

104TH CONGRESS
1ST SESSION

H. R. 31

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mr. GONZALEZ (for himself, Mr. KANJORSKI, and Mr. MFUME) introduced the following bill; which was referred to the Committee on Banking and Financial Services

A BILL

To enhance the supervision and regulation of the 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 1995”.

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. Training for examiners and assistant examiners.
- Sec. 104. 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 of derivative financial in-
7 struments, or conducts transactions in a wide variety
8 of derivative financial instruments.

9 (2) **APPROPRIATE FEDERAL BANKING AGEN-
10 CY.**—The term “appropriate Federal banking agen-

1 cy” has the same meaning as in section 3(q) of the
2 Federal Deposit Insurance Act.

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

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

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

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

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

21 (E) the Director of the Office of Thrift Su-
22 pervision, in the case of any affiliate of any sav-
23 ings association or savings and loan holding
24 company for which there is no other appro-
25 priate Federal banking agency;

1 (F) the Securities and Exchange Commis-
2 sion, in the case of any financial institution de-
3 scribed in clause (v), (vi), or (vii) of paragraph
4 (7)(A);

5 (G) the Secretary of the Treasury, in the
6 case of any insurance company;

7 (H) the Commodity Futures Trading Com-
8 mission, in the case of any financial institution
9 described in clause (viii) of paragraph (7)(A);
10 and

11 (I) the Board of Governors of the Federal
12 Reserve System, in the case of any financial in-
13 stitution which is not described in any other
14 subparagraph of this paragraph.

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

17 (A) has the same meaning as in section
18 3(c) of the Federal Deposit Insurance Act; and

19 (B) includes any Federal credit union and
20 any State credit union (as such terms are de-
21 fined in section 101 of the Federal Credit
22 Union Act).

23 (5) DERIVATIVES ACTIVITIES.—The term “de-
24 rivatives activities” means any activity in which a fi-

1 nancial institution is engaged as a dealer in deriva-
2 tive financial instruments or as an active end-user.

3 (6) DERIVATIVE FINANCIAL INSTRUMENT.—

4 The term “derivative financial instrument” means
5 any qualified financial contract (as defined in section
6 11(e)(8)(D) of the Federal Deposit Insurance Act),
7 and any other instrument, which the appropriate
8 Federal regulatory agency determines to be a deriva-
9 tive financial instrument.

10 (7) FINANCIAL INSTITUTION.—The term “fi-
11 nancial institution”—

12 (A) means—

13 (i) any depository institution;

14 (ii) any entity described in section
15 3(q) of the Federal Deposit Insurance Act
16 which is not a depository institution;

17 (iii) any institution which is subject to
18 the oversight of the Office of Federal
19 Housing Enterprise Oversight of the De-
20 partment of Housing and Urban Develop-
21 ment; and

22 (iv) any Federal home loan bank and
23 the Office of Finance of the Federal home
24 loan banks;

1 (v) any broker, dealer, government se-
2 curities broker, government securities deal-
3 er, municipal securities broker, or municipi-
4 pal securities dealer (as such terms are de-
5 fined in the Securities Exchange Act of
6 1934);

7 (vi) any investment company (as de-
8 fined in section 3(a) of the Investment
9 Company Act of 1940);

10 (vii) any investment adviser (as de-
11 fined in section 202(a)(11) of the Invest-
12 ment Advisers Act of 1940);

13 (viii) any futures commission mer-
14 chant, floor broker, commodity trading ad-
15 visor, or commodity pool operator (as de-
16 fined in section 1a of the Commodity Ex-
17 change Act); and

18 (ix) any insurance company; and

19 (B) includes any affiliate of a depository
20 institution (which is not otherwise described in
21 subparagraph (A)) the derivatives activities of
22 which are determined by the appropriate Fed-
23 eral regulatory agency to pose a potential risk
24 to the safety and soundness of such depository
25 institution.

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

4 (9) INSURED DEPOSITORY INSTITUTION.—The
5 term “insured depository institution”—

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

8 (B) includes an insured credit union.

9 **TITLE I—ENHANCED SUPER-**
10 **VISION OF DERIVATIVES AC-**
11 **TIVITIES**

12 **SEC. 101. INCREASED AGENCY OVERSIGHT OF FINANCIAL**
13 **INSTITUTION ACTIVITIES INVOLVING DERIV-**
14 **ATIVE FINANCIAL INSTRUMENTS.**

15 (a) ESTABLISHMENT OF REGULATORY STAND-
16 ARDS.—The appropriate Federal regulatory agencies shall
17 establish, in consultation with each other such agency,
18 substantially similar standards relating to capital, ac-
19 counting, disclosure, risk management, and suitability, for
20 the supervision by such agencies of financial institutions
21 engaged in derivatives activities.

22 (b) FACTORS REQUIRED TO BE CONSIDERED IN ES-
23 TABLISHING STANDARDS.—

24 (1) IN GENERAL.—In establishing standards
25 pursuant to subsection (a), the appropriate Federal

1 regulatory agencies shall consider the need to re-
2 quire the following:

3 (A) Capital requirements (with particular
4 attention to a leverage ratio where appropriate)
5 to guard generally against risks at financial in-
6 stitutions, including added risks that may be
7 posed by derivatives activities.

8 (B) Comprehensive risk management sys-
9 tems that—

10 (i) are commensurate in scope, size,
11 and complexity to the levels of activities
12 and risks assumed by financial institutions;

13 (ii) include limits and controls with
14 respect to any level of risk regarding
15 counterparty credit, concentration, and
16 other relevant market factors;

17 (iii) ensure that market factors affect-
18 ing risk exposures are adequately meas-
19 ured, monitored, and controlled; and

20 (iv) adequately control potential losses
21 and undue risks arising from system defi-
22 ciencies.

23 (C) To the extent practicable, joint regu-
24 latory examinations by the appropriate Federal

1 banking agencies of financial institutions which
2 engage in derivatives activities.

3 (D) The prudent use of collateral by
4 counterparties to derivatives transactions.

5 (E) Appropriate parameters, models, and
6 simulations for the purpose of evaluating a fi-
7 nancial institution's exposure to derivatives ac-
8 tivities and relevant economic scenarios and fur-
9 ther specifics regarding stress tests.

10 (F) Appropriate credit risk reserves in con-
11 nection with derivatives activities.

12 (G) Protection against legal risk, including
13 foreign legal risk.

14 (H) Assurance that, consistent with safe
15 and sound banking practices, a financial insti-
16 tution does not recommend or engage in deriva-
17 tives activities which are inappropriate for a
18 customer of the institution.

19 (I) Effective senior management super-
20 vision and oversight by the board of directors of
21 a financial institution to ensure that derivatives
22 activities are conducted in a safe and sound
23 manner and are consistent with the board of di-
24 rector's overall risk management philosophy
25 and the institution's business strategy.

1 report of condition made by any insured depository insti-
2 tution in accordance with section 7(a) with respect to any
3 period beginning after December 31, 1995, of the follow-
4 ing information:

5 “(1) QUANTITATIVE INFORMATION WITH RE-
6 SPECT TO ALL DERIVATIVE FINANCIAL INSTRU-
7 MENTS.—

8 “(A) GROSS NOTIONAL VALUE.—The gross
9 notional value of each class of derivative finan-
10 cial instruments.

11 “(B) REVENUE, GAINS, AND LOSSES.—All
12 revenue, gains, and losses of the institution at-
13 tributable to each class of derivative financial
14 instruments.

15 “(C) EXPOSURE UNDER BILATERAL NET-
16 TING CONTRACT.—The net current credit expo-
17 sure of the institution under legally enforceable
18 bilateral arrangements with respect to each
19 class of derivative financial instruments.

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

23 “(3) QUANTITATIVE INFORMATION WITH RE-
24 SPECT TO DERIVATIVE FINANCIAL INSTRUMENTS
25 HELD FOR TRADING PURPOSES.—

1 “(A) AVERAGE FAIR VALUE BALANCES.—

2 The average maximum and minimum fair value
3 balances of the insured depository institution
4 with respect to each class of derivative financial
5 instruments used by the institution for trading
6 purposes.

7 “(B) REVENUE, GAINS, AND LOSSES.—All
8 revenue, gains, and losses of the institution at-
9 tributable to trading account operations with
10 respect to each class of derivative financial in-
11 struments.

12 “(4) ADDITIONAL INFORMATION.—Any addi-
13 tional information that any appropriate Federal
14 banking agency may consider to be appropriate.

15 “(b) SEPARATE REPORTING FOR EXCHANGE AND
16 OTC TRADING.—To the maximum extent possible, infor-
17 mation reported pursuant to subsection (a) with respect
18 to transactions which are conducted on an exchange, and
19 each class of derivative financial instruments which are
20 the subjects of such transactions, shall be provided sepa-
21 rately from information relating to transactions which are
22 conducted over the counter, and the classes of derivative
23 financial instruments which are the subjects of such trans-
24 actions.

1 “(c) QUALITATIVE REPORTING REQUIREMENTS.—
2 The Federal banking agencies shall take such action as
3 may be appropriate to encourage insured depository insti-
4 tutions to publicly report the following information with
5 such frequency as the agencies determine to be appro-
6 priate:

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

9 “(A) the purposes for which each class of
10 derivative financial instruments has been ac-
11 quired by the institution, including the specific
12 objectives of the institution; and

13 “(B) the overall operating and investment
14 strategies of the institution which provide the
15 context for acquiring or taking any such hold-
16 ing, position, or other interest in any derivative
17 financial instrument.

18 “(2) ACCOUNTING POLICIES.—A description of
19 the accounting policy and principles and the meth-
20 odologies used by the institution to determine the
21 value of the various classes of derivative financial in-
22 struments.

23 “(d) DEFINITIONS.—For purposes of this section, the
24 terms ‘active end-user’ and ‘derivative financial instru-

1 ment' have the same meanings as in section 2 of the De-
2 rivatives Safety and Soundness Supervision Act of 1995.”.

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

7 “(8) DERIVATIVE FINANCIAL INSTRUMENTS.—

8 “(A) IN GENERAL.—The reports of condi-
9 tion made by insured credit unions under this
10 section shall include all the information with re-
11 spect to derivative financial instruments which
12 is required, under section 44 of the Federal De-
13 posit Insurance Act, to be included in reports of
14 condition made by insured depository institu-
15 tions (as defined in section 3 of such Act).

16 “(B) APPLICABILITY OF SECTION 44 OF
17 THE FEDERAL DEPOSIT INSURANCE ACT.—Sec-
18 tion 44 of the Federal Deposit Insurance Act
19 shall apply with respect to insured credit unions
20 and the Board in the same manner such section
21 applies to insured depository institutions and
22 Federal banking agencies (as such terms are
23 defined in section 3 of such Act) and shall be
24 enforceable by the Board with respect to in-
25 sured credit unions under this Act.”.

1 (c) OTHER FINANCIAL INSTITUTIONS.—

2 (1) IN GENERAL.—Each appropriate Federal
3 regulatory agency of any financial institution which
4 is not an insured depository institution or an insured
5 credit union shall consider requiring, and may re-
6 quire, such institution to file a quarterly report, with
7 such institution's appropriate Federal regulatory
8 agency, containing comparable information with re-
9 spect to derivative financial instruments which is re-
10 quired, under section 44 of the Federal Deposit In-
11 surance Act, to be included in reports of condition
12 made by insured depository institutions (as defined
13 in section 3 of such Act).

14 (2) APPLICABILITY OF SECTION 44 OF THE
15 FEDERAL DEPOSIT INSURANCE ACT.—Section 44 of
16 the Federal Deposit Insurance Act shall apply with
17 respect to financial institutions and appropriate
18 Federal regulatory agencies described in paragraph
19 (1) in the same manner such section applies to in-
20 sured depository institutions and Federal banking
21 agencies (as such terms are defined in section 3 of
22 such Act) and shall be enforceable by such agencies
23 with respect to such financial institutions under any
24 other law which provides such agency with adminis-
25 trative enforcement authority over such institution.

1 **SEC. 103. TRAINING FOR EXAMINERS AND ASSISTANT EX-**
2 **AMINERS.**

3 (a) IN GENERAL.—The Financial Institutions Exam-
4 ination Council shall sponsor training programs concern-
5 ing derivatives activities for examiners and assistant ex-
6 aminers employed by any agency represented on such
7 council.

8 (b) ENROLLMENT.—Under such conditions as the Fi-
9 nancial Institutions Examination Council may establish,
10 training programs sponsored by the council pursuant to
11 subsection (a) shall be open to enrollment by employees
12 of State bank supervisors (as defined in section 3(r) of
13 the Federal Deposit Insurance Act) and employees of the
14 Federal Housing Finance Board and the Office of Federal
15 Housing Enterprise Oversight of the Department of Hous-
16 ing and Urban Development.

17 (c) RISK MANAGEMENT TRAINING.—The risk man-
18 agement training provided under section 1009A of the
19 Federal Financial Institutions Examination Council Act of
20 1978 shall include risk management techniques related to
21 derivatives activities, except that the cost of providing
22 training with respect to such activities to employees of fi-
23 nancial institutions shall be paid by the institutions.

24 **SEC. 104. STATE LIAISONS.**

25 (a) IN GENERAL.—To encourage the application of
26 uniform examination principles and standards by State

1 and Federal agencies with respect to derivatives activities
2 of financial institutions, the appropriate Federal regu-
3 latory agencies shall establish a liaison committee com-
4 posed of 5 representatives of State agencies which super-
5 vise financial institutions which shall meet at least twice
6 a year with such Federal agencies.

7 (b) TRAVEL EXPENSES.—Each member of the liaison
8 committee established pursuant to subsection (a) shall re-
9 ceive travel expenses, including per diem in lieu of subsist-
10 ence, in accordance with sections 5702 and 5703 of title
11 5, United States Code.

12 **TITLE II—SUPERVISORY** 13 **IMPROVEMENTS**

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

15 (a) EFFECTIVE MANAGEMENT OVERSIGHT.—No fi-
16 nancial institution may engage in derivatives activities
17 without a written management plan approved by the board
18 of directors of the institution which—

19 (1) ensures that such activities are—

20 (A) conducted with appropriate oversight
21 of the directors and the senior executive officers
22 (as defined pursuant to section 32(f) of the
23 Federal Deposit Insurance Act) of the institu-
24 tion;

1 (B) conducted in a safe and sound man-
2 ner; and

3 (C) consistent with the overall risk man-
4 agement philosophy and the business strategy
5 of the management of the institution; and

6 (2) establishes prudential standards for the
7 management of the risks involved in such activities
8 and a framework for internal controls with respect
9 to such activities.

10 (b) REQUIREMENT FOR DIRECTORS.—No financial
11 institution may act as a dealer in derivative financial in-
12 struments or as an active end-user unless the board of
13 directors of such institution is informed of the risks associ-
14 ated with the derivatives activities of the financial institu-
15 tion and the total current credit exposure of the institution
16 with respect to any such activities.

17 (c) ENFORCEMENT.—Any failure to comply with the
18 provisions of this section, and the failure of any institu-
19 tion-affiliated party (as defined in section 3(u) of the Fed-
20 eral Deposit Insurance Act) engaged in derivatives activi-
21 ties to have adequate technical expertise with respect to
22 such activities, may be treated by the appropriate Federal
23 regulatory agency as an unsafe or unsound practice in
24 conducting the business of the institution involved.

1 **SEC. 202. CONFIDENTIAL EMERGENCY MANAGEMENT RE-**
2 **PORTING.**

3 (a) IN GENERAL.—Before the end of the 1-year pe-
4 riod beginning on the date of the enactment of this Act,
5 the appropriate Federal regulatory agencies shall develop
6 the means to obtain all necessary information relating to
7 any derivatives activity or any class of derivative financial
8 instruments, whenever the appropriate Federal regulatory
9 agency determines such information is needed, from any
10 financial institution which is a dealer in derivative finan-
11 cial instruments or is an active end-user if the agency de-
12 termines that the agency needs such information as a re-
13 sult of adverse market conditions or other emergency situ-
14 ation (as defined by the agency).

15 (b) ACCESSIBILITY OF INFORMATION.—Each finan-
16 cial institution referred to in subsection (a) shall—

17 (1) obtain such information and make and keep
18 such records as the appropriate Federal regulatory
19 agency may require by regulation for purposes of
20 such paragraph; and

21 (2) promptly provide to the appropriate Federal
22 regulatory agency any information requested by the
23 agency pursuant to such paragraph.

24 (c) CONFIDENTIALITY OF INFORMATION PRO-
25 VIDED.—No information provided to or obtained by an ap-
26 propriate Federal regulatory agency pursuant to sub-

1 section (a) with respect to any financial institution may
2 be provided to any person or entity other than another
3 Federal regulatory agency with jurisdiction over the finan-
4 cial institution without the prior written approval of the
5 agency.

6 **SEC. 203. INTERNAL CONTROLS.**

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

12 **SEC. 204. FOREIGN BANK SUPERVISION.**

13 (a) STANDARDS FOR APPROVAL.—Section 7(d)(2)(A)
14 of the International Banking Act of 1978 (12 U.S.C.
15 3105(d)(2)(A)) is amended by inserting before the semi-
16 colon the following: “, including, in the case of a foreign
17 bank engaged in derivatives activities (as defined in sec-
18 tion 2(5) of the Derivatives Safety and Soundness Super-
19 vision Act of 1995), comprehensive supervision and regu-
20 lation of such activities.”.

21 (b) FACTOR FOR CONSIDERATION.—Section 7(d) of
22 the International Banking Act of 1978 (12 U.S.C.
23 3105(d)) is amended by adding at the end the following
24 new paragraph:

1 “(6) FACTOR FOR CONSIDERATION.—In making
2 any determination under paragraph (2), the Board
3 shall consider whether the home country of a foreign
4 bank maintains comprehensive supervision and regu-
5 lation of derivatives activities (as defined in section
6 2(5) of the Derivatives Safety and Soundness Super-
7 vision Act of 1995), including, where appropriate,
8 capital and disclosure standards, which are not less
9 stringent than United States standards.”.

10 **TITLE III—FINANCIAL INSTITU-** 11 **TION INSOLVENCY REFORMS**

12 **SEC. 301. TREATMENT OF CERTAIN SWAP AGREEMENTS BY** 13 **CONSERVATORS OR RECEIVERS OF INSURED** 14 **DEPOSITORY INSTITUTIONS.**

15 Section 11(e)(8)(D)(vi)(I) of the Federal Deposit In-
16 surance Act (12 U.S.C. 1821(e)(8)(D)(vi)(I)) is amend-
17 ed—

18 (1) by striking “purchased” each place such
19 term appears; and

20 (2) by inserting “, equity derivative, equity or
21 equity index swap, equity or equity index option,
22 bond option, spot foreign exchange transaction”
23 after “currency option”.

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 sserting “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 paragraphs (9) and (10) or to
20 liquidate any such contract.

21 “(G) UNDERCAPITALIZED INSURED DE-
22 POSITORY INSTITUTIONS.—The Corporation, in
23 consultation with the appropriate Federal bank-
24 ing agencies, shall prescribe regulations requir-
25 ing more detailed recordkeeping with respect to
26 qualified financial contracts (including market

1 valuations) by insured depository institutions
2 that are undercapitalized (as defined in section
3 38).”.

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

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

8 (1) in subparagraph (A)—

9 (A) by striking “conservator or” each place
10 such term appears”;

11 (B) by striking “use such conservator’s or
12 receiver’s best efforts to”; and

13 (C) by striking “12:00, noon (local time)”
14 and inserting “5:00 p.m. (Eastern time)”;

15 (2) by redesignating subparagraph (B) as sub-
16 paragraph (E); and

17 (3) by inserting after subparagraph (A) the fol-
18 lowing new subparagraphs:

19 “(B) CERTAIN RIGHTS NOT ENFORCE-
20 ABLE.—

21 “(i) IN GENERAL.—A person who is a
22 party to a qualified financial contract with
23 an insured depository institution may not
24 exercise any right such person has to net
25 or close out such contract under paragraph

1 (8)(A) or section 403 or 404 of the Fed-
2 eral Deposit Insurance Corporation Im-
3 provement Act of 1991 solely by reason of
4 the appointment of a receiver for the de-
5 pository institution (or the insolvency or fi-
6 nancial condition of the institution for
7 which the receiver is been appointed) until
8 the earlier of—

9 “(I) 5:00 p.m. (Eastern time) of
10 the business day following the date of
11 the appointment of the receiver; or

12 “(II) the time the person receives
13 notice that the contract has been
14 transferred pursuant to paragraph
15 (9)(A).

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

1 respect to such contract in the manner
2 provided for in the contract or by other
3 means reasonably calculated to reach such
4 person by the time specified in clause
5 (i)(I).

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

18 “(C) TREATMENT OF BRIDGE BANKS.—A
19 bridge bank shall not be treated as a depository
20 institution in default for purposes of this para-
21 graph.

22 “(D) TREATMENT OF CERTAIN
23 CONSERVATORSHIPS.—An institution organized
24 by the Corporation for which a conservator is
25 appointed—

1 “(i) immediately upon the organiza-
2 tion of the institution; or

3 “(ii) at the time of a purchase and as-
4 sumption transaction between such institu-
5 tion and a failed depository institution for
6 which the Corporation has been appointed
7 receiver,

8 shall not be treated as a depository institution
9 in default for purposes of this paragraph.”.

10 **SEC. 304. CLARIFYING AMENDMENT RELATING TO MASTER**
11 **AGREEMENTS.**

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

15 “(vii) TREATMENT OF MASTER
16 AGREEMENT AS 1 AGREEMENT.—Any mas-
17 ter agreement for any contract or agree-
18 ment described in any preceding clause of
19 this subparagraph, together with all sup-
20 plements to such master agreement, shall
21 be treated as a single agreement and a sin-
22 gle qualified financial contract.”.

1 **SEC. 305. TECHNICAL AMENDMENTS RELATING TO QUALI-**
2 **FIED FINANCIAL CONTRACTS.**

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

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

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

10 (3) in clause (v), by striking “101(41)” and in-
11 sserting “101(47)”.

12 (b) LIMITATION ON RIGHTS OF COUNTERPARTIES IN
13 EVENT OF DEFAULT DUE TO APPOINTMENT OF A CON-
14 SERVATOR.—Section 11(e)(8)(E)(i) of the Federal De-
15 posit Insurance Act (12 U.S.C. 1821(e)(8)(E)(i)) is
16 amended—

17 (1) by striking “paragraph (12)” and inserting
18 “paragraph (10)”; and

19 (2) by striking “subsection (d)(9)” and insert-
20 ing “subsections (d)(9) and (n)(4)(I)”.

21 (c) FEDERAL DEPOSIT INSURANCE CORPORATION
22 IMPROVEMENT ACT OF 1991.—Sections 403(a) and
23 404(a) of the Federal Deposit Insurance Corporation Im-
24 provement Act of 1991 (12 U.S.C. 4403(a), 4404(a)) are
25 each amended by inserting “other than paragraph (8)(E)

1 and (10)(B)(iii) of section 11(e) of the Federal Deposit
2 Insurance Act” after “other provisions of law”.

3 **TITLE IV—INTERNATIONAL**
4 **REGULATORY COOPERATION**

5 **SEC. 401. STUDY OF INTERNATIONAL REGULATION AND SU-**
6 **PERVISION OF DERIVATIVES ACTIVITIES OF**
7 **FINANCIAL INSTITUTIONS.**

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

15 (b) **GOALS OF STUDY.**—The goals of the study as
16 proposed by the Secretary of the Treasury pursuant to
17 subsection (a) with respect to derivatives activities of fi-
18 nancial institutions shall be as follows:

19 (1) To foster a greater understanding of the
20 manner in which derivative financial instruments af-
21 fect the stability of the world’s financial systems and
22 markets.

23 (2) To examine the adequacy of international
24 regulation and supervision of derivative financial ac-
25 tivities.

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

4 (4) To foster greater cooperation between all
5 regulatory agencies with jurisdiction over derivatives
6 activities.

7 (5) To make recommendations for action by the
8 financial regulators in the respective countries that
9 would facilitate the safe and sound conduct of enti-
10 ties involved in derivative financial activities.

11 (6) To evaluate the feasibility of establishing a
12 single governing body to regulate international deriv-
13 ative financial activities.

14 (c) ISSUES TO STUDY.—The Secretary of the Treas-
15 ury shall propose that the study with respect to derivatives
16 activities of financial institutions include the following
17 factors:

18 (1) Identification of the manner in which deriv-
19 ative financial instruments affect the stability of the
20 world's financial systems and markets.

21 (2) Identification of the various regulatory enti-
22 ties and mechanisms that are used to regulate and
23 supervise derivative financial activities around the
24 world.

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

4 (4) Identification of problems that inhibit the
5 safe and sound conduct of worldwide derivatives ac-
6 tivities.

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

11 (6) Identification of uniform accounting and
12 public reporting standards for derivative financial in-
13 struments.

14 (7) Evaluation of the feasibility of establishing
15 a single governing body to regulate international de-
16 rivatives activities.

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

22 (1) gather information from a wide variety of
23 sources including government agencies, central
24 banks, market participants, and the consumers of
25 the derivative financial instruments;

1 (2) to the extent feasible, obtain and use infor-
2 mation from the International Monetary Fund, the
3 Bank for International Settlements, and other multi-
4 lateral organizations; and

5 (3) utilize all available information and conclu-
6 sions from studies conducted by any multilateral or-
7 ganization, central bank, or any group consisting of
8 representatives of major industrialized countries.

9 **SEC. 402. INTERNATIONAL NEGOTIATIONS.**

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

18 **TITLE V—GAO STUDY**

19 **SEC. 501. STUDY OF SPECULATION AND MARGIN AND COL-**
20 **LATERAL REQUIREMENTS WITH RESPECT TO**
21 **DERIVATIVES ACTIVITIES OF FINANCIAL IN-**
22 **STITUTIONS.**

23 (a) STUDY REQUIRED.—

24 (1) IN GENERAL.—The Comptroller General of
25 the United States shall conduct a study of the spec-

1 ulative uses of derivative financial instruments by fi-
2 nancial institutions and the feasibility of imposing
3 margin and collateral requirements on speculative
4 transactions engaged in by financial institutions
5 which involve derivative financial instruments.

6 (2) REPORT.—The Comptroller General shall
7 submit a report on the study conducted pursuant to
8 paragraph (1) to the Congress before the end of the
9 18-month period beginning on the date of the enact-
10 ment of this Act.

11 (b) ISSUES INVOLVING SPECULATIVE TRANSACTIONS
12 INVOLVING DERIVATIVE FINANCIAL INSTRUMENTS.—In
13 conducting the study under subsection (a)(1), the Comp-
14 troller General shall—

15 (1) define the term “speculation” as such term
16 is used in connection with derivative financial instru-
17 ments;

18 (2) determine the extent to which financial in-
19 stitutions use the various classes of derivative finan-
20 cial instruments to engage in speculation for the in-
21 stitution’s own trading account; and

22 (3) determine the extent to which financial in-
23 stitutions engage in derivatives activities involving
24 the various classes of derivative financial instru-
25 ments with speculators.

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

4 (1) determine which classes of derivative finan-
5 cial instruments are subject to margin and collateral
6 requirements and the amount and purpose of the
7 margin and collateral requirement;

8 (2) determine the extent to which the trans-
9 actions of financial institutions which involve any
10 class of derivative financial instruments are con-
11 ducted over the counter and evaluate the feasibility
12 of imposing margin and collateral requirements on
13 such transactions;

14 (3) evaluate the feasibility of imposing margin
15 and collateral requirements on any class of deriva-
16 tive financial instruments which were acquired or
17 taken for speculative purposes; and

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

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