined in section 3 of such Act) and shall be
9 enforceable by the Board with respect to in-
10 sured credit unions under this Act.”.

11 (c) OTHER FINANCIAL INSTITUTIONS.—

12 (1) IN GENERAL.—A financial institution which
13 is not an insured depository institution or an insured
14 credit union shall file a quarterly report, with such
15 institution’s appropriate Federal regulatory agency,
16 containing all the information with respect to deriva-
17 tive financial instruments which is required, under
18 section 44 of the Federal Deposit Insurance Act, to
19 be included in reports of condition made by insured
20 depository institutions (as defined in section 3 of
21 such Act).

22 (2) APPLICABILITY OF SECTION 44 OF THE
23 FEDERAL DEPOSIT INSURANCE ACT.—Section 44 of
24 the Federal Deposit Insurance Act shall apply with
25 respect to financial institutions and appropriate

1 Federal regulatory agencies described in paragraph
2 (1) in the same manner such section applies to in-
3 sured depository institutions and Federal banking
4 agencies (as such terms are defined in section 3 of
5 such Act) and shall be enforceable by such agencies
6 with respect to such financial institutions under any
7 other law which provides such agency with adminis-
8 trative enforcement authority over such institution.

9 **SEC. 103. INCLUSION OF FDIC AND OCC AS PRINCIPALS IN**
10 **INTERAGENCY TASK FORCE.**

11 The Chairperson of the Federal Deposit Insurance
12 Corporation and the Comptroller of the Currency shall be
13 included as principals on any interagency task force or
14 working group dealing with issues relating to derivative
15 financial instruments.

16 **SEC. 104. TRAINING FOR EXAMINERS AND ASSISTANT EX-**
17 **AMINERS.**

18 (a) IN GENERAL.—The Financial Institutions Exam-
19 ination Council shall sponsor training programs concern-
20 ing derivatives activities for examiners and assistant ex-
21 aminers employed by such any agency represented on such
22 council.

23 (b) ENROLLMENT.—Under such conditions as the Fi-
24 nancial Institutions Examination Council may establish,
25 training programs sponsored by the council pursuant to

1 subsection (a) shall be open to enrollment by employees
2 of State bank supervisors (as defined in section 3(r) of
3 the Federal Deposit Insurance Act) and employees of the
4 Federal Housing Finance Board and the Office of Federal
5 Housing Enterprise Oversight of the Department of Hous-
6 ing and Urban Development.

7 (c) RISK MANAGEMENT TRAINING.—The risk man-
8 agement training provided under section 1009A of the
9 Federal Financial Institutions Examination Council Act of
10 1978 shall include risk management techniques related to
11 derivatives activities, except that the cost of providing
12 training with respect to such activities to employees of fi-
13 nancial institutions shall be paid by the institutions.

14 **SEC. 105. STATE LIAISONS.**

15 (a) IN GENERAL.—To encourage the application of
16 uniform examination principles and standards by State
17 and Federal agencies with respect to derivatives activities
18 of financial institutions, the appropriate Federal regu-
19 latory agencies shall establish a liaison committee com-
20 posed of 5 representatives of State agencies which super-
21 vise financial institutions which shall meet at least twice
22 a year with such Federal agencies.

23 (b) TRAVEL EXPENSES.—Each member of the liaison
24 committee established pursuant to subsection (a) shall re-
25 ceive travel expenses, including per diem in lieu of subsist-

1 ence, in accordance with sections 5702 and 5703 of title
2 5, United States Code.

3 **TITLE II—SUPERVISORY**
4 **IMPROVEMENTS**

5 **SEC. 201. UNSAFE OR UNSOUND PRACTICES.**

6 (a) EFFECTIVE MANAGEMENT OVERSIGHT.—No fi-
7 nancial institution may engage in derivatives activities
8 without a written management plan approved by the board
9 of directors of the institution which—

10 (1) ensures that such activities are—

11 (A) conducted with appropriate direct over-
12 sight of the directors and the senior executive
13 officers (as defined pursuant to section 32(f) of
14 the Federal Deposit Insurance Act) of the insti-
15 tution;

16 (B) conducted in a safe and sound man-
17 ner; and

18 (C) consistent with the overall risk man-
19 agement philosophy and the business strategy
20 of the management of the institution; and

21 (2) establishes prudential standards for the
22 management of the risks involved in such activities
23 and a framework for internal controls with respect
24 to such activities.

1 (b) REQUIREMENT FOR DIRECTORS.—No financial
2 institution may act as a dealer in derivative financial in-
3 struments or as an active end-user unless a sufficient
4 number of the directors of such institution are familiar
5 with the risks associated with any class of derivative finan-
6 cial instruments involved in any derivatives activity of a
7 financial institution and the total current credit exposure
8 of the institution with respect to any such class, and ac-
9 tivities of the institution relating to such class of instru-
10 ments.

11 (c) ENFORCEMENT.—Any failure to comply with the
12 provisions of this subsection, and the failure of any insti-
13 tution-affiliated party (as defined in section 3(u) of the
14 Federal Deposit Insurance Act) engaged in derivatives ac-
15 tivities to have adequate technical expertise with respect
16 to such activities, may be treated by the appropriate Fed-
17 eral regulatory agency as an unsafe or unsound practice
18 in conducting the business of the institution involved.

19 **SEC. 202. CONFIDENTIAL EMERGENCY MANAGEMENT RE-**
20 **PORTING.**

21 (a) IN GENERAL.—Before the end of the 1-year pe-
22 riod beginning on the date of the enactment of this Act,
23 the appropriate Federal regulatory agencies shall develop
24 the means to obtain all necessary information relating to
25 any derivatives activity or any class of derivative financial

1 instruments, whenever the appropriate Federal regulatory
2 agency determines such information is needed, from any
3 financial institution which is a dealer in derivative finan-
4 cial instruments or is an active end-user if the agency de-
5 termines that the agency needs such information as a re-
6 sult of adverse market conditions or other emergency situ-
7 ation (as defined by the agency).

8 (b) ACCESSIBILITY OF INFORMATION.—Each finan-
9 cial institution referred to in paragraph (1) shall—

10 (1) obtain such information and make and keep
11 such records as the appropriate Federal regulatory
12 agency may require by regulation for purposes of
13 such paragraph; and

14 (2) promptly provide to the appropriate Federal
15 regulatory agency any information requested by the
16 agency pursuant to such paragraph.

17 (c) CONFIDENTIALITY OF INFORMATION PRO-
18 VIDED.—No information provided to or obtained by an ap-
19 propriate Federal regulatory agency pursuant to para-
20 graph (1) with respect to any financial institution may be
21 provided to any person or entity other than another Fed-
22 eral regulatory agency with jurisdiction over the financial
23 institution without the prior written approval of the agen-
24 cy.

1 **SEC. 203. INTERNAL CONTROLS.**

2 Section 39(a)(1)(A) of the Federal Deposit Insurance
3 Act (12 U.S.C. 1831p-1(a)(1)(A)) is amended by striking
4 “internal controls” and inserting “internal controls (in-
5 cluding internal controls for activities involving derivative
6 financial instruments (as defined in section 44(d)))”.

7 **SEC. 204. FOREIGN BANK SUPERVISION.**

8 (a) STANDARDS FOR APPROVAL.—Section 7(d)(2)(A)
9 of the International Banking Act of 1978 (12 U.S.C.
10 3105(d)(2)(A)) is amended by inserting before the semi-
11 colon the following: “, including, in the case of a foreign
12 bank engaged in derivatives activities (as defined in sec-
13 tion 2(5) of the Derivatives Safety and Soundness Super-
14 vision Act of 1994), comprehensive supervision and regu-
15 lation of such activities.”.

16 (b) FACTOR FOR CONSIDERATION.—Section 7(d) of
17 the International Banking Act of 1978 (12 U.S.C.
18 3105(d)) is amended by adding at the end the following
19 new paragraph:

20 “(6) FACTOR FOR CONSIDERATION.—In making
21 any determination under paragraph (2), the Board
22 shall consider whether the home country of a foreign
23 bank maintains comprehensive supervision and regu-
24 lation of derivatives activities (as defined in section
25 2(5) of the Derivatives Safety and Soundness Super-
26 vision Act of 1994), including, where appropriate,

1 capital and disclosure standards, which are not less
2 stringent than United States standards.”.

3 **TITLE III—FINANCIAL INSTITU-**
4 **TION INSOLVENCY REFORMS**

5 **SEC. 301. TREATMENT OF CERTAIN SWAP AGREEMENTS BY**
6 **CONSERVATORS OR RECEIVERS OF INSURED**
7 **DEPOSITORY INSTITUTIONS.**

8 Section 11(e)(8)(D)(vi) of the Federal Deposit Insur-
9 ance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended—

10 (1) by striking “purchased” each place such
11 term appears; and

12 (2) by inserting “, equity derivative, equity or
13 equity index swap, equity or equity index option,
14 bond option, spot foreign exchange transaction”
15 after “currency option”.

16 **SEC. 302. AUTHORITY OF THE CORPORATION WITH RE-**
17 **SPECT TO FAILED AND FAILING INSTITU-**
18 **TIONS.**

19 Section 11(e)(8) of the Federal Deposit Insurance
20 Act (12 U.S.C. 1821(e)(8)) is amended by adding the fol-
21 lowing new subparagraphs:

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

1 ner, the right or power of the Corporation, to
2 transfer any qualified financial contract in ac-
3 cordance with paragraphs (9) and (10) or to
4 liquidate any such contract.

5 “(G) UNDERCAPITALIZED INSURED DE-
6 POSITORY INSTITUTIONS.—The Corporation, in
7 consultation with the appropriate Federal bank-
8 ing agencies, shall prescribe regulations requir-
9 ing more detailed recordkeeping with respect to
10 qualified financial contracts (including market
11 valuations) by insured depository institutions
12 that are undercapitalized (as defined in section
13 38).”.

14 **SEC. 303. AMENDMENTS RELATING TO TRANSFERS OF**
15 **QUALIFIED FINANCIAL CONTRACTS.**

16 Section 11(e)(10) of the Federal Deposit Insurance
17 Act (12 U.S.C. 1821(e)(10)) is amended—

18 (1) by redesignating subparagraph (B) as sub-
19 paragraph (E);

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

22 “(B) EFFECT OF NOTICE.—If a conserva-
23 tor or receiver for an insured depository institu-
24 tion in default has taken steps reasonably cal-
25 culated to provide notice, pursuant to subpara-

1 graph (A), to any person by the close of busi-
2 ness (local time) on the business day following
3 the appointment of the conservator or receiver
4 for such institution that the conservator or re-
5 ceiver has transferred, pursuant to paragraph
6 (9)(A), all qualified financial contracts between
7 the depository institution and such person, or
8 any affiliate of such person, paragraph (8)(A)
9 shall not apply with respect to such person or
10 affiliate in connection with any such contract.

11 “(C) TREATMENT OF BRIDGE BANKS.—If
12 a bridge bank or other institution is organized
13 by the Corporation and a conservator is ap-
14 pointed for such bank or institution—

15 “(i) immediately upon the organiza-
16 tion of the bank or institution; or

17 “(ii) at the time of a purchase and as-
18 sumption transaction between such bank
19 or institution and a failed depository insti-
20 tution for which the Corporation has been
21 appointed receiver,

22 the bridge bank or other institution shall not be
23 considered a depository institution in default
24 for purposes of this paragraph and paragraphs
25 (8) and (9).”.

1 **SEC. 304. 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 SWAP AGREEMENT.—
8 Notwithstanding any other provision of
9 law, any master agreement for any con-
10 tract or agreement described in clause (ii),
11 (iii), (iv), or (vi), together with all supple-
12 ments to such master agreement, shall be
13 treated as 1 swap agreement for purposes
14 of this paragraph.”.

15 **SEC. 305. TECHNICAL AMENDMENTS RELATING TO QUALI-**
16 **FIED FINANCIAL CONTRACTS.**

17 (a) DEFINITION OF QUALIFIED FINANCIAL CON-
18 TRACT.—Section 11(e)(8)(D) of the Federal Deposit In-
19 surance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

20 (1) in clause (i), by inserting “spot contract,”
21 after “swap agreement,”;

22 (2) in clause (iv), by striking “(24)” and insert-
23 ing “(25)”; and

24 (3) in clause (v), by striking “101(41)” and in-
25 serting “101(47)”.

1 (b) LIMITATION ON RIGHTS OF COUNTERPARTIES IN
2 EVENT OF DEFAULT DUE TO APPOINTMENT OF A CON-
3 SERVATOR.—Section 11(e)(8)(E)(i) of the Federal De-
4 posit Insurance Act (12 U.S.C. 1821(e)(8)(E)(i)) is
5 amended by inserting “, other than a default based solely
6 upon the appointment of a conservator” before the semi-
7 colon at the end.

8 **TITLE IV—INTERNATIONAL**
9 **REGULATORY COOPERATION**

10 **SEC. 401. STUDY OF INTERNATIONAL REGULATION AND SU-**
11 **PERVISION OF DERIVATIVES ACTIVITIES OF**
12 **FINANCIAL INSTITUTIONS.**

13 (a) IN GENERAL.—Before the end of the 30-day pe-
14 riod beginning on the date of the enactment of this Act,
15 the Secretary of the Treasury shall request a meeting with
16 the appropriate representatives of the other major indus-
17 trialized countries to plan a study to examine the adequacy
18 of the international regulation and supervision of deriva-
19 tives activities of financial institutions.

20 (b) GOALS OF STUDY.—The goals of the study as
21 proposed by the Secretary of the Treasury pursuant to
22 subsection (a) with respect to derivatives activities of fi-
23 nancial institutions shall be as follows:

24 (1) To foster a greater understanding of the
25 manner in which derivative financial instruments af-

1 fect the stability of the world's financial systems and
2 markets.

3 (2) To examine the adequacy of international
4 regulation and supervision of derivative financial ac-
5 tivities.

6 (3) To make recommendations for improving
7 the international regulation and supervision of deriv-
8 ative financial activities.

9 (4) To foster greater cooperation between all
10 regulatory agencies with jurisdiction over derivatives
11 activities.

12 (5) To make recommendations for action by the
13 financial regulators in the respective countries that
14 would facilitate the safe and sound conduct of enti-
15 ties involved in derivative financial activities.

16 (6) To evaluate the feasibility of establishing a
17 single governing body to regulate international deriv-
18 ative financial activities.

19 (c) ISSUES TO STUDY.—The Secretary of the Treas-
20 ury shall propose that the study with respect to derivatives
21 activities of financial institutions include the following fac-
22 tors:

23 (1) Identification of the manner in which deriv-
24 ative financial instruments affect the stability of the
25 world's financial systems and markets.

1 (2) Identification of the various regulatory enti-
2 ties and mechanisms that are used to regulate and
3 supervise derivative financial activities around the
4 world.

5 (3) Analysis of the adequacy of the cooperation
6 between the various regulatory entities and mecha-
7 nisms referred to in paragraph (2).

8 (4) Identification of problems that inhibit the
9 safe and sound conduct of worldwide derivatives ac-
10 tivities.

11 (5) Analysis of the extent to which derivative fi-
12 nancial activities in countries other than the major
13 industrialized countries affect the safety and sound-
14 ness of the world's financial systems and markets.

15 (6) Identification of uniform accounting and
16 public reporting standards for derivative financial in-
17 struments.

18 (7) Evaluation of the feasibility of establishing
19 a single governing body to regulate international de-
20 rivatives activities.

21 (d) UTILIZATION OF INFORMATION AND RE-
22 SOURCES.—The Secretary of the Treasury shall propose
23 that, in conducting the study under this section with re-
24 spect to derivatives activities of financial institutions, the
25 major industrialized countries should—

1 (1) gather information from a wide variety of
2 sources including government agencies, central
3 banks, market participants, and the consumers of
4 the derivative financial instruments;

5 (2) to the extent feasible, obtain and use infor-
6 mation from the International Monetary Fund, the
7 Bank for International Settlements, and other multi-
8 lateral organizations; and

9 (3) utilize all available information and conclu-
10 sions from studies conducted by any multilateral or-
11 ganization, central bank, or any group consisting of
12 representatives of major industrialized countries.

13 **SEC. 402. INTERNATIONAL NEGOTIATIONS.**

14 The Chairman of the Board of Governors of the Fed-
15 eral Reserve System and the Comptroller of the Currency
16 shall encourage central banks, and regulatory authorities
17 of the other industrialized countries to work toward main-
18 taining and, where appropriate, adopting comparable su-
19 pervisory standards and regulations, particularly capital
20 standards, for financial institutions engaged in derivatives
21 activities.

TITLE V—GAO STUDY**SEC. 501. STUDY OF SPECULATION AND MARGIN AND COLLATERAL REQUIREMENTS WITH RESPECT TO DERIVATIVES ACTIVITIES OF FINANCIAL INSTITUTIONS.**

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the speculative uses of derivative financial instruments by financial institutions and the feasibility of imposing margin and collateral requirements on speculative transactions engaged in by financial institutions which involve derivative financial instruments.

(2) REPORT.—The Comptroller General shall submit a report on the study conducted pursuant to paragraph (1) to the Congress before the end of the 18-month period beginning on the date of the enactment of this Act.

(b) ISSUES INVOLVING SPECULATIVE TRANSACTIONS INVOLVING DERIVATIVE FINANCIAL INSTRUMENTS.—In conducting the study under subsection (a)(1), the Comptroller General shall—

(1) define the term “speculation” as such term is used in connection with derivative financial instruments;

1 (2) determine the extent to which financial in-
2 stitutions use the various classes of derivative finan-
3 cial instruments to engage in speculation for the in-
4 stitution's own trading account; and

5 (3) determine the extent to which financial in-
6 stitutions engage in derivatives activities involving
7 the various classes of derivative financial instru-
8 ments with speculators.

9 (c) ISSUES INVOLVING MARGIN AND COLLATERAL
10 REQUIREMENTS.—In conducting the study under sub-
11 section (a)(1), the Comptroller General shall—

12 (1) determine which classes of derivative finan-
13 cial instruments are subject to margin and collateral
14 requirements and the amount and purpose of the
15 margin and collateral requirement;

16 (2) determine the extent to which the trans-
17 actions of financial institutions which involve any
18 class of derivative financial instruments are con-
19 ducted over the counter and evaluate the feasibility
20 of imposing margin and collateral requirements on
21 such transactions;

22 (3) evaluate the feasibility of imposing margin
23 and collateral requirements on any class of deriva-
24 tive financial instruments which were acquired or
25 taken for speculative purposes; and

1 (4) evaluate the competitive impact of imposing
2 margin and collateral requirements on the various
3 classes of derivative financial instruments which
4 were acquired or taken for speculative purposes.

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