

Oct. 28, 1992, 106 Stat. 4087; Pub. L. 106-554, §1(a)(5) [title I, §§112(a)(2), 123(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-391, 2763A-411; Pub. L. 109-8, title IX, §906(a), Apr. 20, 2005, 119 Stat. 167.)

Editorial Notes

REFERENCES IN TEXT

This title, referred to in par. (1)(B), means title IV of Pub. L. 102-242, Dec. 19, 1991, 105 Stat. 2371. For complete classification of title IV to the Code, see Tables.

The Securities Exchange Act of 1934, referred to in par. (2)(A)(ii), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Section 4421 of this title, referred to in par. (2)(B), was repealed by Pub. L. 111-203, title VII, §740, July 21, 2010, 124 Stat. 1729.

Section 25(a) of the Federal Reserve Act, referred to in par. (6), which is classified to subchapter II (§611 et seq.) of chapter 6 of this title, was renumbered section 25A of that act by Pub. L. 102-242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§601 et seq.) of chapter 6 of this title.

AMENDMENTS

2005—Par. (2)(A)(ii). Pub. L. 109-8, §906(a)(1)(A), inserted before semicolon “, or is exempt from such registration by order of the Securities and Exchange Commission”.

Par. (2)(B). Pub. L. 109-8, §906(a)(1)(B), inserted before period at end “, 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 4421 of this title)”.

Par. (6)(B). Pub. L. 109-8, §906(a)(2)(B), added subpar. (B). Former subpar. (B) redesignated (C).

Par. (6)(C). Pub. L. 109-8, §906(a)(2)(A), (C), redesignated subpar. (B) as (C) and amended it generally. Prior to amendment, subpar. (C) read as follows: “a branch or agency as defined in section 1(b) of the International Banking Act of 1978;”. Former subpar. (C) redesignated (D).

Par. (6)(D), (E). Pub. L. 109-8, §906(a)(2)(A), redesignated subpars. (C) and (D) as (D) and (E), respectively.

Par. (11). Pub. L. 109-8, §906(a)(3), inserted before period at end “and any other clearing organization with which such clearing organization has a netting contract”.

Par. (14)(A)(i). Pub. L. 109-8, §906(a)(4), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “means a contract or agreement between 2 or more financial institutions or members, that—

“(I) is governed by the laws of the United States, any State, or any political subdivision of any State, and

“(II) provides for netting present or future payment obligations or payment entitlements (including liquidation or close-out values relating to the obligations or entitlements) among the parties to the agreement; and”.

Par. (15). Pub. L. 109-8, §906(a)(5), added par. (15).

2000—Pub. L. 106-554, §1(a)(5) [title I, §112(a)(2)], substituted “this subchapter” for “this chapter” in introductory provisions.

Par. (2)(B). Pub. L. 106-554, §1(a)(5) [title I, §123(b)], added subpar. (B) and struck out former subpar. (B) which read as follows: “that performs clearing functions for a contract market designated pursuant to the Commodity Exchange Act.”

1992—Par. (14)(B). Pub. L. 102-550 substituted “Federal law” for “Federal commodities law”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases

commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

§ 4403. Bilateral netting

(a) General rule

Notwithstanding any other provision of State or Federal law (other than section 1821(e) of this title, section 5390(c) of this title, section 4617 of this title, section 1787(c) of this title, or any order authorized under section 78eee(b)(2) of title 15), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be terminated, liquidated, accelerated, and netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11).

(b) Limitation on obligation to make payment

The only obligation, if any, of a financial institution to make payment with respect to covered contractual payment obligations to another financial institution shall be equal to its net obligation to such other financial institution, and no such obligation shall exist if there is no net obligation.

(c) Limitation on right to receive payment

The only right, if any, of a financial institution to receive payments with respect to covered contractual payment entitlements from another financial institution shall be equal to its net entitlement with respect to such other financial institution, and no such right shall exist if there is no net entitlement.

(d) Payment of net entitlement of failed financial institution

The net entitlement of any failed financial institution, if any, shall be paid to the failed financial institution in accordance with, and subject to the conditions of, the applicable netting contract.

(e) Effectiveness notwithstanding status as financial institution

This section shall be given effect notwithstanding that a financial institution is a failed financial institution.

(f) Enforceability of security agreements

The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than section 1821(e) of this title, section 1787(c) of this title, and section 78eee(b)(2) of title 15).

(Pub. L. 102-242, title IV, §403, Dec. 19, 1991, 105 Stat. 2374; Pub. L. 109-8, title IX, §906(b), Apr. 20,

2005, 119 Stat. 168; Pub. L. 109-390, §4(a), Dec. 12, 2006, 120 Stat. 2695; Pub. L. 111-203, title II, §211(c), July 21, 2010, 124 Stat. 1514.)

Editorial Notes

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203 inserted “section 5390(c) of this title, section 4617 of this title,” after “section 1821(e) of this title.”

2006—Subsec. (a). Pub. L. 109-390 struck out “paragraphs (8)(E), (8)(F), and (10)(B) of” before “section 1821(e)” and “section 1787(c)” and inserted “terminated, liquidated, accelerated, and” after “institutions shall be”.

Subsec. (f). Pub. L. 109-390, §4(a)(1), struck out “paragraphs (8)(E), (8)(F), and (10)(B) of” before “section 1821(e)” and “section 1787(c)”.

2005—Subsec. (a). Pub. L. 109-8, §906(b)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “Notwithstanding any other provision of law, the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract.”

Subsec. (f). Pub. L. 109-8, §906(b)(2), added subsec. (f).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-390 not applicable to any cases commenced under Title 11, Bankruptcy, or to appointments made under any Federal or State law, before Dec. 12, 2006, see section 7 of Pub. L. 109-390, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of Title 11.

§ 4404. Clearing organization netting

(a) General rule

Notwithstanding any other provision of State or Federal law (other than section 1821(e) of this title, section 1787(c) of this title, and any order authorized under section 78eee(b)(2) of title 15), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be terminated, liquidated, accelerated, and netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11).

(b) Limitation of obligation to make payment

The only obligation, if any, of a member of a clearing organization to make payment with respect to covered contractual payment obligations arising under a single netting contract to any other member of a clearing organization shall be equal to its net obligation arising under that netting contract, and no such obligation shall exist if there is no net obligation.

(c) Limitation on right to receive payment

The only right, if any, of a member of a clearing organization to receive payment with respect to a covered contractual payment entitlement arising under a single netting contract from other members of a clearing organization shall be equal to its net entitlement arising under that netting contract, and no such right shall exist if there is no net entitlement.

(d) Entitlement of failed members

The net entitlement, if any, of any failed member of a clearing organization shall be paid to the failed member in accordance with, and subject to the conditions of, the applicable netting contract.

(e) Obligations of failed members

The net obligation, if any, of any failed member of a clearing organization shall be determined in accordance with, and subject to the conditions of, the applicable netting contract.

(f) Limitation on claims for entitlement

A failed member of a clearing organization shall have no recognizable claim against any member of a clearing organization for any amount based on such covered contractual payment entitlements other than its net entitlement.

(g) Effectiveness notwithstanding status as member

This section shall be given effect notwithstanding that a member is a failed member.

(h) Enforceability of security agreements

The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than section 1821(e) of this title, section 1787(c) of this title, and section 78eee(b)(2) of title 15).

(Pub. L. 102-242, title IV, §404, Dec. 19, 1991, 105 Stat. 2374; Pub. L. 109-8, title IX, §906(c), Apr. 20, 2005, 119 Stat. 168; Pub. L. 109-390, §4(b), Dec. 12, 2006, 120 Stat. 2695.)

Editorial Notes

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-390 struck out “paragraphs (8)(E), (8)(F), and (10)(B) of” before “section 1821(e)” and “section 1787(c)” and inserted “terminated, liquidated, accelerated, and” after “organization shall be”.

Subsec. (h). Pub. L. 109-390, §4(b)(1), struck out “paragraphs (8)(E), (8)(F), and (10)(B) of” before “section 1821(e)” and “section 1787(c)”.

2005—Subsec. (a). Pub. L. 109-8, §906(c)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “Notwithstanding any other provision of law, the covered contractual payment obligations and covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract.”

Subsec. (h). Pub. L. 109-8, §906(c)(2), added subsec. (h).