

section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act”;

(2) in section 362(b)—

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

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

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

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

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

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

“(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and”;

(3) in section 741(7)(A)—

(A) in clause (i)—

(i) by striking “mortgage loan or” and inserting “mortgage loan.”; and

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

(B) in clause (iii)—

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

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

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

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

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

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

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

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

(1) in subsection (e)—

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

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

(2) in subsection (f)—

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

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

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

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

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

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

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

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

**“SEC. 912. SAVINGS CLAUSE.**

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

**SEC. 5. WALKAWAY CLAUSES.**

Section 11(e)(8)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(G)) is amended to read as follows:

“(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

“(1) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit In-

surance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default, provided that any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time that the receiver is appointed until the earlier of—

“(I) the time that such party receives notice that such contract has been transferred pursuant to subparagraph (A); or

“(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

“(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term ‘walkaway clause’ means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party in whole or in part or does not create a payment obligation of a party that would otherwise exist solely because of such party’s status as a nondefaulting party in connection with the insured depository institution’s insolvency or the appointment of or the exercise of rights or powers by a conservator or receiver, and not as a result of a party’s exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.”.

**SEC. 6. EFFECTIVE DATE.**

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) NO RETROACTIVE APPLICATION OF AMENDMENTS.—The amendments made by this Act shall not apply to any cases commenced under title 11, United States Code, or appointments made under any Federal or State law, before the effective date of this Act.

**ORDERS FOR SUNDAY, DECEMBER 18, 2005**

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 6 p.m. on Sunday, December 18. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

**PROGRAM**

Mr. FRIST. Tomorrow, we will return to session to continue to work on the remaining business before we leave. We will need to come in tomorrow in anticipation of the conference reports which will arrive from the House. I do not believe we will need to have any votes tomorrow evening, but we will alert Members if something arises. If we do not vote Sunday, we would start voting early Monday. We have seven district judges on the calendar. I understand some of those may require votes.

Having said that, I thank all Senators for their patience during this period. It has been difficult because of

our inability, the impossibility to predict with any element of certainty exactly when we will finish. We are working very hard on bills with the House of Representatives. Once those reports are addressed in the House, they can come here. Until that time, we continue to work to see that will occur in an expeditious way. It is the nature of the business. I am appreciative of everyone's assistance.

#### REFLECTIONS ON HANUKKAH

Mr. FRIST. Mr. President, a very brief comment on this time of year, with a few reflections on a very special time—Hanukkah.

Earlier this year, I had the opportunity, once again, to visit the State of Israel. I say without reserve, the land of Israel touches my soul. It does so when you are there and you have that opportunity to visit the Old City, to visit the Western Wall.

I took the opportunity to meet with Israelis from all walks of life, visiting several of the hospitals there, and visiting my professional colleagues in medicine. I came to appreciate even more deeply the 4,000 years of distinct and vibrant Jewish culture, as well as the Jewish people's hopeful triumph over adversity and persecution.

So now, as Jews all over the world begin to prepare for the celebration of Hanukkah, which this year begins on December 25, I invite my colleagues to reflect on its meaning and its relevance to the continuity of Jewish culture and survival.

The First Book of Maccabees, a venerated ancient text, tells the story of a revolt against a tyrant, the King Antiochus. King Antiochus was a tyrant, a cruel leader, who attempted to outlaw the practice of Judaism, to forbid the study of Torah, and to compel, to force the worship of idols.

Joined by corrupt politicians in the land of Judea, he succeeded for a time. Eventually, however, a popular uprising, led by a group who called themselves the Maccabees—and that translates into “hammer”—expelled his forces and reclaimed the Temple that became the center of the Jewish faith.

Upon entering the desecrated Temple, Jewish soldiers and priests discovered that the eternal flame within had extinguished. The last stores of oil, those last little bits of oil, would only keep the lamp lit for a single day.

They lit the lamp with the oil that was left, and then something miraculous happened. According to the ancient writings, instead of burning

down, the lamp oil continually filled and refilled and refilled, and the light in the Temple burned for 8 full days.

One can think of this story of faith and perseverance as truly emblematic of the Jewish journey. Just as, by God's grace, the lamp was continually filled, continually replenished, so, too, has the Jewish culture continued to thrive.

In honor of the rededication of the Temple and the Miracle of the Lights, Jews all over the world celebrate Hanukkah by lighting a Menorah and drawing their families close.

Children play games and exchange gifts and, as every Jewish family knows, potato latkes and donuts cooked in oil are holiday favorites.

As those of us who are Christian celebrate the birth of Jesus this Christmas, let us also reflect on the story of Hanukkah and the ways in which the Almighty touches our daily lives.

I do wish my fellow Americans of the Jewish faith a happy Hanukkah and a safe, prosperous holiday season.

#### ADJOURNMENT UNTIL TOMORROW AT 6 P.M.

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:55 p.m., adjourned until Sunday, December 18, 2005, at 6 p.m.

#### CONFIRMATIONS

Executive nominations confirmed by the Senate Saturday, December 17, 2005:

##### ENVIRONMENTAL PROTECTION AGENCY

SUSAN P. BODINE, OF MARYLAND, TO BE ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE, ENVIRONMENTAL PROTECTION AGENCY.

##### DEPARTMENT OF COMMERCE

SANTANU K. BARUAH, OF OREGON, TO BE ASSISTANT SECRETARY OF COMMERCE FOR ECONOMIC DEVELOPMENT.

##### DEPARTMENT OF HEALTH AND HUMAN SERVICES

JOHN O. AGWUNOBI, OF FLORIDA, TO BE AN ASSISTANT SECRETARY OF HEALTH AND HUMAN SERVICES.

JOHN O. AGWUNOBI, OF FLORIDA, TO BE MEDICAL DIRECTOR IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE, SUBJECT TO THE QUALIFICATIONS THEREFORE AS PROVIDED BY LAW AND REGULATIONS.

##### NATIONAL TRANSPORTATION SAFETY BOARD

MARK V. ROSENKER, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL TRANSPORTATION SAFETY BOARD FOR A TERM EXPIRING DECEMBER 31, 2010.

KATHRYN HIGGINS, OF SOUTH DAKOTA, TO BE A MEMBER OF THE NATIONAL TRANSPORTATION SAFETY BOARD FOR A TERM EXPIRING DECEMBER 31, 2009.

##### DEPARTMENT OF ENERGY

JEFFREY D. JARRETT, OF PENNSYLVANIA, TO BE AN ASSISTANT SECRETARY OF ENERGY (FOSSIL ENERGY).

##### EXECUTIVE OFFICE OF THE PRESIDENT

DALE W. MEYERROSE, OF INDIANA, TO BE CHIEF INFORMATION OFFICER, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE.

##### FEDERAL TRADE COMMISSION

WILLIAM E. KOVACIC, OF VIRGINIA, TO BE A FEDERAL TRADE COMMISSIONER FOR A TERM OF SEVEN YEARS FROM SEPTEMBER 26, 2004.

J. THOMAS ROSCH, OF CALIFORNIA, TO BE A FEDERAL TRADE COMMISSIONER FOR THE TERM OF SEVEN YEARS FROM SEPTEMBER 26, 2005.

##### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

BRUCE COLE, OF INDIANA, TO BE CHAIRPERSON OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES FOR A TERM OF FOUR YEARS.

##### MERIT SYSTEMS PROTECTION BOARD

MARY M. ROSE, OF NORTH CAROLINA, TO BE A MEMBER OF THE MERIT SYSTEMS PROTECTION BOARD FOR THE TERM OF SEVEN YEARS EXPIRING MARCH 1, 2011.

##### DEPARTMENT OF HOMELAND SECURITY

GEORGE W. FORESMAN, OF VIRGINIA, TO BE UNDER SECRETARY FOR PREPAREDNESS, DEPARTMENT OF HOMELAND SECURITY.

##### IN THE COAST GUARD

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES COAST GUARD RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be rear admiral (lower half)*

CAPT. MICHAEL R. SEWARD

##### DEPARTMENT OF COMMERCE

DAVID STEELE BOHIGIAN, OF MISSOURI, TO BE AN ASSISTANT SECRETARY OF COMMERCE.

##### DEPARTMENT OF THE TREASURY

ANTONIO FRATTO, OF PENNSYLVANIA, TO BE AN ASSISTANT SECRETARY OF THE TREASURY.

##### DEPARTMENT OF COMMERCE

DAVID M. SPOONER, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF COMMERCE.

##### EXECUTIVE OFFICE OF THE PRESIDENT

RICHARD T. CROWDER, OF VIRGINIA, TO BE CHIEF AGRICULTURAL NEGOTIATOR, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

##### DEPARTMENT OF JUSTICE

CATHERINE LUCILLE HANAWAY, OF MISSOURI, TO BE UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF MISSOURI FOR THE TERM OF FOUR YEARS.

##### DEPARTMENT OF EDUCATION

STEPHANIE JOHNSON MONROE, OF VIRGINIA, TO BE ASSISTANT SECRETARY FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION.

##### UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

DONALD A. GAMBATESA, OF VIRGINIA, TO BE INSPECTOR GENERAL, UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT.

##### DEPARTMENT OF STATE

MARILYN WARE, OF PENNSYLVANIA, TO BE AMBASSADOR TO FINLAND.

##### IN THE COAST GUARD

COAST GUARD NOMINATION OF JAMES R. MONTGOMERY TO BE CAPTAIN.

COAST GUARD NOMINATION OF RICHARD E. PETHERBRIDGE TO BE COMMANDER.

COAST GUARD NOMINATIONS BEGINNING WITH BENES Z. ALDANA AND ENDING WITH MICHAEL L. WOOLARD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON DECEMBER 14, 2005.

COAST GUARD NOMINATIONS BEGINNING WITH STEPHEN ADLER AND ENDING WITH PETER E. ZOHIMSKY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON DECEMBER 14, 2005.