

106TH CONGRESS
2D SESSION

H. R. 4203

To establish a comprehensive regulatory framework over the clearing of over-the-counter derivative instruments that will operate under the supervision of the Federal banking agencies, to clarify the lawfulness of the use of multilateral clearing systems for over-the-counter derivative instrument transactions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2000

Mr. LEACH (for himself, Mr. LAFALCE, Mr. BAKER, and Mr. KANJORSKI) introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committees on Commerce, Agriculture, and the Judiciary, 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 establish a comprehensive regulatory framework over the clearing of over-the-counter derivative instruments that will operate under the supervision of the Federal banking agencies, to clarify the lawfulness of the use of multilateral clearing systems for over-the-counter derivative instrument transactions, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Over-the-Counter De-
3 rivatives Systemic Risk Reduction Act of 2000”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 The Congress finds as follows:

6 (1) Banks and other financial institutions regu-
7 lated under Federal banking laws—

8 (A) are dominant participants in the mar-
9 ket for over-the-counter derivative instruments;
10 and

11 (B) use such instruments in their capital
12 market activities for, among other purposes,
13 controlling financial risks and facilitating in-
14 vestment strategies.

15 (2) Multilateral clearing systems can reduce
16 risks to the financial system posed by certain cat-
17 egories of over-the-counter derivative instruments by
18 mutualizing the credit risk of each transaction.

19 (3) A multilateral clearing system may—

20 (A) mitigate losses that the parties to
21 transactions involving over-the-counter deriva-
22 tive instruments would suffer if their
23 counterparties fail to settle obligations in con-
24 nection with such transactions; and

25 (B) make such transactions more economi-
26 cally efficient by facilitating the offset and net-

1 ting of obligations arising under contracts
2 cleared through the system.

3 (4) Although it is evident that the establish-
4 ment of multilateral clearing systems in the United
5 States for transactions involving over-the-counter de-
6 rivative instruments would enhance the competitive-
7 ness of United States financial institutions, efforts
8 to establish such systems have been hindered by con-
9 cerns that the use of such a system may render the
10 underlying transactions illegal under existing Fed-
11 eral law.

12 (5) In November 1999, the Secretary of the
13 Treasury, the Chairman of the Board of Governors
14 of the Federal Reserve System, the Chairman of the
15 Securities and Exchange Commission, and the
16 Chairman of the Commodity Futures Trading Com-
17 mission all agreed to foster the development of mul-
18 tilateral clearing systems for over-the-counter deriva-
19 tive instruments transactions.

20 (6) Federal supervision of multilateral clearing
21 systems for over-the-counter derivative instruments
22 markets will foster the effectiveness and integrity of
23 the operations, the risk management of such sys-
24 tems, and the stability of the financial markets and
25 the safety and soundness of the banking system.

1 (7) Questions about the enforceability of over-
2 the-counter derivatives contracts under Federal and
3 State law could have a negative impact on the sta-
4 bility of the financial institutions that are parties to
5 them and could threaten the safety and soundness of
6 the financial system.

7 (8) Interpretations of Federal law suggesting
8 that the use of certain electronic technologies in the
9 trading of over-the-counter derivative instruments
10 might raise questions about their lawfulness have
11 hampered the development of more efficient trading
12 systems and, therefore, more effective risk manage-
13 ment for financial institutions.

14 **SEC. 3. MULTILATERAL CLEARING ORGANIZATIONS.**

15 (a) IN GENERAL.—Subtitle A of title IV of the Fed-
16 eral Deposit Insurance Corporation Improvement Act of
17 1991 is amended—

18 (1) by inserting before the section heading for
19 section 401, the following new heading:

20 **“CHAPTER 1—BILATERAL AND CLEARING**
21 **ORGANIZATION NETTING”;**

22 (2) in section 401, by striking “this subtitle”
23 and inserting “this chapter”; and

24 (3) by inserting after section 407, the following
25 new chapter:

1 **“CHAPTER 2—MULTILATERAL CLEARING**
2 **ORGANIZATIONS**

3 **“SEC. 408. DEFINITIONS.**

4 For purposes of this chapter, the following definitions
5 shall apply:

6 “(1) MULTILATERAL CLEARING ORGANIZA-
7 TION.—The term ‘multilateral clearing organization’
8 means a system utilized by more than 2 participants
9 in which the bilateral credit exposures of partici-
10 pants arising from the transactions cleared are effec-
11 tively eliminated and replaced by a system of guar-
12 antees, insurance, or mutualized risk of loss.

13 “(2) OVER-THE-COUNTER DERIVATIVE INSTRU-
14 MENT.—The term ‘over-the-counter derivative in-
15 strument’ means—

16 “(A) any agreement, including the terms
17 and conditions incorporated by reference in any
18 such agreement, which is an interest rate swap,
19 option, or forward agreement, including a rate
20 floor, rate cap, rate collar, cross-currency rate
21 swap, basis swap, and forward rate agreement;
22 a spot, same day-tomorrow, tomorrow-next, for-
23 ward, or other foreign exchange or precious
24 metals agreement; a currency swap, option, or
25 forward agreement; an equity index or equity

1 swap, option, or forward agreement; a debt
2 index or debt swap, option, or forward agree-
3 ment; a credit spread or credit swap, option, or
4 forward agreement; a commodity index or com-
5 modity swap, option, or forward agreement; and
6 a weather swap, weather derivative, or weather
7 option;

8 “(B) any agreement or transaction similar
9 to any other agreement or transaction referred
10 to in this clause that is presently, or in the fu-
11 ture becomes, regularly entered into by parties
12 that participate in swap transactions (including
13 terms and conditions incorporated by reference
14 in such agreement) and that is a forward, swap,
15 or option on 1 or more rates, currencies, com-
16 modities, equity securities or other equity in-
17 struments, debt securities or other debt instru-
18 ments, or economic or other indices or measures
19 of economic or other risk or value; and

20 “(C) any option to enter into any, or any
21 combination of, agreements or transactions re-
22 ferred to in this subparagraph.

23 “(3) OTHER DEFINITIONS.—The terms ‘bank’
24 and ‘affiliate’ have the meanings given the terms in

1 section 2 of the Bank Holding Company Act of
2 1956.

3 **“SEC. 409. MULTILATERAL CLEARING ORGANIZATIONS.**

4 “(a) IN GENERAL.—Except with respect to clearing
5 organizations described in subsection (b), no person may
6 operate a multilateral clearing organization for over-the-
7 counter derivative instruments, or otherwise engage in ac-
8 tivities that constitute such a multilateral clearing organi-
9 zation unless the person is a bank, or a corporation char-
10 tered under section 25A of the Federal Reserve Act.

11 “(b) CLEARING ORGANIZATIONS.—Subsection (a)
12 shall not apply to any clearing organization that—

13 “(1) is registered as a clearing agency under
14 the Securities Exchange Act of 1934;

15 “(2) performs clearing functions for a contract
16 market designated pursuant to the Commodity Ex-
17 change Act; or

18 “(3) is supervised by a foreign financial regu-
19 lator that an appropriate Federal financial regu-
20 latory agency has determined satisfies appropriate
21 standards.

22 “(c) RULES OF CONSTRUCTION.—

23 “(1) OVER-THE-COUNTER DERIVATIVE INSTRU-
24 MENTS.—The fact that an over-the-counter deriva-
25 tive instrument is cleared or settled through a multi-

1 lateral clearing organization shall not be construed
2 to mean, or used to support a conclusion, that such
3 transaction is subject to the Commodity Exchange
4 Act.

5 “(2) CFTC JURISDICTION.—No provision of
6 this chapter shall be construed as altering, limiting,
7 or otherwise affecting the applicability of the Com-
8modity Exchange Act to, or the jurisdiction of the
9 Commodity Futures Trading Commission over—

10 “(A) trading in or clearing of transactions
11 in, or based on, nonfinancial commodities with
12 finite supplies; and

13 “(B) clearing by organizations that clear
14 exchange-traded contracts for the purchase or
15 sale of a commodity for future delivery, com-
16modity options, and options on contracts for the
17 purchase or sale of a commodity for future de-
18livery under the Commodity Exchange Act.

19 “(3) SEC JURISDICTION.—No provision of this
20 chapter shall be construed as altering, limiting, or
21 otherwise affecting the jurisdiction of the Securities
22 and Exchange Commission over clearance and settle-
23ment by a clearing agency registered under the Se-
24curities Exchange Act of 1934.

1 “(4) NO EFFECT ON APPLICABILITY OF SECURITIES EXCHANGE ACT OF 1934 TO CLEARING OF SECURITIES.—No provision of this chapter shall be construed as altering, limiting, or otherwise affecting the applicability of the Securities Exchange Act of 1934 to the clearing of securities, including the applicability of section 17A(d) of such Act to the clearing through a multilateral clearing organization under this chapter of over-the-counter derivative instruments that are securities within the meaning of the Federal securities laws.

12 “(5) FEDERAL RESERVE BOARD AND OCC JURISDICTION.—A multilateral clearing organization under the jurisdiction of the Board of Governors of the Federal Reserve System or the Comptroller of the Currency in accordance with subsection (a) shall not be subject to the jurisdiction of any other Federal department or agency as a result of clearing any over-the-counter derivative instrument.”.

20 (b) ENFORCEMENT POWERS OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—Section 9 of the Federal Reserve Act (12 U.S.C. 221) is amended by adding at the end the following new paragraph:

24 “(24) ENFORCEMENT AUTHORITY.—Section 3(u), subsections (j) and (k) of section 7, sub-

1 sections (b) through (n), (s), (u), and (v) of section
2 8, and section 19 of the Federal Deposit Insurance
3 Act shall apply to a State member bank which is not
4 an insured depository institution (as defined in sec-
5 tion 3 of the Federal Deposit Insurance Act) in the
6 same manner and to the same extent as such provi-
7 sions apply to State member insured banks, and any
8 reference in such sections to an insured depository
9 institution shall be deemed to include a reference to
10 any such noninsured State member bank.”.

11 **SEC. 4. LEGAL CERTAINTY.**

12 No over-the-counter derivative instrument (as defined
13 in section 408(2) of the Federal Deposit Insurance Cor-
14 poration Improvement Act of 1991) to which a financial
15 institution (as defined in or under section 402(9) of such
16 Act or in or under section 509(3)(A) of the Gramm-Leach-
17 Bliley Act) is a party shall be held void, subject to rescis-
18 sion, or unenforceable based solely on the regulatory sta-
19 tus of, or regulatory jurisdiction over, such agreement,
20 contract, or transaction under Federal or State law.

21 **SEC. 5. ELECTRONIC TRADING.**

22 (a) RULES OF CONSTRUCTION.—

23 (1) OVER-THE-COUNTER DERIVATIVE INSTRU-
24 MENTS.—The fact that an over-the-counter deriva-
25 tive instrument is the subject of communication on,

1 or is entered into or traded through or by means of,
2 a financial electronic trading system shall not be
3 construed to mean, or used to support a conclusion,
4 that such transaction is subject to the Commodity
5 Exchange Act.

6 (2) CFTC JURISDICTION.—No provision of this
7 section shall be construed as altering, limiting, or
8 otherwise affecting the applicability of the Com-
9modity Exchange Act to, or the jurisdiction of the
10 Commodity Futures Trading Commission over, trad-
11ing in transactions in, or based on, nonfinancial
12 commodities with finite supplies.

13 (b) DEFINITIONS.—For purposes of this section, the
14 following definitions shall apply:

15 (1) ELIGIBLE CONTRACT PARTICIPANT.—The
16 term “eligible contract participant” means any of
17 the following persons acting for its own account:

18 (A) Any depository institution (as defined
19 in section 3 of the Federal Deposit Insurance
20 Act), foreign bank (as defined in section 1(b) of
21 the International Banking Act of 1978), Fed-
22 eral or State credit union (as defined in section
23 101 of the Federal Credit Union Act), corpora-
24 tion organized under section 25A of the Federal
25 Reserve Act, corporation operating under sec-

1 tion 25 of such Act, trust company, or affiliate
2 of any such person.

3 (B) An insurance company (as defined in
4 section 2(q) of the Bank Holding Company Act
5 of 1956).

6 (C) An investment company subject to reg-
7 ulation under the Investment Company Act of
8 1940 or a foreign person performing a similar
9 role or function subject as such to foreign regu-
10 lation (regardless of whether the investors in
11 such investment company or foreign person are
12 themselves eligible contract participants).

13 (D) A commodity pool which has total as-
14 sets exceeding \$5,000,000 and which is formed
15 and operated by a person subject to regulation
16 under the Commodity Exchange Act or a for-
17 eign person performing a similar role or func-
18 tion subject as such to foreign regulation (re-
19 gardless of whether the investors in such com-
20 modity pool are themselves eligible contract
21 participants).

22 (E) A corporation, partnership, proprietor-
23 ship, organization, trust, or other entity—

24 (i) which has total assets exceeding
25 \$10,000,000;

1 (ii) the obligations of which under an
2 agreement, contract, or transaction are
3 guaranteed or otherwise supported by a
4 letter of credit or any other agreement by
5 any entity referred to in clause (i) of this
6 subparagraph or subparagraph (A), (B),
7 (C), or (D); or

8 (iii) which has a net worth of
9 \$1,000,000 and enters into an agreement,
10 contract, or transaction in connection with
11 the conduct of its business or to manage
12 the risk associated with an asset or liability
13 owned or incurred or reasonably likely
14 to be owned or incurred by such person in
15 the conduct of its business.

16 (F) A broker or dealer subject to regula-
17 tion under the Securities Exchange Act of 1934
18 or a foreign person performing a similar role or
19 function subject as such to foreign regulation,
20 except that if such broker or dealer is a natural
21 person or proprietorship, the broker or dealer
22 shall not be deemed an eligible contract partici-
23 pant unless the broker or dealer also meets the
24 requirements of subparagraph (E) or owns and

1 invests on a discretionary basis not less than
2 \$25,000,000 in investments.

3 (G) A futures commission merchant, floor
4 broker, or floor trader subject to regulation
5 under the Commodity Exchange Act or a for-
6 eign person performing a similar role or func-
7 tion subject as such to foreign regulation, ex-
8 cept that if such futures commission merchant,
9 floor broker, or floor trader is a natural person
10 or proprietorship, the futures commission mer-
11 chant, floor broker, or floor trader shall not be
12 deemed an eligible contract participant, unless
13 the futures commission merchant, floor broker,
14 or floor trader also meets the requirements of
15 subparagraph (E) or owns and invests on a dis-
16 cretionary basis not less than \$25,000,000 in
17 investments.

18 (2) FINANCIAL ELECTRONIC TRADING SYS-
19 TEM.—The term “financial electronic trading sys-
20 tem” means any person or group of persons, includ-
21 ing any exchange that has been designated as a con-
22 tract market by the Commodity Futures Trading
23 Commission, that constitutes, maintains, or provides
24 an electronic facility or system, including a computer
25 system or network, in which—

1 (A) each participant is a financial institu-
2 tion (as defined in or under section 402(9) of
3 the Federal Deposit Insurance Corporation Im-
4 provement Act of 1991 or in or under section
5 509(3)(A) of the Gramm-Leach-Bliley Act) that
6 is an eligible contract participant;

7 (B) participants have the ability to com-
8 municate information or to execute or trade
9 agreements, contracts, or transactions that are
10 open to participants in such facility or system;
11 and

12 (C) no participant may act as an agent for
13 another person in using the system.

14 (3) OVER-THE-COUNTER DERIVATIVE INSTRU-
15 MENT.—The term ‘over-the-counter derivative in-
16 strument’ has the same meaning as in section
17 408(2) of the Federal Deposit Insurance Corpora-
18 tion Improvement Act of 1991.

19 **SEC. 6. CLEARING BANKS.**

20 (a) IN GENERAL.—The Federal Reserve Act (12
21 U.S.C. 221 et seq.) is amended by inserting after section
22 9A the following new section:

23 **“SEC. 9B. RESOLUTION OF CLEARING BANKS.**

24 **“(a) CONSERVATORSHIP OR RECEIVERSHIP.—**

1 “(1) APPOINTMENT.—The Board may appoint
2 a conservator or receiver to take possession and con-
3 trol of a State bank which operates, or operates as,
4 a multilateral clearing organization pursuant to sec-
5 tion 409 of the Federal Deposit Insurance Corpora-
6 tion Improvement Act of 1991 to the same extent
7 and in the same manner as the Comptroller of the
8 Currency may appoint a conservator or receiver for
9 a national bank.

10 “(2) POWERS.—The conservator or receiver for
11 a State bank referred to in paragraph (1) shall exer-
12 cise the same powers, functions, and duties, subject
13 to the same limitations, as a conservator or receiver
14 for a national bank.

15 “(b) BOARD AUTHORITY.—The Board shall have the
16 same authority with respect to any conservator or receiver
17 appointed under subsection (a), and the State bank for
18 which the conservator or receiver has been appointed, as
19 the Comptroller of the Currency has with respect to a con-
20 servator or receiver for a national bank and the national
21 bank for which the conservator or receiver has been ap-
22 pointed.

23 “(c) BANKRUPTCY PROCEEDINGS.—The Comptroller
24 of the Currency (in the case of a national bank which oper-
25 ates, or operates as, a multilateral clearing organization

1 pursuant to section 409 of the Federal Deposit Insurance
2 Corporation Improvement Act of 1991) or the Board (in
3 the case of a State bank which operates, or operates as,
4 such a multilateral clearing organization) may direct a
5 conservator or receiver appointed for such bank to file a
6 petition pursuant to title 11, United States Code, in which
7 case, title 11, United States Code, shall apply to such
8 bank in lieu of otherwise applicable Federal or State insol-
9 vency law.”.

10 (b) TECHNICAL AND CONFORMING AMENDMENTS TO
11 TITLE 11, UNITED STATES CODE.—

12 (1) BANKRUPTCY CODE DEBTORS.—Section
13 109(b)(2) of title 11, United States Code, is amend-
14 ed by striking ‘; or’ and inserting the following: ‘, ex-
15 cept that a bank or a corporation organized under
16 section 25A of the Federal Reserve Act which oper-
17 ates, or operates as, a multilateral clearing organiza-
18 tion pursuant to section 409 of the Federal Deposit
19 Insurance Corporation Improvement Act of 1991
20 may be a debtor if a petition is filed at the direction
21 of the Comptroller of the Currency (in the case of
22 a national bank) or the Board of Governors of the
23 Federal Reserve System (in the case of a State bank
24 or such a corporation); or”.

1 (2) CHAPTER 7 DEBTORS.—Section 109(d) of
2 title 11, United States Code, is amended to read as
3 follows:

4 “(d) Only a railroad, a person that may be a debtor
5 under chapter 7 of this title (except a stockbroker or a
6 commodity broker), and a bank or a corporation organized
7 under section 25A of the Federal Reserve Act which oper-
8 ates, or operates as, a multilateral clearing organization
9 pursuant to section 409 of the Federal Deposit Insurance
10 Corporation Improvement Act of 1991 may be a debtor
11 under chapter 11 of this title.”.

12 (3) DEFINITION OF FINANCIAL INSTITUTION.—
13 Section 101(22) of title 11, United States Code, is
14 amended to read as follows:

15 “(22) the term ‘financial institution’—

16 “(A) means a person that is a commercial
17 or savings bank, industrial savings bank, sav-
18 ings and loan association, trust company, a
19 bank or a corporation organized under section
20 25A of the Federal Reserve Act and, when any
21 such person is acting as agent or custodian for
22 a customer in connection with a securities con-
23 tract, as defined in section 741 of this title,
24 such customer; and

1 “(B) includes any person described in sub-
2 paragraph (A) which operates, or operates as, a
3 multilateral clearing organization pursuant to
4 section 409 of the Federal Deposit Insurance
5 Corporation Improvement Act of 1991;”.

6 (4) SUBCHAPTER V OF CHAPTER 7.—

7 (A) IN GENERAL.—Section 103 of title 11,
8 United States Code, is amended—

9 (i) by redesignating subsections (e)
10 through (i) as subsections (f) through (j),
11 respectively; and

12 (ii) by inserting after subsection (d)
13 the following new subsection:

14 “(e) SCOPE OF APPLICATION.—Subchapter V of
15 chapter 7 of this title shall apply only in a case under
16 such chapter concerning the liquidation of a bank or a
17 corporation organized under section 25A of the Federal
18 Reserve Act which operates, or operates as, a multilateral
19 clearing organization pursuant to section 409 of the Fed-
20 eral Deposit Insurance Corporation Improvement Act of
21 1991.”.

22 (B) CLEARING BANK LIQUIDATION.—
23 Chapter 7 of title 11, United States Code, is
24 amended by adding at the end the following
25 new subchapter:

1 **“Subchapter V—Clearing Bank Liquidation**

2 **“§ Sec. 781. Definitions.**

3 “For purposes of this subchapter, the following defi-
4 nitions shall apply:

5 “(1) BOARD.—The term ‘Board’ means the
6 Board of Governors of the Federal Reserve System.

7 “(2) DEPOSITORY INSTITUTION.—The term ‘de-
8 pository institution’ has the same meaning as in sec-
9 tion 3 of the Federal Deposit Insurance Act, and in-
10 cludes any wholesale bank.

11 “(3) CLEARING BANK.—The term ‘clearing
12 bank’ means a national or State bank, or a corpora-
13 tion organized under section 25A of the Federal Re-
14 serve Act, which operates, or operates as, a multilat-
15 eral clearing organization pursuant to section 409 of
16 the Federal Deposit Insurance Corporation Improve-
17 ment Act of 1991.

18 **“§ Sec. 782. Selection of trustee**

19 “(a) IN GENERAL.—

20 “(1) APPOINTMENT.—Notwithstanding any
21 other provision of this title, the conservator or re-
22 ceiver who files the petition shall be the trustee
23 under this chapter, unless the Comptroller of the
24 Currency (in the case of a clearing bank for which
25 the Comptroller of the Currency appointed a conser-

1 vator or receiver) or the Board (in the case of any
2 clearing bank for which the Board appointed a con-
3 servator or receiver) designates an alternative trust-
4 ee.

5 “(2) SUCCESSOR.—The Comptroller of the Cur-
6 rency or the Board of Governors of the Federal Re-
7 serve System (as the case may be) may designate a
8 successor trustee, if required.

9 “(b) AUTHORITY OF TRUSTEE.—Whenever the
10 Comptroller of the Currency or the Board appoints or des-
11 ignates a trustee, chapter 3 and sections 704 and 705 of
12 this title shall apply to the Comptroller or the Board, as
13 applicable, in the same way and to the same extent that
14 they apply to a United States trustee.

15 **“§ Sec. 783. Additional powers of trustee**

16 “(a) DISTRIBUTION OF NONESTATE PROPERTY.—
17 The trustee under this subchapter has power to distribute
18 property not of the estate, including distributions to cus-
19 tomers that are mandated by subchapters III and IV of
20 this chapter.

21 “(b) DISPOSITION OF INSTITUTION.—The trustee
22 under this subchapter may, after notice and a hearing—

23 “(1) sell the clearing bank to a depository insti-
24 tution or consortium of depository institutions

1 (which consortium may agree on the allocation of
2 the clearing bank among the consortium);

3 “(2) merge the clearing bank with a depository
4 institution;

5 “(3) transfer contracts to the same extent as
6 could a receiver for a depository institution under
7 paragraphs (9) and (10) of section 11(e) of the Fed-
8 eral Deposit Insurance Act;

9 “(4) transfer assets or liabilities to a depository
10 institution;

11 “(5) transfer assets and liabilities to a bridge
12 bank as provided in paragraphs (1), (3)(A), (5), (6),
13 of section 11(n) of the Federal Deposit Insurance
14 Act, paragraphs (9) through (13) of such section,
15 and subparagraphs (A) through (H) and subpara-
16 graph (K) of paragraph (4) of such section 11(n),
17 except that—

18 “(A) the bridge bank to which such assets
19 or liabilities are transferred shall be treated as
20 a clearing bank for the purpose of this sub-
21 section; and

22 “(B) any references in any such provision
23 of law to the Federal Deposit Insurance Cor-
24 poration shall be construed to be references to

1 the appointing agency and that references to
2 deposit insurance shall be omitted.

3 “(c) CERTAIN TRANSFERS INCLUDED.—Any ref-
4 erence in this section to transfers of liabilities includes a
5 ratable transfer of liabilities within a priority class.

6 **“§ Sec. 784. Right to be heard**

7 “The Comptroller of the Currency (in the case of a
8 clearing bank for which the Comptroller of the Currency
9 appointed a conservator or receiver), the Board of Gov-
10 ernors of the Federal Reserve System (in the case of any
11 clearing bank for which the Board appointed a conservator
12 or receiver), or a Federal reserve bank (in the case of a
13 clearing bank that is a member of that bank) may raise
14 and may appear and be heard on any issue in a case under
15 this subchapter.”.

16 (c) CONFORMING AMENDMENT.—The table of sec-
17 tions for chapter 7 of title 11, United States Code, is
18 amended by adding at the end the following new items:

19 **“Subchapter V—Clearing Bank Liquidation**

“Sec.
“781. Definitions.
“782. Selection of trustee.
“783. Additional powers of trustee.
“784. Right to be heard.”.

20 (d) RESOLUTION OF EDGE ACT CORPORATIONS.—
21 The 16th undesignated paragraph of section 25A of the
22 Federal Reserve Act (12 U.S.C. 624) is amended to read
23 as follows:

1 “(16) APPOINTMENT OF RECEIVER OR CONSER-
2 VATOR.—

3 “(A) IN GENERAL.—The Board may ap-
4 point a conservator or receiver for a corporation
5 organized under the provisions of this section to
6 the same extent and in the same manner as the
7 Comptroller of the Currency may appoint a con-
8 servator or receiver for a national bank, and the
9 conservator or receiver for such corporation
10 shall exercise the same powers, functions, and
11 duties, subject to the same limitations, as a
12 conservator or receiver for a national bank.

13 “(B) EQUIVALENT AUTHORITY.—The
14 Board shall have the same authority with re-
15 spect to any conservator or receiver appointed
16 for a corporation organized under the provisions
17 of this section under this paragraph and any
18 such corporation as the Comptroller of the Cur-
19 rency has with respect to a conservator or re-
20 ceiver of a national bank and the national bank
21 for which a conservator or receiver has been ap-
22 pointed.

23 “(C) TITLE 11 PETITIONS.—The Board
24 may direct the conservator or receiver of a cor-
25 poration organized under the provisions of this

1 section to file a petition pursuant to title 11,
2 United States Code, in which case, title 11,
3 United States Code, shall apply to the corpora-
4 tion in lieu of otherwise applicable Federal or
5 State insolvency law.”.

6 **SEC. 7. RELATION TO STATE LAW.**

7 No state or local law that prohibits or regulates gam-
8 ing or the operation of “bucket shops” (other than anti-
9 fraud provisions of general applicability) shall be deemed
10 to govern or be in any way applicable to any over-the-
11 counter derivative instrument (as defined in section
12 408(2) of the Federal Deposit Insurance Corporation Im-
13 provement Act of 1991) to which a financial institution
14 (as defined in or under section 402(9) of such Act or in
15 or under section 509(3)(A) of the Gramm-Leach-Bliley
16 Act) is a party.

○