

# NATIONAL BANKRUPTCY CONFERENCE

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

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June 16, 2005

## By E-mail

Susan Jensen, Counsel  
Commercial and Administrative Law Subcommittee  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

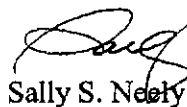
Re: Proposed Bennett Amendments to Title IX,  
Financial Contract Provisions, S. 256

Dear Susan:

Please find attached the Report of the Capital Markets Committee regarding the proposed Bennett Amendments to Title IX, Financial Contract Provisions, of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This Report has been approved and adopted by the National Bankruptcy Conference ("NBC").<sup>1</sup> As reflected in the Report, the NBC opposes only one provision of the proposed Bennett Amendments: Rider 105A, which would add a new subparagraph (d) to section 553 of the Bankruptcy Code.

If you have any questions about the Report or the position of the NBC, please contact Richard Levin, Vice Chair of the NBC, or me; our contact information is below.

Sincerely



Sally S. Neely  
Co-Chair of the Legislation Committee  
National Bankruptcy Conference

## Attachments

cc: Harold Kim (by e-mail)

<sup>1</sup> The National Bankruptcy Conference is a voluntary, non-profit, self-supporting, non-partisan group of 58 judges, law professors and practicing lawyers that has been working with Congress on bankruptcy legislation since the 1930's. Our members are all recognized experts in bankruptcy law and procedure who are committed to the improvement and integrity of the bankruptcy system.

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R. PATRICK VANCE

MEMORANDUM

To: Don Bernstein, Chair, National Bankruptcy Conference  
Rich Levin, Vice Chair

From: Capital Markets Committee

Date: May 17, 2005

Re: Proposed Bennett Amendments to Title IX, Financial Contract Provisions,  
S. 256

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This memorandum responds to the proposed Bennett Amendments to Title IX, Financial Contract Provisions, S. 256,<sup>1</sup> since enacted into law and signed by the President in April 2005. The Committee does not have any objections to the proposed amendments, save for Rider 105A.

Rider 105A would add a new subparagraph (4) to subsection (n) of section 907 of Title IX of S. 256. Section 907 sets out "Bankruptcy Law Amendments." Subsection (n) amends section 553 of the Bankruptcy Code. The first three subparagraphs of subsection (n) amend section 553 to incorporate the special financial contracts provisions enacted by other parts of Title IX. Rider 105A, however, would add a new subparagraph (d) to section 553 of the Bankruptcy Code, to read as follows:

(d) Debts and claims will not be considered as lacking mutuality as a result of such debts or claims being held through one or more securities clearing systems, securities intermediaries, or securities depositories (or nominees thereof), notwithstanding any otherwise applicable nonbankruptcy law to the contrary.

This rider appears to have been proposed to address some troubling trial court decisions out of the state of New York<sup>2</sup> holding that the beneficial holder of

<sup>1</sup> A copy of the proposed Bennett Amendments is attached to this memorandum.

<sup>2</sup> The cases are as follows: *MacKay Shields, LLC v. Sea Containers, Ltd.*, 300 A.D.2d 165, 751 N.Y.S.2d 485 (App. Division, 1st Dept., Dec. 19, 2002); *Oaktree Capital Management, LLC v. DGS Int'l Finance Co., B.V.*, slip op., Index No. 602881/02 (N.Y. Sup.Ct., April 11, 2003); see also *Friedman v. Airlift Int'l, Inc.*, 44 A.D.2d 459, 355 N.Y.S.2d 613 (App. Div., 1st Dept., May 23, 1974)(beneficial holder has standing). Copies of same are attached to this memorandum.

bonds held through an intermediary does not have standing to bring suit to enforce the bonds. It has been suggested that, as a consequence, the beneficial holder may not be viewed as the creditor with respect to such bonds for purposes of satisfying the mutuality test for assertion of setoff rights. We are not aware of any case in which this issue has been considered.

Section 553(a) states as a matter of congressional policy that

this title [i.e., title 11] does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case ...

11 U.S.C. § 553(a). The section then goes on to describe certain circumstances in which, as a matter of federal bankruptcy policy, those pre-existing nonbankruptcy setoff rights may be limited. Except for those narrow exceptions, the settled rule announced in the Bankruptcy Code is that setoff rights are a matter of state law and that the development of those rights is left to the states.

The proposed rider, however, expands setoff rights in the bankruptcy context beyond what they might otherwise be under nonbankruptcy law. It is designed to override state law rules that affect mutuality, but only if, as and when the setoff right is asserted in the context of a bankruptcy. As a result, it may give greater setoff rights to a given creditor inside bankruptcy than that same creditor might otherwise have had in a given state, had bankruptcy never been filed. Creditor setoff rights are traditionally matters left to the states. Conferring additional creditor setoff rights available only in bankruptcy, beyond those available in a given state, creates an incentive for a given creditor that might not have certain rights under state law to try to drive the debtor into bankruptcy in order to have those additional rights. Rider 105A should not be adopted for the foregoing reasons.

As already noted, the Committee does not have an objection to the remainder of the proposed Bennett Amendments.

February 28, 2005

PROPOSED TECHNICAL AMENDMENTS TO TITLE IX OF S. 256 (FINANCIAL  
CONTRACT PROVISIONS)

1. On page 314, line 14, strike "or".

On page 315, line 3, insert "(whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement" as defined in Section 11(e)(8)(D)(v))" after "option" and before the semicolon.

On page 315, line 15, insert "(including by novation)" after "guarantee" and before "by".

On page 316, line 3, insert "(whether or not such settlement is in connection with any agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), (X), or (XI))" after "option" and before the semicolon.

On page 316, line 4, insert as a new line after the semicolon

"(VI) any extension of credit for the clearance or settlement of securities transactions;

"(VII) any collar/loan transaction related to securities, prepaid forward transaction related to securities, or sale/total return swap transaction related to securities;".

On page 316, line 5, strike "(VI)" and replace with "(VIII)".

On page 316, line 9, strike "(VII)" and replace with "(IX)".

On page 316, line 12, strike "(VIII)" and replace with "(X)".

On page 316, line 15, strike "(IX)" and replace with "(XI)".

On page 316, line 19, insert "(IX), or (X)" after "(VIII)," and before "together".

On page 317, line 6, strike "or" and insert ",(IX), or (X)" before the semicolon.

On page 317, line 7, replace "(X)" with "(XII)".

On page 327, lines 3 through 4, strike "transaction," and replace with "or", and insert "(whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement" as defined in Section 11(e)(8)(D)(v))" after "transaction" and before the comma.

On page 381, line 8, strike "(ii)" and replace with "(iv)" and insert "(iii) by striking "repurchase transaction, reverse repurchase transaction," and inserting "repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement" as defined in Section 101)" as a new line before "(iv)".

On page 381, line 11, strike "(iii)" and replace with "(v)".

On page 389, line 25, strike "or" and replace with a ",".

On page 390, line 12, insert "(whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement" as defined in Section 101)", after "option" and before the semicolon.

On page 390, line 16, insert "(including by novation)", after "guarantee" and before "by".

On page 391, line 2, insert "(whether or not such settlement is in connection with any agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), or (x))" after "option" and before the semicolon.

On page 391, line 3, insert as a new line after the semicolon

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

"(vi) any collar/loan transaction related to securities, prepaid forward transaction related to securities, or sale/total return swap transaction related to securities;".

On page 391, line 4, strike "(v)" and replace with "(vii)".

On page 391, line 8, strike "(vi)" and replace with "(viii)".

On page 391, line 11, strike "(vii)" and replace with "(ix)".

On page 391, line 14, strike "(viii)" and replace with "(x)".

On page 391, line 17, strike "or" and insert "(viii), or (ix)" after "(vii)," and before "together".

On page 392, line 3, strike "or" and insert ", (viii), or (ix)" before the semicolon.

On page 392, line 4, replace "(ix)" with "(xi)".

These amendments would make the following changes to the definition of securities contract in the FDIA and the Bankruptcy Code:

First, the inclusion of securities clearing agency novations would be expressly included in the statutory definition of "securities contract" (rather than relying on conference report language) and guarantees and novations by a securities clearing agency of any settlement of cash or securities, whether or not in connection with the enumerated transactions, would be expressly included in the definition.

Second, the relationship between the defined term "repurchase agreement" and the terms repurchase and reverse repurchase "transactions" would be set forth in the statute (rather than relying on conference report language).

Third, the word "or" would be deleted on line 14 on page 314 and line 25 on page 389 to make clear that "group or index" applies to securities, certificates of deposit and mortgage loans.

Fourth, the amendments would add "extensions of credit for the clearance or settlement of securities transactions". Such extensions of credit are critical to the functioning of the securities

markets and directly implicate the systemic risk issues intended to be addressed by the safe harbors.

Fifth, they would add “collar/loan transactions related to securities, prepaid forward transactions related to securities, or sale/total return swap transactions related to securities” to confirm that “similar agreements” already covered by the definition of securities contract include these transactions which are functionally similar to other enumerated transactions in the definition, even though their form might differ. The common thread of these securities transactions is that they involve market intermediaries – stockbrokers, financial institutions, financial participants or securities clearing agencies – that often repledge securities collateral, hedge their risk in the transactions through other market transactions, or both. As such these transactions implicate the systemic risk concerns that are addressed by the safe harbors.

These amendments are important to provide legal certainty to financial market counterparties. This has taken on increasing importance in light of Basle II (and its application, through consolidated supervised entity regulation by the SEC, to major broker-dealer groups) and could provide important capital benefits to U.S. regulated entities, improving their ability to compete globally.

2. On page 338, line 1, strike “or” and replace with “,” and insert “or other commodity” after “metals”.

On page 338, lines 12 through 13, strike “weather derivative, or weather option” and replace with “option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement”.

On page 338, line 20, insert “or other derivatives” after “swap” and before “markets”.

On page 338, line 24, strike the first “or” and insert “, or spot transaction” after “option” and before “on”.

On page 386, line 8, strike “or” and replace with “,” and insert “or other commodity” after “metals”.

On page 386, lines 23 through 24, strike “weather derivative, or weather option” and replace with “option, future, or forward agreement;

“(LX) an emissions swap, option, future, or forward agreement; or

“(X) an inflation swap, option, future, or forward agreement”.

On page 387, line 8, insert “or other derivatives” after “swap” and before “markets”.

On page 387, line 12, strike the first “or” and replace with a “,” and insert “, or spot transaction” after “option” and before “on”.

These would amend the definitions of "swap agreement" in the FDIA and the Bankruptcy Code.

The definition of "swap agreement" adopted in the Bankruptcy Code in 1990 includes various types of interest rate derivatives, currency derivatives and commodity derivatives. This was the known universe of privately negotiated derivatives at that time. The proposal negotiated with the President's Working Group in 1996 expanded the list to include equity derivatives, credit derivatives and weather derivatives. These were the main types of new derivatives that developed between 1990 and 1996. The proposed amendments would add to the items specified emissions derivatives and inflation derivatives. These are the main types of new derivatives that have developed since 1996.

The swap agreement amendments adopted in 1990 included the phrase "or any other similar agreement" in order to make the definition a flexible mechanism that would include new types of transactions developed over time. This phrase was replaced in the 1996 provisions agreed with the President's Working Group by a longer clause intended to offer more guidance in determining when new derivatives should be included under the definition of "swap agreement". This clause includes any similar agreement or transaction "that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets...." The proposed amendments would change "swap markets" to "swap or other derivatives markets" in order to avoid any suggestion that new developments are limited to transactions that are technically swaps as opposed to other types of derivatives, such as options.

The addition of "or spot transaction" in the provision regarding "similar agreements" is a technical correction intended to refer to spot transactions that are similar to the spot transactions already enumerated in the definition of "swap agreement".

The definition of "swap agreement" would be amended to include "spot" commodities transactions. The bill already expressly includes spot and next-day foreign exchange and precious metals transactions. Other commodities, such as oil and gas, are traded in the financial markets on a spot and next-day basis, as well as on a further forward basis. Often payment follows delivery by some substantial period of time. The conference report would make clear that ordinary sale-of-goods contracts would not be encompassed by this change.

3. On page 370, line 11, insert "AND DEFINITION OF PERSON" after "AGREEMENTS" and before the period.

On page 370, line 13, insert "(i)" before "Section".

On page 371, line 7, insert as a new line

"(ii) Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended by adding the following subclause (8)(D)(ix):

"(ix) For purposes of this subsection, "person" shall include any governmental entity and any entity set forth in the definition of "person" in 1 U.S.C. 1."



This relates to the definition of "person" as used in Section 11(e) of the FDIA and takes language from the conference report and places it in the statute, with a clarification that the term "person" as used in Section 11(e) of the FDIA includes governmental entities.

4. On page 374, lines 20 through 21, strike "paragraphs (8)(E), (8)(F), and (10)(B) of".

On page 375, line 3, insert "terminated, liquidated, accelerated and", after "be" and before "netted".

On page 376, lines 4 through 5, strike "paragraphs (8)(E), (8)(F), and (10)(B) of".

On page 376, line 13, insert "terminated, liquidated, accelerated and", after "be" and before "netted".

These amendments to FDICIA confirm what is currently implicit in the conference report to the bill, namely, that a financial institution counterparty to a "netting contract" can terminate, accelerate and liquidate transactions thereunder as part of the "netting" process, and conform the language of FDICIA to the similar language in Section 11(e)(8) of the FDIA and Sections 555, 556, 559, 560 and new 561 of the Bankruptcy Code. The bill is also changed to provide that all of the provisions of Section 11(e) of the FDIA override FDICIA, and not just certain paragraphs of that Section.

5. On page 380, line 22, strike "LAW" and replace with "CODE".

This corrects a typographical error.

6. On page 381, line 7, insert as a new line "(ii) by inserting "as defined in Section 761 of this title" after "commodity contract";.

This clarifies a cross reference in the definition of forward contract by making clear that "commodity contract" has the meaning set forth in Section 761 of the Bankruptcy Code.

7. On page 394, line 24, insert "(whether or not a "customer" as defined in Section 741)" after "customer" and before "in".

This confirms that a "customer" of a financial institution does not have to be a "customer" as defined in the stockbroker liquidation provisions of the Bankruptcy Code.

8. On page 395, line 20, insert "at such time or" after "outstanding" and before "on".

On page 395, line 21, strike "previous" and insert "prior to the commencement of the case" after "period" and before the comma.

On page 396, line 1, insert "at such time or" after "(other than an affiliate)" and before "on".

On page 396, line 2, strike "previous" and insert "prior to the commencement of the case" after "period" and before the semicolon.

This relates to the definition of "financial participant" in the Bankruptcy Code and takes language from the conference report and places it in the statute. The addition of the language "at such time or" is a technical correction to cross-refer accurately to the times at which criteria for the dollar value of agreements or transactions are to be measured.

9. On page 394, line 10, strike "AND".

On page 394, line 11, insert ", COMMODITY BROKER, CORPORATION, REPO PARTICIPANT, STOCKBROKER AND SWAP PARTICIPANT" after "MERCHANT" and before the period.

On page 396, line 5, strike "and"

On page 395, line 10, insert "(domestic or foreign)" after "entity" and before "that".

On page 396, line 9, insert "(domestic or foreign)" after "entity" and before "the".

On page 396, line 15, insert before the period

"(4) by inserting in paragraph (6) after "means", the following: ", whether domestic or foreign,";

(5) by inserting in paragraph (9) the following after "business trust":

"(and for purposes of Section 109, any trust that enters into one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a) shall be deemed to be a business trust)";

(6) by inserting in paragraph (46) after "entity" the following: "(domestic or foreign)";

(7) by striking in paragraph (53A) "person" and replacing it with "entity (domestic or foreign)" and striking "person's" and replacing it with "entity's"; and

(8) by inserting in paragraph (53C) after "entity" the following: "(domestic or foreign)"."

On page 397, line 17, insert "(domestic or foreign)" after "entity" and before "that".

The amendments to the Bankruptcy Code definitions of the protected counterparties to include "domestic or foreign" entities eliminate any negative implication that only domestic counterparties are encompassed by the definitions, by conforming the use of the phrase "entity

(domestic or foreign)” to the same phrase in the current definition of “financial institution” in the Bankruptcy Code.

The amendment to the Bankruptcy Code definition of “corporation” provides for greater legal certainty for financial market counterparties to trusts that enter into securities contracts, commodity contracts, forward contracts, repurchase agreements or swap agreements, by making clear that such trusts are deemed to be business trusts eligible to be debtors under the Bankruptcy Code. Many trusts are substantial financial markets participants and it is often not clear under current law that they are eligible to be Bankruptcy Code debtors.

10. On page 397, line 17, strike “the date of”.

This change to the Bankruptcy Code definition of “master netting agreement participant” conforms the bill to H.R. 10, and the analogous definitions of “repo participant” and “swap participant”.

11. On page 398, strike lines 4 through 6 after “(A)” and replace with “by striking paragraph (6) 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;”.

On page 398, strike lines 7 through 9 after “(B)” and replace with “by striking paragraph (7) and inserting the following:

“(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;”.

On page 398, strike lines 12 through 25 after “(17)” and before the semicolon and replace with

“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 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;”.

On page 399, strike lines 3 to 20 after “(27)” and replace with

“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 any contract or agreement subject to such 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 or contracts or agreements subject thereto”.

On page 399, line 22, strike “offset”.

On page 412, strike lines 12 through 14 after the “(1)”.

On page 412, line 15, strike “(2)” and strike “sections 362(b)(7) and” and insert “section” after “in”.

On page 412, line 18, strike “(3)” and replace with “(2)”.

On page 412, line 20, strike “(4)” and replace with “(3)”.

On page 412, line 22, strike “(5)” and replace with “(4)”.

On page 412, line 24, strike “(6)” and replace with “(5)”.

On page 413, line 1, strike “(7)” and replace with “(6)”.

On page 413, line 23, strike “(8)” and replace with “(7)”.

On page 414, line 1, strike “(9)” and replace with “(8)”.

On page 414, line 4, strike “(10)” and replace with “(9)”.

These changes are intended to bring into the Bankruptcy Code what was previously in the conference report and to conform the language to the similar provisions of Section 11(e)(8) of the FDIA. These amendments will provide legal certainty as to the coverage in the safe harbors of all self-help remedial actions, free from the automatic stay. In particular, the changes would confirm that the automatic stay does not apply to foreclosure on collateral for protected contracts, exercise of rights in connection with title transfer arrangements and offset of obligations against collateral posted. The rights protected are “contractual rights” as defined in Sections 555, 556, 559 and 560.

12. On page 400, line 12, insert after “amended-”

“(1) in subsection (e), by inserting “(or for the benefit of)” before “a commodity broker” and 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, in each case,” after “securities clearing agency,”;

(2) in subsection (f), by striking “that is a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title,” and inserting “(or for the benefit of)” before “a repo participant”;

On page 400, line 13, strike “(1)” and replace with “(3)”.

On page 400, line 18, strike “and”.

On page 400, line 20, insert “(D) by inserting “(or for the benefit of)” before “a swap participant”,” after the semicolon and before “and”.

On page 400, line 21, strike “(2)” and replace with “(4)”.

On page 400, line 24, insert “(or for the benefit of)” after “by or to” and before “a master”.

These amendments conform Bankruptcy Code Sections 546(e) and (f) to Section 546(g) by making clear that all transfers in connection with protected contracts are covered by the safe harbors (except post-petition transfers or those made with actual fraudulent intent). This will confirm the application of the safe harbors to pledges of receivables. The addition of “for the benefit of” language in 546(e), (f), (g) and new 546(j) is intended to confirm that transfers to letter of credit banks for the benefit of a protected counterparty have the benefit of the safe harbors.

13. On page 412, line 5, strike “and”.

On page 412, line 8, insert after “561,”:

“; and

(4) by inserting a new subsection 553(d):

“(d) Debts and claims will not be considered as lacking mutuality as a result of such debts or claims being held through one or more securities clearing systems, securities intermediaries, or securities depositories (or nominees thereof), notwithstanding any otherwise applicable nonbankruptcy law to the contrary.”.

This makes clear that obligations held through securities intermediaries or depositories for beneficial holders would not be viewed as lacking mutuality for setoff purposes under the Bankruptcy Code on account of such holding mechanism.

14. On page 421, strike lines 8 through 14, after "bylaw of" and until the first comma in line 14 and replace with "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), a national securities exchange, a national securities association, 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), or in a resolution of the governing board thereof".

This conforms the definition of "contractual right" in the Securities Investor Protection Act to the provisions of the Bankruptcy Code.

15. On page 421, line 17, add the following:

**"SEC. 912. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

(a) **EFFECTIVE DATE.** – This title shall take effect on the date of enactment of the Act.

(b) **APPLICATION OF AMENDMENTS.** – The amendments made by this title and Section 502 shall apply with respect to cases commenced or appointments made under any Federal or State law on or after the date of enactment of this Act, but shall not apply with respect to cases commenced or appointments made under any Federal or State law before the date of enactment of this Act.

**SEC. 913. 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."

This inserts an effective date and savings clause provision that was contained in H.R. 10. There is no reason to delay the effectiveness of the financial contract provisions of S. 256, and the provision makes clear that it only applies to bankruptcy or insolvency proceedings commenced after the effective date of the bill. The savings clause provision was originally included in the predecessor to H.R. 10 at the request of the President's Working Group, and makes clear that the Bankruptcy Code definitions have no bearing on other statutes.