

NATIONAL BANKRUPTCY CONFERENCE

*A Voluntary Organization Composed of Persons Interested in the
Improvement of the Bankruptcy Code and Its Administration*

December 13, 2005

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By Fax Transmission

Honorable F. James Sensenbrenner, Jr.
Chairman, House Judiciary Committee
House of Representatives
Washington, D.C. 20515

Honorable Robert F. Bennett
Chairman, Subcommittee on Financial Institutions
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

Re: Proposed Amendments to Bankruptcy Code's Sections on Financial
Contracts

Dear Chairman Sensenbrenner and Chairman Bennett:

The National Bankruptcy Conference¹ has studied the proposed amendments to various Bankruptcy Code sections involving financial contracts. We understand that these amendments have been proposed by the Bond Market Association.

The Conference believes that the special protections that the Bankruptcy Code provides for financial contracts are justified by the need to protect the financial markets, where billions of dollars of transactions occur every day, and where the inability of a financial market participant to close out a position with a counterparty that files bankruptcy could have a damaging ripple effect in the markets. In general, the Conference supports those protections.

However, we have concerns about three particular provisions in the proposed amendments:

- The amendment to the definition of "corporation" is dangerous and probably unnecessary. The amendment could expand bankruptcy court jurisdiction to encompass the bankruptcy of trusts created under probate estates. If there is a particular problem related to financial contracts that needs to be addressed, there may be a less harmful way to address it, and we would support exploring such a solution.

¹ The National Bankruptcy Conference is a voluntary, non-profit, self-supporting organization of about sixty-five lawyers, law teachers and bankruptcy judges who are leading scholars and practitioners in the field of bankruptcy law. Its primary purpose is to advise Congress on the operation of bankruptcy and related laws and any proposed changes to those laws. The Conference has been working cooperatively with Congress on bankruptcy legislation since the 1930's.

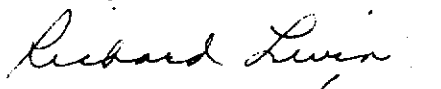
- We do not think that the amendment to insert "(domestic or foreign)" in numerous definitions is necessary. In any event, it is better done by: (i) deleting the phrase from the definition of "financial institution," where it stands alone and is the source of an apparent negative implication concern; and (ii) putting it in the definitions of "entity" and "person," so that it applies generally.

- The change in the definition of "stockbroker" to "entity" makes no sense, because probate estates, non-business trusts and governmental entities do not act as brokers or dealers in securities for the general public or for the account of others. Even if they did, this amendment could have an adverse effect on the interpretation of section 109: Would a "non-person" stockbroker thereby become eligible for chapter 7, even though a governmental unit is generally only eligible for chapter 9; would a non-business trust or estate be eligible for chapter 7 even though neither is generally eligible? Again, if there is a financial contracts reason for this amendment, there may a less harmful way to address it, and we would support exploring such a solution.

We are concerned that we may not have captured all of the possible ramifications of this proposed legislation, given the lack of public discussion of the amendments. These are exceedingly complicated provisions of the Bankruptcy Code, which are not well understood. As a result, we believe that adoption of the amendments at the end of this Session of Congress would be premature and unwise. We would not oppose consideration of these proposals in the next Session to allow a full vetting of the provisions and their consequences, and we would welcome an opportunity to share our more considered views with your respective Committees then.

With best regards.

Sincerely,


Richard Levin
Vice Chair

cc: Honorable Chris Cannon
Honorable John Conyers, Jr.
Honorable Melvin L. Watt
Honorable Arlen Specter
Honorable Patrick J. Leahy
Honorable Jeff Sessions
Honorable Charles E. Schumer