

SUBCHAPTER I—BILATERAL AND
CLEARING ORGANIZATION NETTING

§ 4401. Findings and purpose

The Congress finds that—

(1) many financial institutions engage daily in thousands of transactions with other financial institutions directly and through clearing organizations;

(2) the efficient processing of such transactions is essential to a smoothly functioning economy;

(3) such transactions can be processed most efficiently if, consistent with applicable contractual terms, obligations among financial institutions are netted;

(4) such netting procedures would reduce the systemic risk within the banking system and financial markets; and

(5) the effectiveness of such netting procedures can be assured only if they are recognized as valid and legally binding in the event of the closing of a financial institution participating in the netting procedures.

(Pub. L. 102-242, title IV, §401, Dec. 19, 1991, 105 Stat. 2371.)

SEPARABILITY

If any provision of Pub. L. 102-242 or any application of any provision thereof to any person or circumstance is held invalid, the remainder of Pub. L. 102-242 and the application of any remaining provision of such Act to any other person or circumstance not to be affected by such holding, see section 481 of Pub. L. 102-242, set out as a note under section 1811 of this title.

§ 4402. Definitions

For purposes of this subchapter—

(1) Broker or dealer

The term “broker or dealer” means—

(A) any company that is registered or licensed under Federal or State law to engage in the business of brokering, underwriting, or dealing in securities in the United States; and

(B) to the extent consistent with this title,¹ as determined by the Board of Governors of the Federal Reserve System, any company that is an affiliate of a company described in subparagraph (A) and that is engaged in the business of entering into netting contracts.

(2) Clearing organization

The term “clearing organization” means a clearinghouse, clearing association, clearing corporation, or similar organization—

(A) that provides clearing, netting, or settlement services for its members and—

(i) in which all members other than the clearing organization itself are financial institutions or other clearing organizations; or

(ii) which is registered as a clearing agency under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or is exempt from such registration by order of the Securities and Exchange Commission; or

(B) that is registered as a derivatives clearing organization under section 7a-1 of title 7, that has been granted an exemption under section 6(c)(1) of title 7, or that is a multilateral clearing organization (as defined in section 4421¹ of this title).

(3) Covered clearing obligation

The term “covered clearing obligation” means an obligation of a member of a clearing organization to make payment to another member of a clearing organization, subject to a netting contract.

(4) Covered contractual payment entitlement

The term “covered contractual payment entitlement” means—

(A) an entitlement of a financial institution to receive a payment, subject to a netting contract from another financial institution; and

(B) an entitlement of a member of a clearing organization to receive payment, subject to a netting contract, from another member of a clearing organization of a covered clearing obligation.

(5) Covered contractual payment obligation

The term “covered contractual payment obligation” means—

(A) an obligation of a financial institution to make payment, subject to a netting contract to another financial institution; and

(B) a covered clearing obligation.

(6) Depository institution

The term “depository institution” means—

(A) a depository institution as defined in section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)(1)(A)] (other than clause (vii));

(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 1815 of this title;

(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978 [12 U.S.C. 3101];

(D) a corporation chartered under section 25(a)¹ of the Federal Reserve Act [12 U.S.C. 611 et seq.]; or

(E) a corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.].

(7) Failed financial institution

The term “failed financial institution” means a financial institution that—

(A) fails to satisfy a covered contractual payment obligation when due;

(B) has commenced or had commenced against it insolvency, liquidation, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings; or

(C) has generally ceased to meet its obligations when due.

¹ See References in Text note below.