

104TH CONGRESS
1ST SESSION

H. R. 20

To provide a framework to improve risk management techniques at financial institutions, including the prudential use of derivative products.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mr. LEACH introduced the following bill; which was referred to the Committee on Banking and Financial Services and, in addition, to the Committees on Commerce, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide a framework to improve risk management techniques at financial institutions, including the prudential use of derivative products.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act shall be cited as the “Risk Management Im-
5 provement and Derivatives Oversight Act of 1995”.

1 **TITLE I—FEDERAL DERIVATIVES**
2 **COMMISSION**

3 **SEC. 101. DECLARATION OF PURPOSE.**

4 It is the purpose of this title to establish a Federal
5 Derivatives Commission which shall establish principles
6 and standards for the supervision and oversight by Fed-
7 eral financial institution regulators of financial institu-
8 tions engaged in derivatives activities and make rec-
9 ommendations to promote better risk management tech-
10 niques and uniformity in the supervision of these financial
11 institutions. The Commission's actions shall be designed
12 to promote consistency in regulatory practices and to in-
13 sure progressive and vigilant supervision.

14 **SEC. 102. DEFINITIONS.**

15 As used in this title—

16 (1) the term “Federal financial institution regu-
17 latory agencies” means the Office of the Comptroller
18 of the Currency, the Board of Governors of the Fed-
19 eral Reserve System, the Federal Deposit Insurance
20 Corporation, the Office of Thrift Supervision, the
21 Securities and Exchange Commission, and the Com-
22 modity Futures Trading Commission;

23 (2) the term “Commission” means the Federal
24 Derivatives Commission;

1 (3) the term “Federal banking agency” has the
2 same meaning as in section 3 of the Federal Deposit
3 Insurance Act (12 U.S.C. 1813);

4 (4) the term “financial institution” means any
5 institution covered under section 402(9) of the Fed-
6 eral Deposit Insurance Corporation Improvement
7 Act of 1991, any government sponsored enterprise,
8 or any other institution (including a state or local
9 government or other type of end-user) as determined
10 by the Commission;

11 (5) the term “government sponsored enter-
12 prise” has the same meaning as in section 1404(e)
13 of the Financial Institutions Reform, Recovery, and
14 Enforcement Act of 1989;

15 (6) the term “securities contract” has the same
16 meaning as in section 741(7) of title 11, United
17 States Code and includes a contract for the pur-
18 chase, sale or loan of a structured note or an option
19 on a structured note;

20 (7) the terms “commodity contract”, “forward
21 contract”, and “swap agreement” have the same
22 meaning as in section 11(e)(8)(D) of the Federal
23 Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D));

24 (8) the term “derivative financial instrument”
25 means any securities contract, commodity contract,

1 forward contract, swap agreement or any other simi-
2 lar agreement or instrument which the Commission
3 determines to be a derivative financial instrument
4 for purposes of this title; and

5 (9) the term “derivatives activities” means ac-
6 tivities by a financial institution involving derivative
7 financial instruments.

8 **SEC. 103. FEDERAL DERIVATIVES COMMISSION.**

9 (a) ESTABLISHMENT; COMPOSITION.—There is es-
10 tablished the Federal Derivatives Commission which shall
11 consist of—

12 (1) the Chairman of the Board of Governors of
13 the Federal Reserve System,

14 (2) the Comptroller of the Currency,

15 (3) the Chairperson of the Board of Directors
16 of the Federal Deposit Insurance Corporation,

17 (4) the Director of the Office of Thrift Super-
18 vision,

19 (5) the Chairman of the Securities and Ex-
20 change Commission,

21 (6) the Chairman of the Commodity Futures
22 Trading Commission, and

23 (7) the Secretary of Treasury.

1 (b) CHAIRMANSHIP.—The chairman of the Commis-
2 sion shall be the Chairman of the Board of Governors of
3 the Federal Reserve System.

4 (c) DESIGNATION OF OFFICERS AND EMPLOYEES.—
5 The members of the Commission may, from time to time,
6 designate other officers or employees of their respective
7 agencies to carry out their duties on the Commission.

8 (d) COMPENSATION AND EXPENSES.—Each member
9 of the Commission shall serve without additional com-
10 pensation but shall be entitled to reasonable expenses
11 incurred in carrying out his official duties as such a
12 member.

13 (e) COSTS AND EXPENSES OF COMMISSION.—One-
14 sixth of the costs and expenses of the Commission, includ-
15 ing the salaries of its employees, shall be paid by each
16 of the Federal financial institution regulatory agencies.
17 Annual assessments for such share shall be levied by the
18 Commission based upon its projected budget for the year,
19 and additional assessments may be made during the year
20 if necessary.

21 **SEC. 104. FUNCTIONS OF COMMISSION.**

22 (a) ESTABLISHMENT OF PRINCIPLES AND STAND-
23 ARDS.—

24 (1) The Commission shall establish principles
25 and standards to improve risk management and the

1 prudent use of derivative financial instruments by fi-
2 nancial institutions. Such actions by the Commission
3 shall include principles and standards related to—

4 (A) capital or limits on leverage as appro-
5 priate;

6 (B) accounting (consistent with section 37
7 of the Federal Deposit Insurance Act);

8 (C) disclosure;

9 (D) sales practices or appropriateness; and

10 (E) such other regulatory actions for the
11 supervision of financial institutions engaged in
12 derivatives activities deemed appropriate by the
13 Commission.

14 (2) Each Federal financial institution regu-
15 latory agency shall issue substantially similar regula-
16 tions or guidelines governing derivatives activities for
17 purposes of implementing paragraph (1), unless it
18 finds that implementation of substantially similar
19 regulations is not necessary or appropriate in the
20 public interest.

21 (3) For purposes of implementing paragraph
22 (1), the Commission may establish differing stand-
23 ards for different classes of financial institutions, in-
24 cluding, but not limited to, dealers, end-users, or
25 municipalities as appropriate.

1 (4) Any financial institution not subject to su-
2 pervision by a Federal banking agency or the Com-
3 modity Futures Trading Commission shall be super-
4 vised by the Securities and Exchange Commission to
5 the extent of their derivatives activities, except as
6 otherwise provided by the Commission. The Securi-
7 ties and Exchange Commission shall have the au-
8 thority to enforce the provisions of this title against
9 any financial institution covered by this paragraph
10 to the extent that such provisions govern the con-
11 duct or activities of the financial institution as if
12 they were provisions of the Securities Exchange Act
13 of 1934.

14 (b) RECOMMENDATIONS REGARDING SUPERVISORY
15 ACTIONS.—

16 (1) In establishing principles and standards
17 under subsection (a), the Commission shall consider
18 and may make recommendations for comparable reg-
19 ulatory action by the Federal financial institution
20 regulatory agencies in other matters related to fi-
21 nancial institutions engaged in derivatives activities,
22 including the need to establish principles and stand-
23 ards for the following:

24 (A) Strong capital requirements (with par-
25 ticular attention to a leverage ratio where ap-

1 appropriate) to guard generally against risks at fi-
2 nancial institutions, including added risks that
3 may be posed by derivative activities.

4 (B) Comprehensive risk management sys-
5 tems that—

6 (i) are commensurate in scope, size,
7 and complexity to the levels of activities
8 and risks assumed by financial institutions;

9 (ii) include limits and controls with
10 respect to levels or risk regarding
11 counterparty credit, concentration, and
12 other relevant market factors;

13 (iii) ensure that market factors affect-
14 ing risk exposures are adequately meas-
15 ured, monitored, controlled and disclosed;
16 and

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

20 (C) To the extent practicable, joint regu-
21 latory examinations by the Federal banking
22 agencies of insured depository institutions that
23 are derivatives dealers and any affiliates.

24 (D) Effective senior management super-
25 vision and oversight by the board of directors of

1 a financial institution to ensure that derivatives
2 activities are conducted in a safe and sound
3 manner and are consistent with the board of di-
4 rector's overall risk management philosophy
5 and the institution's business strategy.

6 (E) The prudent use of collateral by
7 counterparties to derivatives transactions.

8 (F) Appropriate parameters, models and
9 simulations for purposes of evaluating a finan-
10 cial institution's exposure to derivatives activi-
11 ties and relevant economic scenarios and fur-
12 ther specifics regarding stress test.

13 (G) Appropriate credit risk reserves in con-
14 nection with derivatives activities.

15 (H) Protection against legal risk, including
16 foreign legal risk.

17 (I) Minimum prudential practices for mu-
18 nicipalities and pension funds that may use de-
19 rivatives.

20 (J) Enhanced disclosures to mutual fund
21 customers of the risks that may be posed to
22 mutual funds that are end-users of derivative
23 products.

24 (K) Assurances that, consistent with safe
25 and sound banking practices, a financial insti-

1 tution does not engage in inappropriate deriva-
2 tives activities.

3 (L) Protection against systemic risk.

4 (2) When a recommendation of the Commission
5 is found unacceptable by one or more of the applica-
6 ble Federal financial institution regulatory agencies,
7 the agency or agencies shall submit to the Commis-
8 sion, within a time period specified by the Commis-
9 sion, a written statement of the reasons the rec-
10 ommendation is unacceptable and such statement
11 shall be published in the Federal Register.

12 **SEC. 105. TRAINING FOR EXAMINERS AND ASSISTANT EX-**
13 **AMINERS.**

14 The Commission shall sponsor training programs
15 concerning risk management techniques and derivatives
16 activities for examiners, assistant examiners and other em-
17 ployees of the Federal financial institution regulatory
18 agencies. Such training programs shall be open to enroll-
19 ment by employees of State financial institutions super-
20 visory agencies and employees of the Federal Housing Fi-
21 nance Board and the Department of Housing and Urban
22 Development's Office of Federal Housing Enterprise
23 Oversight under conditions specified by the Commission.

1 **SEC. 106. RISK MANAGEMENT TRAINING.**

2 The Commission shall develop training seminars in
3 risk management techniques related to derivatives activi-
4 ties for employees of state or local governments and finan-
5 cial institutions.

6 **SEC. 107. EFFECT ON FEDERAL REGULATORY AGENCY RE-**
7 **SEARCH AND DEVELOPMENT OF NEW FINAN-**
8 **CIAL INSTITUTIONS SUPERVISORY METHODS.**

9 Nothing in this title shall be construed to limit or
10 discourage Federal financial institution regulatory agency
11 research and development of new financial institutions su-
12 pervisory methods and tools related to derivatives activi-
13 ties, nor to preclude the field testing of any innovation
14 devised by any Federal financial institution regulatory
15 agency.

16 **SEC. 108. STATE LIAISON.**

17 To encourage the application of uniform examination
18 principles and standards by State and Federal supervisory
19 agencies, the Commission shall establish a liaison commit-
20 tee composed of five representatives of State agencies
21 which supervise financial institutions which shall meet at
22 least twice a year with the Commission. Members of the
23 liaison committee shall receive a reasonable allowance for
24 necessary expenses incurred in attending meetings.

1 **SEC. 109. ADMINISTRATION.**

2 (a) AUTHORITY OF CHAIRMAN OF COMMISSION.—
3 The Chairman of the Commission is authorized to carry
4 out and to delegate the authority to carry out the internal
5 administration of the Commission, including the appoint-
6 ment and supervision of employees and the distribution
7 of business among members, employees, and administra-
8 tive units.

9 (b) USE OF PERSONNEL, SERVICES, AND FACILITIES
10 OF FEDERAL FINANCIAL INSTITUTION REGULATORY
11 AGENCIES.—In addition to any other authority conferred
12 upon it by this title, in carrying out its functions under
13 this title, the Commission may utilize, with their consent
14 and to the extent practical, the personnel, services, and
15 facilities of the Federal financial institution regulatory
16 agencies, with or without reimbursement therefor.

17 (c) COMPENSATION, AUTHORITY, AND DUTIES OF
18 OFFICERS AND EMPLOYEES; EXPERTS AND CONSULT-
19 ANTS.—In addition, the Commission may—

20 (1) subject to the provisions of title 5 relating
21 to the competitive service, classification, and General
22 Schedule pay rates, appoint and fix the compensa-
23 tion of such officers and employees as are necessary
24 to carry out the provisions of this title, and to pre-
25 scribe the authority and duties of such officers and
26 employees; and

1 (2) obtain the services of such experts and con-
2 sultants as are necessary to carry out the provisions
3 of this title.

4 **SEC. 110. INTERNATIONAL NEGOTIATIONS.**

5 The Chairman of the Board of Governors of the Fed-
6 eral Reserve System, in consultation with the members of
7 the Commission, shall encourage governments, central
8 banks, and regulatory authorities of other countries to
9 work toward maintaining and, where appropriate, adopt-
10 ing comparable supervisory standards and regulations,
11 particularly capital standards, for financial institutions
12 engaged in derivatives activities.

13 **SEC. 111. CREDIT UNIONS.**

14 Insured credit unions (as defined in section 101(7)
15 of the Federal Credit Union Act) shall be supervised for
16 purposes of derivatives activities by the National Credit
17 Union Administration under standards no less stringent
18 than standards under which Federal depository institu-
19 tions (as defined in section 3(c) of the Federal Deposit
20 Insurance Act) are supervised by the Federal banking
21 agencies.

22 **SEC. 112. ANNUAL REPORT.**

23 Not later than April 1 of each year, the Commission
24 shall prepare a report covering its activities during the
25 preceding calendar year.

1 **TITLE II—SUPERVISORY**
2 **IMPROVEMENTS**

3 **SEC. 201. UNSAFE OR UNSOUND BANKING PRACTICES.**

4 (a) IN GENERAL.—Failure of an institution-affiliated
5 party engaged in derivatives activities to have adequate
6 technical expertise may be deemed by the appropriate fed-
7 eral banking agency to constitute an unsafe or unsound
8 banking practice within the meaning of section 8 of the
9 Federal Deposit Insurance Act (12 U.S.C. 1818).

10 (b) RULE OF CONSTRUCTION.—This section shall be
11 in addition to and not in derogation of the authority of
12 any appropriate Federal banking agency under section 8
13 of the Federal Deposit Insurance Act to determine unsafe
14 or unsound banking practices.

15 **SEC. 202. INTERNAL CONTROLS.**

16 Section 39(a)(1)(A) of the Federal Deposit Insurance
17 Act (12 U.S.C. 1831p-1(a)(1)(A)) is amended by striking
18 “internal controls” and inserting “internal controls (in-
19 cluding internal controls for derivatives activities)”.

20 **SEC. 203. FOREIGN BANK SUPERVISION.**

21 Section 7(d)(2)(A) of the International Banking Act
22 of 1978 (12 U.S.C. 3105(d)(2)(A)) is amended after
23 “country” by inserting “, including, in the case of a for-
24 eign bank engaged in derivatives activities, comprehensive
25 supervision and regulation for derivatives activities (as

1 that term is defined in the Risk Management Improve-
2 ment and Derivatives Oversight Act of 1995). In making
3 any determination under this paragraph, the Board shall
4 consider whether the home country maintains comprehen-
5 sive supervision and regulation of derivatives activities, in-
6 cluding capital and disclosure standards, not less stringent
7 than United States standards.”.

8 **SEC. 204. CONFIDENTIAL EMERGENCY MANAGEMENT RE-**
9 **PORTING.**

10 (a) **IN GENERAL.**—Before the end of the 1-year pe-
11 riod beginning on the date of the enactment of this Act,
12 the Federal financial institution regulatory agencies shall
13 develop the means to obtain all necessary information re-
14 lating to any derivatives activity or any class of derivative
15 financial instruments, whenever the appropriate Federal
16 financial institution regulatory agency determines that re-
17 ceipt of such information from any financial institution
18 engaged in derivatives activities is necessary as a result of
19 adverse market conditions or other emergency situations
20 (as defined by the agency).

21 (b) **ACCESSIBILITY OF INFORMATION.**—Each finan-
22 cial institution referred to in paragraph (1) shall—

23 (1) assemble such information and retain such
24 records as the appropriate Federal financial institu-

1 tion regulatory agency may require by regulation for
2 purposes of such paragraph; and

3 (2) promptly provide to the appropriate Federal
4 financial institution regulatory agency any informa-
5 tion requested by the agency pursuant to such para-
6 graph.

7 (c) CONFIDENTIALITY OF INFORMATION PRO-
8 VIDED.—No information provided to or obtained by an ap-
9 propriate Federal financial institution regulatory agency
10 pursuant to paragraph (1) with respect to any financial
11 institution may be provided to any person or entity other
12 than another Federal financial institution regulatory agen-
13 cy, except that such information may be provided with the
14 prior written approval of the agency.

15 (d) DEFINITIONS.—For purposes of this section, the
16 terms “Federal financial institution regulatory agencies”,
17 “financial institution”, “derivative financial instrument”,
18 and “derivatives activities” have the same meaning as in
19 title I of this Act.

1 **TITLE III—FINANCIAL INSTITU-**
2 **TION INSOLVENCY REFORMS**

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

6 Section 11(e)(8)(D)(vi)(I) of the Federal Deposit In-
7 surance Act (12 U.S.C. 1821(e)(8)(D)(vi)(I)) is amended
8 to read as follows:

9 “(I) means any agreement, in-
10 cluding the terms and conditions in-
11 corporated by reference in any such
12 agreement, which is a rate swap
13 agreement, basis swap, commodity
14 swap, forward rate agreement, inter-
15 est rate future, interest rate option,
16 foreign exchange agreement, rate cap
17 agreement, rate floor agreement, rate
18 collar agreement, currency swap
19 agreement, cross-currency rate swap
20 agreement, currency future, currency
21 option, equity or equity index swap,
22 equity or equity index option, bond
23 option, or any other similar agree-
24 ment, and”

1 **SEC. 302. AUTHORITY OF THE CORPORATION WITH RE-**
2 **SPECT TO FAILED AND FAILING INSTITU-**
3 **TIONS.**

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

6 (1) in subparagraph (E)—

7 (A) by striking “paragraph (12) of this
8 subsection”; and

9 (B) by striking “subsection (d)(9)” and in-
10 serting “subsections (d)(9), (e)(10), and
11 (n)(4)(I)”; and

12 (2) by adding the following new subparagraphs:

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

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

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

3 **SEC. 303. AMENDMENTS RELATING TO TRANSFERS OF**
4 **QUALIFIED FINANCIAL CONTRACTS.**

5 (a) TRANSFERS OF QUALIFIED FINANCIAL CON-
6 TRACTS TO PERSONS OTHER THAN DEPOSITORY INSTI-
7 TUTIONS.—Section 11(e)(9)(A) of the Federal Deposit In-
8 surance Act (12 U.S.C. 1821(e)(9)(A)) is amended to read
9 as follows:

10 “(A) transfer to 1 depository institution (other
11 than a depository institution in default) or to 1 per-
12 son that is not a depository institution (other than
13 a person for which a conservator, receiver, trustee in
14 bankruptcy, or other legal custodian has been ap-
15 pointed or which is otherwise the subject of a bank-
16 ruptcy or insolvency proceeding)—”.

17 (b) NOTICE TO QUALIFIED FINANCIAL CONTRACT
18 COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal
19 Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is
20 amended to read as follows:

21 “(A) IN GENERAL.—If—

22 “(i) the receiver for an insured depository
23 institution in default makes any
24 transfer of the assets and liabilities of such
25 institution; and

1 “(ii) the transfer includes any quali-
2 fied financial contract; the receiver shall
3 notify any person who is a party to any
4 such contract of such transfer by 5:00 p.m.
5 (Eastern Time) on the business day follow-
6 ing the date of the appointment of the re-
7 ceiver.”.

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

12 (1) by redesignating subparagraph (B) as sub-
13 paragraph (D);

14 (2) by inserting after subparagraph (A) the fol-
15 lowing new subparagraphs:

16 “(B) CERTAIN RIGHTS NOT ENFORCE-
17 ABLE.—

18 “(i) IN GENERAL.—A person who is a
19 party to a qualified financial contract with
20 an insured depository institution may not
21 exercise any right such person has to net
22 or close out such contract under paragraph
23 (8)(A) or section 403 or 404 of the Fed-
24 eral Deposit Insurance Corporation Im-
25 provement Act of 1991 solely by reason of

1 the appointment of a receiver for the de-
2 pository institution (or the insolvency or fi-
3 nancial condition of the institution for
4 which the receiver has been appointed)—

5 “(I) until 5:00 p.m. (Eastern
6 time) of the business day following the
7 date of the appointment of the re-
8 ceiver; or

9 “(II) after the person has re-
10 ceived notice that the contract has
11 been transferred pursuant to para-
12 graph (9)(A).

13 “(ii) NOTICE TO LAST-KNOWN AD-
14 DRESS.—For purposes of this subpara-
15 graph, the Corporation as receiver of an
16 insured depository institution shall be
17 deemed to have notified a person who is a
18 party to a qualified financial contract with
19 such depository institution if the Corpora-
20 tion has sent notice to the last address of
21 such person shown on the books and
22 records of the depository institution with
23 respect to such contract in the manner
24 provided for in the contract or by other
25 means reasonably calculated to reach such

1 person by the time specified in subpara-
2 graphs (A) and (B)(i)(I) of this subsection.

3 “(iii) EXCEPTION TO RIGHT OF CON-
4 TRACTING PARTY TO NET OR CLOSE OUT
5 CONTRACTS.—A person who is a party to
6 a qualified financial contract with an in-
7 sured depository institution may not exer-
8 cise any right such person has to net or
9 close out such contract under paragraph
10 (8)(E) or sections 403 or 404 of the Fed-
11 eral Deposit Insurance Corporation Im-
12 provement Act of 1991, solely by reason of
13 the appointment of a conservator for the
14 depository institution.

15 “(C) TREATMENT OF BRIDGE BANKS.—
16 The following institutions shall not be consid-
17 ered depository institutions in default for pur-
18 poses of subsection(e)(9):

19 “(i) A bridge bank.

20 “(ii) An institution organized by the
21 Corporation, for which a conservator is ap-
22 pointed either, (I) immediately upon the
23 organization of the institution, or (II) at
24 the time of a purchase and assumption
25 transaction between such institution and

1 the Corporation as receiver for a failed de-
2 pository institution.”.

3 **SEC. 304. CLARIFYING AMENDMENT RELATING TO MASTER**
4 **AGREEMENTS.**

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

8 “(vii) TREATMENT OF MASTER
9 AGREEMENT AS ONE AGREEMENT.—Any
10 master agreement for any contract or
11 agreement described in any preceding
12 clause of this subparagraph (or any master
13 agreement for such master agreement or
14 agreements), together with all supplements
15 to such master agreement, shall be treated
16 as a single agreement and a single quali-
17 fied financial contract.”.

18 **SEC. 305. QUALIFIED FINANCIAL CONTRACTS.**

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

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

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

1 (b) FEDERAL DEPOSIT INSURANCE CORPORATION
2 IMPROVEMENT ACT OF 1991.—Sections 403(a) and
3 404(a) of the Federal Deposit Insurance Corporation Im-
4 provement Act of 1991 (12 U.S.C. 4403(a), 4404(a)) are
5 each amended by inserting “other than paragraphs (8)(E)
6 and (10)(B) of section 11(e) of the Federal Deposit Insur-
7 ance Act” after “other provisions of law”.

8 **SEC. 306. TECHNICAL AND CONFORMING AMENDMENTS.**

9 (a) DEFINITION OF SWAP AGREEMENT.—Section
10 101 of title 11, United States Code, is amended in para-
11 graph (53B)—

12 (1) by inserting “equity or equity index swap,
13 equity or equity index option, bond option,” after
14 “basis swap,”;

15 (2) by inserting “interest rate future,” after
16 “commodity swap,”; and

17 (3) by inserting “currency future,” after “cross-
18 currency rate swap agreement,”.

19 (b) DEFINITION OF MASTER NETTING AGREEMENT
20 AND MASTER NETTING AGREEMENT PARTICIPANT.—Sec-
21 tion 101 of title 11, United States Code, is amended by
22 adding, after paragraph (38), the following new para-
23 graphs:

24 “(38A) ‘master netting agreement’ means an
25 agreement providing for the exercise of rights, in-

1 including rights of setoff, liquidation, termination, ac-
2 celeration, or closeout, in connection with one or
3 more contracts with the debtor that are described in
4 paragraphs (1) through (5) of section 561(a);

5 “(38B) ‘master netting agreement participant’
6 means an entity that, at any time before the filing
7 of the petition, has an outstanding master netting
8 agreement with the debtor.”.

9 (c) MASTER AGREEMENTS UNDER THE AUTO-
10 STAY.—Section 362(b)(17) of title 11, United States
11 Code, is amended to read as follows:

12 “(17) under subsection (a), of the setoff by a
13 swap participant or master netting agreement par-
14 ticipant of any mutual debt and claim under or in
15 connection with any swap agreement or master net-
16 ting agreement that constitutes the setoff of a claim
17 against the debtor for any payment due from the
18 debtor under or in connection with any such agree-
19 ment against—

20 “(A) any payment due to the debtor from
21 such participant under or in connection with
22 any such agreement; or

23 “(B) cash, securities, or other property of
24 the debtor held by or due from such participant

1 to guarantee, secure or settle any such agree-
2 ment.”.

3 (d) LIMITATION OF AVOIDANCE POWERS UNDER
4 MASTER NETTING AGREEMENT.—Section 546(g) of title
5 11, United States Code, is amended—

6 (1) by inserting “or a master netting agree-
7 ment” after “under a swap agreement”;

8 (2) by inserting “or a master netting agreement
9 participant” after “swap participant”; and

10 (3) by inserting “or any master netting agree-
11 ment” after “with a swap agreement”.

12 (e) FRAUDULENT TRANSFERS OF MASTER NETTING
13 AGREEMENTS.—Section 548(d)(2) of title 11, United
14 States Code, is amended—

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

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

18 (3) by adding at the end the following new sub-
19 paragraph:

20 “(E) a master netting agreement participant
21 that receives a transfer in connection with a master
22 netting agreement takes for value to the extent of
23 such transfer.”.

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

4 (1) in the section heading, by inserting “, ter-
5minate, or accelerate” after “liquidate”; and

6 (2) in the first sentence, by inserting “, termi-
7nation, or acceleration” after “liquidation”.

8 (g) TERMINATION OR ACCELERATION OF COMMOD-
9ITIES OR FORWARD CONTRACTS.—Section 556 of title 11,
10 United States Code, is amended—

11 (1) in the section heading, by inserting “, ter-
12minate, or accelerate” after “liquidate”; and

13 (2) in the first sentence, by inserting “, termi-
14nation, or acceleration” after “liquidation”.

15 (h) TERMINATION OR ACCELERATION OF REPUR-
16CHASE AGREEMENTS.—Section 559 of title 11, United
17 States Code, is amended—

18 (1) in the section heading, by inserting “, ter-
19minate, or accelerate” after “liquidate”; and

20 (2) in the first sentence, by inserting “, termi-
21nation, or acceleration” after “liquidation”.

22 (i) LIQUIDATION, TERMINATION OR ACCELERATION
23 OF SWAP AGREEMENTS.—Section 560 of title 11, United
24 States Code, is amended—

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

7 “(b) EXCEPTION.—A party may exercise a contrac-
8 tual right described in subsection (a) only if that party
9 could exercise such a right under section 555, 556, 559,
10 or 560 for each individual contract covered by the master
11 netting agreement in issue.

12 “(c) DEFINITION.—As used in this section, the term
13 ‘contractual right’ includes, but is not limited to, a right
14 set forth in a rule or bylaw of a national securities ex-
15 change, a national securities association or a securities
16 clearing agency, and a right set forth in a bylaw of a clear-
17 ing organization or contract market or in a resolution of
18 the governing board thereof.”.

19 (k) MUNICIPAL BANKRUPTCIES.—Section 901 of title
20 11, United States Code, is amended—

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

22 (2) by inserting “559, 560 561” after “557,”.

1 **SEC. 307. COLLATERALIZATION OF QUALIFIED FINANCIAL**
2 **CONTRACTS AND CERTAIN OTHER LIABIL-**
3 **ITIES.**

4 Section 13(e) of the Federal Deposit Insurance Act
5 (12 U.S.C. 1823(e)) is amended by striking paragraph (2)
6 and adding the following new paragraph:

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

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

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

18 “(C) extensions of credit, including any
19 overdraft, from a Federal Reserve Bank or
20 Federal Home Loan Bank; or

21 “(D) a qualified financial contract, as de-
22 fined in section 1821(e)(8)(D); shall not be
23 deemed to be invalid pursuant to paragraph
24 (1)(B) solely because such agreement was not
25 executed contemporaneously with the acquisi-
26 tion of the collateral or because of pledges, de-

1 livery, or substitution of the collateral made in
2 accordance with such agreement.”.

3 **TITLE IV—DERIVATIVES DEALER**
4 **SELF-REGULATION**

5 **SEC. 401. SHORT TITLE.**

6 This title may be cited as the “Derivatives Dealer
7 Self-Regulation Act of 1995”.

8 **SEC. 402. DECLARATION OF PURPOSE.**

9 It is the purpose of this title to authorize the estab-
10 lishment of a self-regulatory system for the supervision of
11 derivatives dealers.

12 **SEC. 403. DEFINITIONS.**

13 As used in this title:

14 (1) BOARD.—The term “Board” means the
15 Board of Governors of the Federal Reserve System.

16 (2) DERIVATIVES DEALER.—The term “deriva-
17 tives dealer” means any financial institution engaged
18 in the business of brokering or dealing in derivative
19 financial instruments, as determined by the Board,
20 except that such term does not include any person
21 that is registered as a broker or dealer of securities
22 or as a futures commission merchant.

23 (3) FINANCIAL INSTITUTION.—The term “fi-
24 nancial institution” means any institution described
25 in section 402(9) of the Federal Deposit Insurance

1 Corporation Improvement Act of 1991, and any
2 other institution that the Board determines to be a
3 financial institution.

4 (4) DERIVATIVE FINANCIAL INSTRUMENT.—
5 The term “derivative financial instrument” means
6 any securities contract, commodity contract, forward
7 contract, swap agreement, or any other similar
8 agreement or instrument which the Board deter-
9 mines to be a derivative financial instrument for
10 purposes of this title.

11 (5) COMMODITY CONTRACT; FORWARD CON-
12 TRACT; SWAP AGREEMENT.—The terms “commodity
13 contract”, “forward contract”, and “swap agree-
14 ment” have the same meaning as in section
15 11(e)(8)(D) of the Federal Deposit Insurance Act
16 (12 U.S.C. 1821(e)(8)(D)).

17 (6) SECURITIES CONTRACT.—The term “securi-
18 ties contract” has the same meaning as in section
19 741(7) of title 11, United States Code and includes
20 a structured note.

21 (7) STATUTORY DISQUALIFICATION.—A person
22 is subject to a “statutory disqualification” with re-
23 spect to membership or participation in, or associa-
24 tion with a member of, a national derivatives asso-
25 ciation, if such person—

1 (A) has been and is expelled or suspended
2 from membership or participation in, or barred
3 or suspended from being associated with a
4 member of, any self-regulatory organization
5 under the Federal securities laws, foreign equiv-
6 alent of a self-regulatory organization, foreign
7 or international securities exchange, contract
8 market designated pursuant to section 5 of the
9 Commodity Exchange Act (7 U.S.C. 7), or any
10 substantially equivalent foreign statute or regu-
11 lation, or futures association registered under
12 section 17 of such Act (7 U.S.C. 21), or any
13 substantially equivalent foreign statute or regu-
14 lation, or has been and is denied trading privi-
15 leges on any such contract market or foreign
16 equivalent;

17 (B) is subject to—

18 (i) an order to the Board, other ap-
19 propriate regulatory agency, or foreign fi-
20 nancial regulatory authority—

21 (I) denying, suspending for a pe-
22 riod not exceeding 12 months, or re-
23 voking his or her registration as a
24 broker, dealer, municipal securities
25 dealer, government securities broker,

1 or government securities dealer or
2 limiting his or her activities as a for-
3 eign person performing a function
4 substantially equivalent to any of the
5 above; or

6 (II) barring or suspending for a
7 period not exceeding 12 months his or
8 her being associated with a broker,
9 dealer, municipal securities dealer,
10 government securities broker, govern-
11 ment securities dealer, or foreign per-
12 son performing a function substan-
13 tially equivalent to any of the above;

14 (ii) an order of the Commodity Fu-
15 tures Trading Commission denying, sus-
16 pending, or revoking his or her registration
17 under the Commodity Exchange Act (7
18 U.S.C. 1 et seq.); or

19 (iii) an order by a foreign financial
20 regulatory authority denying, suspending,
21 or revoking the person's authority to en-
22 gage in transactions in contracts of sale of
23 a commodity for future delivery or other
24 instruments traded on or subject to the

1 rules of a contract market, board of trade,
2 or foreign equivalent thereof;

3 (C) by his or her conduct while associated
4 with a broker, dealer, municipal securities deal-
5 er, government securities broker, or government
6 securities dealer, or while associated with an en-
7 tity or person required to be registered under
8 the Commodity Exchange Act, has been found
9 to be a cause of any effective suspension, expul-
10 sion, or order of the character described in sub-
11 paragraph (A) or (B) of this paragraph, and
12 in entering such a suspension, expulsion, or
13 order, the Board, an appropriate regulatory
14 agency, or any such self-regulatory organization
15 shall have jurisdiction to find whether or not
16 any person was a cause thereof;

17 (D) by his or her conduct while associated
18 with any broker, dealer, municipal securities
19 dealer, government securities broker, govern-
20 ment securities dealer, or any other entity en-
21 gaged in transactions in securities, or while as-
22 sociated with an entity engaged in transactions
23 in contracts of sale of a commodity for future
24 delivery or other instruments traded on or sub-
25 ject to the rules of a contract market, board of

1 trade, or foreign equivalent thereof, has been
2 found to be a cause of any effective suspension,
3 expulsion, or order by a foreign or international
4 securities exchange or foreign financial regu-
5 latory authority empowered by a foreign govern-
6 ment to administer or enforce its laws relating
7 to financial transactions as described in sub-
8 paragraph (A) or (B) of this paragraph;

9 (E) has associated with him any person
10 who is known, or in the exercise of reasonable
11 care should be known, to him to be a person de-
12 scribed by subparagraph (A), (B), (C), or (D)
13 of this paragraph; or

14 (F) has committed or omitted any act enu-
15 merated in subparagraph (D), (E), or (F) of
16 section 408(g)(2) of this title, has been con-
17 victed of any offense specified in subparagraph
18 (B) of such section or any other felony within
19 ten years of the date of the filing of an applica-
20 tion for membership or participation in, or to
21 become associated with a member of, such na-
22 tional derivatives association, is enjoined from
23 any action, conduct, or practice specified in
24 subparagraph (C) of such section, has willfully
25 made or caused to be made in any application

1 for membership or participation in, or to be-
2 come associated with a member of, a national
3 derivatives association, report required to be
4 filed with a national derivatives association, or
5 proceeding before a national derivatives associa-
6 tion, any statement which was at the time, and
7 in the light of the circumstances under which it
8 was made, false or misleading with respect to
9 any material fact, or has omitted to state in
10 any such application, report, or proceeding any
11 material fact which is required to be stated
12 therein.

13 (8) APPROPRIATE REGULATORY AGENCY.—The
14 term “appropriate regulatory agency” includes the
15 Board, the Securities and Exchange Commission,
16 the Commodity Futures Trading Commission, the
17 Comptroller of the Currency, and the Federal De-
18 posit Insurance Corporation.

19 **SEC. 404. AUTHORITY OF BOARD TO REQUIRE SELF-REGU-**
20 **LATORY ORGANIZATION.**

21 (a) AUTHORITY TO REQUIRE SELF-REGULATION.—
22 The provisions of this title, requiring the establishment of
23 a self-regulatory system for the supervision of derivatives
24 dealers, shall be effective at such time (or at such different

1 times for different provisions) as the Board shall specify
2 in a determination made pursuant to subsection (b).

3 (b) GROUNDS FOR DETERMINATION.—The Board
4 may provide for the taking effect of this title if the Board
5 determines that the establishment of a self-regulatory sys-
6 tem for the supervision of derivatives dealers is in the pub-
7 lic interest. In making such determination, the Board shall
8 take into account the following factors:

9 (1) Promotion of fair and orderly markets for
10 derivative financial instruments.

11 (2) Control of risks associated with derivative
12 financial instruments, including market risk, legal
13 risk, and systemic risk.

14 (3) Establishment of uniformity and com-
15 parability in regulatory principles and standards ap-
16 plied to derivatives dealers.

17 (4) Improvement in regulatory coordination
18 among those responsible for supervision of deriva-
19 tives dealers.

20 (5) Closure of gaps and loopholes in the super-
21 vision of derivatives dealers.

22 (6) Strengthened enforcement of rules and reg-
23 ulations applicable to derivatives dealers.

24 (7) Maintenance of high standards and quali-
25 fications for derivatives dealers.

1 (8) Prevention of fraud and manipulation in the
2 derivatives markets and protection of investors in
3 derivative financial instruments.

4 (9) General improvement in the supervision and
5 functioning of the markets for derivative financial
6 instruments.

7 (c) PROCEDURES TO IMPOSE REQUIREMENTS.—The
8 Board shall not issue a determination under subsection
9 (b) except after notice and opportunity for comment.

10 **SEC. 405. REGISTRATION OF SELF-REGULATORY ORGANI-**
11 **ZATION.**

12 (a) REGISTRATION.—

13 (1) FILING.—An association of derivatives deal-
14 ers may be registered as a national derivatives asso-
15 ciation pursuant to subsection (b) under the terms
16 and conditions hereinafter provided in this section
17 by filing with the Board an application for registra-
18 tion in such form as the Board, by rule, may pre-
19 scribe containing the rules of the association and
20 such other information and documents as the Board,
21 by rule, may prescribe as necessary or appropriate
22 in the public interest or for the protection of inves-
23 tors.

24 (2) NOTICE OF FILING.—The Board shall, upon
25 the filing of an application for registration as a na-

1 tional derivatives exchange, publish notice of such
2 filing and afford interested persons an opportunity
3 to submit written data, views, and arguments con-
4 cerning such application.

5 (3) GRANT OF REGISTRATION OR INITIATION
6 OF PROCEEDINGS.—Within ninety days of the date
7 of publication of such notice (or within such longer
8 period as to which the applicant consents), the
9 Board shall—

10 (A) by order grant such registration, or

11 (B) institute proceedings to determine
12 whether registration should be denied.

13 Such proceedings shall include notice of the grounds
14 for denial under consideration and opportunity for
15 hearing and shall be concluded within one hundred
16 eighty days of the date of a publication of notice of
17 the filing of the application for registration. At the
18 conclusion of such proceedings the Board, by order,
19 shall grant or deny such registration. The Board
20 may extend the time for conclusion of such proceed-
21 ings for up to ninety days if it finds good cause for
22 such extension and publishes its reasons for so find-
23 ing or for such longer period as to which the appli-
24 cant consents.

1 (b) GROUNDS FOR DECISIONS ON APPLICATIONS FOR
2 REGISTRATION.—

3 (1) IN GENERAL.—The Board shall grant such
4 registration if it finds that the requirements of this
5 title and the rules and regulations thereunder with
6 respect to the applicant are satisfied. The Board
7 shall deny such registration if it does not make such
8 finding.

9 (2) CRITERIA FOR APPROVAL.—An association
10 of derivatives dealers shall not be registered as a na-
11 tional derivatives association unless the Board deter-
12 mines that:

13 (A) By reason of the number and geo-
14 graphical distribution of its members and the
15 scope of their transactions, such association will
16 be able to carry out the purposes of this sec-
17 tion.

18 (B) Such association is so organized and
19 has the capacity to be able to carry out the pur-
20 poses of this Act and to comply, and to enforce
21 compliance by its members and persons associ-
22 ated with its members, with the provisions of
23 this Act, and the rules and regulations there-
24 under, and the rules of the association.

1 (C) Subject to the provisions of section
2 406, the rules of the association provide that
3 any derivatives dealer may become a member of
4 such association and any person may become
5 associated with a member thereof.

6 (D) The rules of the association assure a
7 fair representation of its members in the selec-
8 tion of its directors and administration of its
9 affairs.

10 (E) The rules of the association provide for
11 the equitable allocation of reasonable dues, fees,
12 and other charges among members and other
13 persons using any facility or system which the
14 association operates or controls.

15 (F) The rules of the association are de-
16 signed to prevent fraudulent and manipulative
17 acts and practices, to promote just and equi-
18 table principles of trade, to foster cooperation
19 and coordination with persons engaged in regu-
20 lating, clearing, settling, processing information
21 with respect to, and facilitating transactions in
22 derivatives, and, in general, to protect investors
23 and the public interest.

24 (G) The rules of the association provide
25 that its members and persons associated with

1 its members shall be appropriately disciplined
2 for violation of any provision of this Act, the
3 rules or regulations thereunder, or the rules of
4 the association, by expulsion, suspension, limi-
5 tation of activities, functions, and operations,
6 fine, censure, being suspended or barred from
7 being associated with a member, or any other
8 fitting sanction.

9 (H) The rules of the association provide a
10 fair procedure for the disciplining of members
11 and persons associated with members, the de-
12 nial of membership to any person seeking mem-
13 bership therein, the barring of any person from
14 becoming associated with a member thereof,
15 and the prohibition or limitation by the associa-
16 tion of any person with respect to access to
17 services offered by the association or a member
18 thereof.

19 (I) The rules of the association do not im-
20 pose any burden on competition not necessary
21 or appropriate in furtherance of the purposes of
22 this Act.

23 (J) The rules of the association to promote
24 just and equitable principles of trade.

1 (c) WITHDRAWAL FROM REGISTRATION.—A national
2 derivatives association may, upon such terms and condi-
3 tions as the Board, by rule, deems necessary or appro-
4 priate in the public interest or for the protection of inves-
5 tors, withdraw from registration by filing a written notice
6 of withdrawal with the Board. If the Board finds that any
7 national derivatives association is no longer in existence
8 or has ceased to do business in the capacity specified in
9 its application for registration, the Board, by order, shall
10 cancel its registration. Upon the withdrawal of a national
11 derivatives association from registration or the cancella-
12 tion, suspension, or revocation of the registration of a na-
13 tional derivatives association, the registration of any asso-
14 ciation affiliated therewith shall automatically terminate.

15 **SEC. 406. REGISTRATION OF DERIVATIVES DEALERS WITH**
16 **ASSOCIATION.**

17 (a) DENIAL OF MEMBERSHIP.—

18 (1) STATUTORY DISQUALIFICATIONS.—A na-
19 tional derivatives association may, and in cases in
20 which the Board, by order, directs as necessary or
21 appropriate in the public interest or for the protec-
22 tion of investors shall, deny membership to any de-
23 rivatives dealer, and bar from becoming associated
24 with a member any person, who is subject to a stat-
25 utory disqualification. A national derivatives associa-

1 tion shall file notice with the Board not less than
2 thirty days prior to admitting any derivatives dealer
3 to membership or permitting any person to become
4 associated with a member, if the association knew,
5 or in the exercise of reasonable care should have
6 known, that such derivatives dealer or person was
7 subject to a statutory disqualification. The notice
8 shall be in such form and contain such information
9 as the Board, by rule, may prescribe as necessary or
10 appropriate in the public interest or for the protec-
11 tion of investors.

12 (2) ADDITIONAL DISQUALIFICATIONS.—A na-
13 tional derivatives association may deny membership
14 to, or condition the membership of, a derivatives
15 dealer if (A) such derivatives dealer does not meet
16 such standards of financial responsibility or oper-
17 ational capability or such derivatives dealer or any
18 natural person associated with such derivatives deal-
19 er does not meet such standards of training, experi-
20 ence, and competence as are prescribed by the rules
21 of the association or (B) such derivatives dealer or
22 person associated with such derivatives dealer has
23 engaged and there is a reasonable likelihood he will
24 again engage in acts or practices inconsistent with
25 just and equitable principles of trade. A national de-

1 derivatives association may examine and verify the
2 qualifications of an applicant to become a member
3 and the natural persons associated with such an ap-
4 plicant in accordance with procedures established by
5 the rules of the association.

6 (3) ASSOCIATIONS BASED ON BUSINESS TYPE
7 PERMITTED.—A national derivatives association may
8 deny membership to a derivatives dealer not engaged
9 in a type of business in which the rules of the asso-
10 ciation require members to be engaged, except that
11 no national derivatives association may deny mem-
12 bership to a derivatives dealer by reason of the
13 amount of such type of business done by such de-
14 rivatives dealer or the other types of business in
15 which he is engaged.

16 (b) DENIAL OF ASSOCIATION.—

17 (1) ASSOCIATION WITH MEMBERS.—A national
18 derivatives association may bar a natural person
19 from becoming associated with a member or condi-
20 tion the association of a natural person with a mem-
21 ber if such natural person (A) does not meet such
22 standards of training, experience, and competence as
23 are prescribed by the rules of the association or (B)
24 has engaged and there is a reasonable likelihood he
25 will again engage in acts or practices inconsistent

1 with just and equitable principles of trade. A na-
2 tional derivatives association may examine and verify
3 the qualifications of an applicant to become a person
4 associated with a member in accordance with proce-
5 dures established by the rules of the association and
6 require a natural person associated with a member,
7 or any class of such natural persons, to be registered
8 with the association in accordance with procedures
9 so established.

10 (2) INFORMATION AND RECORDS ACCESS.—A
11 national derivatives association may bar any person
12 from becoming associated with a member if such
13 person does not agree (A) to supply the association
14 with such information with respect to its relationship
15 and dealings with the member as may be specified
16 in the rules of the association and (B) to permit ex-
17 amination of its books and records to verify the ac-
18 curacy of any information so supplied.

19 **SEC. 407. PROCEDURES FOR SELF-REGULATION OF MEM-**
20 **BERS.**

21 (a) IN GENERAL.—In any proceeding by a national
22 derivatives association to determine whether a member or
23 person associated with a member should be disciplined
24 (other than a summary proceeding pursuant to subsection
25 (c) of this section) the association shall bring specific

1 charges, notify such member or person of, and give him
2 an opportunity to defend against, such charges, and keep
3 a record. A determination by the association to impose a
4 disciplinary sanction shall be supported by a statement
5 setting forth—

6 (1) any act or practice in which such member
7 or person associated with a member has been found
8 to have engaged, or which such member or person
9 has been found to have omitted;

10 (2) the specific provision of this Act, the rules
11 or regulations thereunder, or the rules of the asso-
12 ciation which any such act or practice, or omission
13 to act, is deemed to violate; and

14 (3) the sanction imposed and the reason there-
15 for.

16 (b) PROCEDURES PRIOR TO SANCTION.—In any pro-
17 ceeding by a national derivatives association to determine
18 whether a person shall be denied membership, barred from
19 becoming associated with a member, or prohibited or lim-
20 ited with respect to access to services offered by the asso-
21 ciation or a member thereof (other than a summary pro-
22 ceeding pursuant to subsection (c) of this section), the as-
23 sociation shall notify such person of and give him an op-
24 portunity to be heard upon, the specific grounds for de-
25 nial, bar, or prohibition or limitation under consideration

1 and keep a record. A determination by the association to
2 deny membership, bar a person from becoming associated
3 with a member, or prohibit or limit a person with respect
4 to access to services offered by the association or a mem-
5 ber thereof shall be supported by a statement setting forth
6 the specific grounds on which the denial, bar, or prohibi-
7 tion or limitation is based.

8 (c) SUMMARY SUSPENSIONS.—A national derivatives
9 association may summarily (1) suspend a member or per-
10 son associated with a member who has been and is ex-
11 pelled or suspended from any national derivatives associa-
12 tion or barred or suspended from being associated with
13 a member of any national derivatives association, (2) sus-
14 pend a member who is in such financial or operating dif-
15 ficulty that the association determines and so notifies the
16 Board that the member cannot be permitted to continue
17 to do business as a member with safety to investors, credi-
18 tors, other members, or the association, or (3) limit or
19 prohibit any person with respect to access to services of-
20 fered by the association if paragraph (1) or (2) of this
21 subsection is applicable to such person or, in the case of
22 a person who is not a member, if the association deter-
23 mines that such person does not meet the qualification re-
24 quirements or other prerequisites for such access and such
25 person cannot be permitted to continue to have such ac-

1 cess with safety to investors, creditors, members, or the
2 association. Any person aggrieved by any such summary
3 action shall be promptly afforded an opportunity for a
4 hearing by the association in accordance with the provi-
5 sions of subsection (a) or (b) of this section. The Board,
6 by order, may stay any such summary action on its own
7 motion or upon application by any person aggrieved there-
8 by, if the Board determines summarily or after notice and
9 opportunity for hearing (which hearing may consist solely
10 of the submission of affidavits or presentation of oral ar-
11 guments) that such stay is consistent with the public inter-
12 est and the protection of investors.

13 **SEC. 408. ENFORCEMENT.**

14 (a) MEMBERSHIP REQUIRED TO ENGAGE IN DE-
15 RIVATIVES BUSINESS.—If the Board has made a deter-
16 mination under section 404, it shall be unlawful, after the
17 effective date of this title (as determined under such sec-
18 tion), for any derivatives dealer to effect any transaction
19 in, or induce or attempt to induce the purchase or sale
20 of, any derivative financial instrument, unless such deriva-
21 tives dealer is a member of a national derivatives associa-
22 tion registered pursuant to section 405 of this Act.

23 (b) CRIMINAL PENALTY FOR VIOLATION.—Any per-
24 son who willfully violates any provision of this title, or any
25 rule or regulation thereunder the violation of which is

1 made unlawful or the observance of which is required
2 under the terms of this title, or any person who willfully
3 and knowingly makes, or causes to be made, any state-
4 ment in any application, report, or document required to
5 be filed under this title or any rule or regulation there-
6 under or by any self-regulatory organization in connection
7 with an application for membership or participation there-
8 in or to become associated with a member thereof, which
9 statement was false or misleading with respect to any ma-
10 terial fact, shall upon conviction be fined not more than
11 \$1,000,000, or imprisoned not more than 10 years, or
12 both, except that when such person is a person other than
13 a natural person, a fine not exceeding \$2,500,000 may
14 be imposed; but no person shall be subject to imprison-
15 ment under this section for the violation of any rule or
16 regulation if he proves that he had no knowledge of such
17 rule or regulation.

18 (c) OBLIGATION TO ENFORCE.—

19 (1) IN GENERAL.—Every national derivatives
20 association shall comply with the provisions of this
21 Act, the rules and regulations thereunder, and its
22 own rules, and (subject to paragraph (2) of this sub-
23 section, and the rules thereunder) absent reasonable
24 justification or excuse enforce compliance with such

1 provisions by its members and persons associated
2 with its members.

3 (2) EXCEPTIONS.—The Board, by rule, consist-
4 ent with the public interest, the protection of inves-
5 tors, and the other purposes of this Act, may relieve
6 any national derivatives association of any respon-
7 sibility under this Act to enforce compliance with
8 any specified provision of this Act or the rules or
9 regulations thereunder by any member of such orga-
10 nization or person associated with such a member,
11 or any class of such members or persons associated
12 with a member.

13 (d) FILING AND APPROVAL OF RULES.—

14 (1) RULES AND CHANGES REQUIRED TO BE
15 FILED.—Each national derivatives association shall
16 file with the Board, in accordance with such rules as
17 the Board may prescribe, copies of any proposed
18 rule or any proposed change in, addition to, or dele-
19 tion from the rules of such national derivatives asso-
20 ciation (hereinafter in this subsection collectively re-
21 ferred to as a “proposed rule change”) accompanied
22 by a concise general statement of the basis and pur-
23 pose of such proposed rule change. The Board shall,
24 upon the filing of any proposed rule change, publish
25 notice thereof together with the terms of substance

1 of the proposed rule change or a description of the
2 subjects and issues involved. The Board shall give
3 interested persons an opportunity to submit written
4 data, views, and arguments concerning such pro-
5 posed rule change. No proposed rule change shall
6 take effect unless approved by the Board or other-
7 wise permitted in accordance with the provisions of
8 this subsection.

9 (2) APPROVAL OR INITIATION OF PROCEED-
10 INGS.—Within thirty-five days of the date of publi-
11 cation of notice of the filing of a proposed rule
12 change in accordance with paragraph (1) of this
13 subsection, or within such longer period as the
14 Board may designate up to ninety days of such date
15 if it finds such longer period to be appropriate and
16 publishes its reasons for so finding or as to which
17 the national derivatives association consents, the
18 Board shall—

19 (A) by order approve such proposed rule
20 change, or

21 (B) institute proceedings to determine
22 whether the proposed rule change should be dis-
23 approved.

24 (2) APPROVAL OR DISAPPROVAL.—Such pro-
25 ceedings shall include notice of the grounds for dis-

1 approval under consideration and opportunity for
2 hearing and be concluded within one hundred eighty
3 days of the date of publication of notice of the filing
4 of the proposed rule change. At the conclusion of
5 such proceedings the Board, by order, shall approve
6 or disapprove such proposed rule change. The Board
7 may extend the time for conclusion of such proceed-
8 ings for up to sixty days if it finds good cause for
9 such extension and publishes its reasons for so find-
10 ing or for such longer period as to which the na-
11 tional derivatives association consents.

12 (3) GROUNDS FOR APPROVAL OR DIS-
13 APPROVAL.—The Board shall approve a proposed
14 rule change of a national derivatives association if it
15 finds that such proposed rule change is consistent
16 with the requirements of this Act and the rules and
17 regulations thereunder applicable to such organiza-
18 tion. The Board shall disapprove a proposed rule
19 change of a national derivatives association if it does
20 not make such finding. The Board shall not approve
21 any proposed rule change prior to the thirtieth day
22 after the date of publication of notice of the filing
23 thereof, unless the Board finds good cause for so
24 doing and publishes its reasons for so finding.

1 (4) EXPEDITED EFFECTIVENESS.—(A) Not-
2 withstanding the provisions of paragraphs (2) and
3 (3) of this subsection, a proposed rule change may
4 take effect upon filing with the Board if designated
5 by the national derivatives association as (i) con-
6 stituting a stated policy, practice, or interpretation
7 with respect to the meaning, administration, or en-
8 forcement of an existing rule of the national deriva-
9 tives association, (ii) establishing or changing a due,
10 fee, or other charged imposed by the national deriva-
11 tives association, or (iii) concerned solely with the
12 administration of the national derivatives association
13 or other matters which the Board, by rule, consist-
14 ent with the public interest and the purposes of this
15 subsection, may specify as without the provisions of
16 such paragraph (2) or (3).

17 (B) Notwithstanding any other provision of this
18 subsection, a proposed rule change may be put into
19 effect summarily if it appears to the Board that
20 such action is necessary for the protection of inves-
21 tors, the maintenance of fair and orderly markets,
22 the safeguarding of securities or funds, or the pro-
23 tection against systemic risk. Any proposed rule
24 change so put into effect shall be filed promptly

1 thereafter in accordance with the provisions of para-
2 graph (1) of this subsection.

3 (C) Any proposed rule change of a national de-
4 rivatives association which has taken effect pursuant
5 to subparagraph (A) or (B) of this paragraph may
6 be enforced by such organization to the extent it is
7 not inconsistent with the provisions of this Act, the
8 rules and regulations thereunder, and applicable
9 Federal and State law. At any time within sixty days
10 of the date of filing of such a proposed rule change
11 in accordance with the provisions of paragraph (1)
12 of this subsection, the Board summarily may abro-
13 gate the change in the rules of the national deriva-
14 tives association made thereby and require that the
15 proposed rule change be refiled in accordance with
16 the provisions of paragraph (1) of this subsection
17 and reviewed in accordance with the provisions of
18 paragraph (2) of this subsection, if it appears to the
19 Board that such action is necessary or appropriate
20 in the public interest, for the protection of investors,
21 or otherwise in furtherance of the purposes of this
22 Act. Board action pursuant to the preceding sen-
23 tence shall not affect the validity or force of the rule
24 change during the period it was in effect and shall
25 not be reviewable nor deemed to be “final agency ac-

1 tion” for purposes of section 704 of title 5, United
2 States Code.

3 (e) AUTHORITY OF BOARD TO MODIFY ASSOCIATION
4 RULES.—The Board, by rule, may abrogate, add to, and
5 delete from (hereinafter in this subsection collectively re-
6 ferred to as “amend”) the rules of a national derivatives
7 association as the Board deems necessary or appropriate
8 to insure the fair administration of the national derivatives
9 association, to conform its rules to requirements of this
10 Act and the rules and regulations thereunder applicable
11 to such organization, or otherwise in furtherance of the
12 purposes of this Act, in the following manner:

13 (1) The Board shall notify the national deriva-
14 tives association and publish notice of the proposed
15 rulemaking in the Federal Register. The notice shall
16 include the text of the proposed amendment to the
17 rules of the national derivatives association and a
18 statement of the Board’s reasons, including any per-
19 tinent facts, for commencing such proposed rule-
20 making.

21 (2) The Board shall give interested persons an
22 opportunity for the oral presentation of data, views,
23 and arguments, in addition to an opportunity to
24 make written submissions. A transcript shall be kept
25 of any oral presentation.

1 (3) A rule adopted pursuant to this subsection
2 shall incorporate the text of the amendment to the
3 rules of the national derivatives association and a
4 statement of the Board's basis for and purpose in so
5 amending such rules. This statement shall include
6 an identification of any facts on which the Board
7 considers its determination so to amend the rules of
8 the self-regulatory agency to be based, including the
9 reasons for the Board's conclusions as to any of
10 such facts which were disputed in the rulemaking.

11 (4)(A) Except as provided in paragraphs (1)
12 through (3) of this subsection, rulemaking under
13 this subsection shall be in accordance with the pro-
14 cedures specified in section 553 of title 5, United
15 States Code, for rulemaking not on the record.

16 (B) Nothing in this subsection shall be con-
17 strued to impair or limit the Board's power to make,
18 or to modify or alter the procedures the Board may
19 follow in making, rules and regulations pursuant to
20 any other authority under this Act.

21 (C) Any amendment to the rules of a national
22 derivatives association made by the Board pursuant
23 to this subsection shall be considered for all pur-
24 poses of this Act to be part of the rules of such na-

1 tional derivatives association and shall not be consid-
2 ered to be a rule of the Board.

3 (f) REVIEW BY BOARD OF ASSOCIATION DISCIPLI-
4 NARY ACTIONS.—

5 (1) NOTICE.—If any national derivatives asso-
6 ciation imposes any final disciplinary sanction on
7 any member thereof or participant therein, denies
8 membership or participation to any applicant, or
9 prohibits or limits any person in respect to access to
10 services offered by such organization or member
11 thereof, or if any national derivatives association im-
12 poses any final disciplinary sanction on any person
13 associated with a member or bars any person from
14 becoming associated with a member, the national de-
15 rivatives association shall promptly file notice there-
16 of with the Board. The notice shall be in such form
17 and contain such information as the Board, by rule,
18 may prescribe as necessary or appropriate in fur-
19 therance of the purposes of this Act.

20 (2) AUTHORITY TO REVIEW.—Any action with
21 respect to which a national derivatives association is
22 required by paragraph (1) of this subsection to file
23 notice shall be subject to review by the Board on its
24 own motion, or upon application by any person ag-
25 grieved thereby filed within thirty days after the

1 date such notice was filed with such Board and re-
2 ceived by such aggrieved person, or within such
3 longer period as such Board may determine. Appli-
4 cation to the Board for review, or the institution of
5 review by such Board on its own motion, shall not
6 operate as a stay of such action unless the Board
7 otherwise orders, summarily or after notice and op-
8 portunity for hearing on the question of a stay
9 (which hearing may consist solely of the submission
10 of affidavits or presentation of oral arguments). The
11 Board shall establish for appropriate cases an expe-
12 dited procedure for consideration and determination
13 of the question of a stay.

14 (3) DECISION AFTER REVIEW.—In any proceed-
15 ing to review a final disciplinary sanction imposed by
16 a national derivatives association on a member
17 thereof or participant therein or a person associated
18 with such a member, after notice and opportunity
19 for hearing (which hearing may consist solely of con-
20 sideration of the record before the national deriva-
21 tives association and opportunity for the presen-
22 tation of supporting reasons to affirm, modify, or set
23 aside the sanction)—

24 (A) if the Board finds that such member,
25 participant, or person associated with a member

1 has engaged in such acts or practices, or has
2 omitted such acts, as the national derivatives
3 association has found him to have engaged in or
4 omitted, that such acts or practices, or omis-
5 sions to act, are in violation of such provisions
6 of this Act, the rules or regulations thereunder,
7 or the rules of the national derivatives associa-
8 tion, as have been specified in the determina-
9 tion of the national derivatives association, and
10 that such provisions are, and were applied in a
11 manner, consistent with the purposes of this
12 Act, the Board, by order, shall so declare and,
13 as appropriate, affirm the sanction imposed by
14 the national derivatives association, modify the
15 sanction in accordance with paragraph (2) of
16 this subsection, or remand to the national de-
17 rivatives association for further proceedings; or

18 (B) if the Board does not make any such
19 finding it shall, by order, set aside the sanction
20 imposed by the national derivatives association
21 and, if appropriate, remand to the national de-
22 rivatives association for further proceedings.

23 (4) AUTHORITY TO CANCEL OR REDUCE SANC-
24 TIONS.—If the Board for a member, participant, or
25 person associated with a member, having due regard

1 for the public interest and the protection of inves-
2 tors, finds after a proceeding in accordance with this
3 subsection that a sanction imposed by a national de-
4 rivatives association upon such member, participant,
5 or person associated with a member imposes any
6 burden on competition not necessary or appropriate
7 in furtherance of the purposes of this Act or is ex-
8 cessive or oppressive, the Board may cancel, reduce,
9 or require the remission of such sanction.

10 (g) AUTHORITY OF BOARD TO SANCTION ASSOCIA-
11 TION.—

12 (1) IN GENERAL.—The Board is authorized, by
13 order, if in its opinion such action is necessary or
14 appropriate in the public interest, for the protection
15 of investors, or otherwise in furtherance of the pur-
16 poses of this Act to suspend for a period not exceed-
17 ing twelve months or revoke the registration of such
18 national derivatives association, or to censure or im-
19 pose limitations upon the activities, functions, and
20 operations of such national derivatives association, if
21 the Board finds, on the record after notice and op-
22 portunity for hearing, that such national derivatives
23 association has violated or is unable to comply with
24 any provision of this Act, the rules or regulations
25 thereunder, or its own rules or without reasonable

1 justification or excuse has failed to enforce compli-
2 ance with any such provision by a member thereof
3 or a person associated with a member thereof.

4 (2) AUTHORITY TO SUSPEND OR EXPEL MEM-
5 BERS.—The Board is authorized, by order, if in its
6 opinion such action is necessary or appropriate in
7 the public interest, for the protection of investors, or
8 otherwise in furtherance of the purposes of this Act,
9 to suspend for a period not exceeding twelve months
10 or expel from such national derivatives association
11 any member thereof or participant therein, if the
12 Board finds, on the record after notice and oppor-
13 tunity for hearing, that such suspension or expulsion
14 is in the public interest and that such member,
15 whether prior or subsequent to becoming such, or
16 any person associated with such broker or dealer,
17 whether prior or subsequent to becoming so associ-
18 ated—

19 (A) has willfully made or caused to be
20 made in any application for registration or re-
21 port required to be filed with the Board, or in
22 any proceeding before the Board with respect to
23 registration, any statement which was at the
24 time and in the light of the circumstances
25 under which it was made false or misleading

1 with respect to any material fact, or has omit-
2 ted to state in any such application or report
3 any material fact which is required to be stated
4 therein;

5 (B) has been convicted within ten years
6 preceding the filing of any application for reg-
7 istration or at any time thereafter of any felony
8 or misdemeanor or of a substantially equivalent
9 crime by a foreign court of competent jurisdic-
10 tion which the Board finds—

11 (i) involves the purchase or sale of
12 any derivative financial instrument, the
13 taking of a false oath, the making of a
14 false report, bribery, perjury, burglary, any
15 substantially equivalent activity however
16 denominated by the laws of the relevant
17 foreign government, or conspiracy to com-
18 mit any such offense;

19 (ii) arises out of the conduct of the
20 business of a derivatives dealer, broker,
21 dealer, municipal securities dealer, govern-
22 ment securities broker, government securi-
23 ties dealer, investment adviser, bank, in-
24 surance company, fiduciary, transfer agent,
25 foreign person performing a function sub-

1 stantially equivalent to any of the above, or
2 entity or person required to be registered
3 under the Commodity Exchange Act (7
4 U.S.C. 1 et seq.) or any substantially
5 equivalent foreign statute or regulation;

6 (iii) involves the larceny, theft, rob-
7 bery, extortion, forgery, counterfeiting,
8 fraudulent concealment, embezzlement,
9 fraudulent conversion, or misappropriation
10 of funds, securities, or derivative financial
11 instruments, or substantially equivalent ac-
12 tivity however denominated by the laws of
13 the relevant foreign government; or

14 (iv) involves the violation of section
15 152, 1341, 1342, or 1343 or chapter 25 or
16 47 of title 18, United States Code, or a
17 violation of a substantially equivalent for-
18 eign statute;

19 (C) is permanently or temporarily enjoined
20 by order, judgment, or decree of any court of
21 competent jurisdiction from acting as an deriva-
22 tives dealer, investment adviser, underwriter,
23 broker, dealer, municipal securities dealer, gov-
24 ernment securities broker, government securi-
25 ties dealer, transfer agent, foreign person per-

1 forming a function substantially equivalent to
2 any of the above, or entity or person required
3 to be registered under the Commodity Ex-
4 change Act or any substantially equivalent for-
5 eign statute or regulation, or as an affiliated
6 person or employee of any investment company,
7 bank, insurance company, foreign entity sub-
8 stantially equivalent to any of the above, or en-
9 tity or person required to be registered under
10 the Commodity Exchange Act or any substan-
11 tially equivalent foreign statute or regulation, or
12 from engaging in or continuing any conduct or
13 practice in connection with any such activity, or
14 in connection with the purchase or sale of any
15 derivative financial instrument or security;

16 (D) has willfully violated any provision of
17 any Federal banking, securities, or commodities
18 laws, this title, the rules or regulations under
19 any of such statutes, or is unable to comply
20 with any such provision;

21 (E) has willfully aided, abetted, counseled,
22 commanded, induced, or procured the violation
23 by any other person of any provision of any
24 Federal banking, securities, or commodities
25 laws, this title, the rules or regulations under

1 any of such statutes, or has failed reasonably to
2 supervise, with a view to preventing violations
3 of the provisions of such statutes, rules, and
4 regulations, another person who commits such a
5 violation, if such other person is subject to his
6 supervision. For the purposes of this subpara-
7 graph (E) no person shall be deemed to have
8 failed reasonably to supervise any other person,
9 if—

10 (i) there have been established proce-
11 dures, and a system for applying such pro-
12 cedures, which would reasonably be ex-
13 pected to prevent and detect, insofar as
14 practicable, any such violation by such
15 other person, and

16 (ii) such person has reasonably dis-
17 charged the duties and obligations incum-
18 bent upon him by reason of such proce-
19 dures and system without reasonable cause
20 to believe that such procedures and system
21 were not being complied with; or

22 (F) has been found by a foreign financial
23 regulatory authority to have—

24 (i) made or caused to be made in any
25 application for registration or report re-

1 required to be filed with a foreign financial
2 regulatory authority, or in any proceeding
3 before a foreign financial regulatory au-
4 thority with respect to registration, any
5 statement that was at the time and in the
6 light of the circumstances under which it
7 was made false or misleading with respect
8 to any material fact, or has omitted to
9 state in any application or report to the
10 foreign financial regulatory authority any
11 material fact that is required to be stated
12 therein;

13 (ii) violated any foreign statute or
14 regulation regarding transactions in securi-
15 ties, or contracts of sale of a commodity
16 for future delivery, traded on or subject to
17 the rules of a contract market or any
18 board of trade; or

19 (iii) aided, abetted, counseled, com-
20 manded, induced, or procured the violation
21 by any person of any provision of any stat-
22 utory provisions enacted by a foreign gov-
23 ernment, or rules or regulations there-
24 under, empowering a foreign financial reg-
25 ulatory authority regarding transactions in

1 securities, or contracts of sale of a com-
2 modity for future delivery, traded on or
3 subject to the rules of a contract market or
4 any board of trade, or has been found, by
5 a foreign financial regulatory authority, to
6 have failed reasonably to supervise, with a
7 view to preventing violations of such statu-
8 tory provisions, rules, and regulations, an-
9 other person who commits such a violation,
10 if such other person is subject to his super-
11 vision.

12 (3) AUTHORITY TO REMOVE OFFICERS.—The
13 Board is authorized, by order, if in its opinion such
14 action is necessary or appropriate in the public in-
15 terest, for the protection of investors, or otherwise in
16 furtherance of the purposes of this Act, to remove
17 from office or censure any officer or director of a
18 national derivatives association, if the Board finds,
19 on the record after notice and opportunity for hear-
20 ing, that such officer or director has willfully vio-
21 lated any provision of this Act, the rules or regula-
22 tions thereunder, or the rules of such national de-
23 rivatives association, willfully abused his or her au-
24 thority, or without reasonable justification or excuse
25 has failed to enforce compliance with any such provi-

1 sion by any member or person associated with a
2 member.

3 **SEC. 409. GENERAL AUTHORITY.**

4 In carrying out this title, the Board is authorized—

5 (1) to conduct investigations and issue adminis-
6 trative subpoenas;

7 (2) to seek and obtain injunctions of violations
8 of this title and the rules and regulations there-
9 under;

10 (3) to issue and enforce cease and desist orders
11 with respect to such violations;

12 (4) to impose and collect civil penalties with re-
13 spect to such violations; and

14 (5) to issue such rules and regulations and take
15 such other actions as may be necessary and appro-
16 priate in furtherance of the purposes of this title.

17 **TITLE V—MISCELLANEOUS**

18 **SEC. 501. SAVINGS PROVISION.**

19 The provisions of this Act shall be in addition to and
20 not in derogation of any existing authority of a Federal
21 financial institution regulatory agency to supervise or reg-
22 ulate derivatives activities provided under any other appli-
23 cable law.

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