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§9–229.1.

(a) (1) In this section the following words have the meanings indicated.

(2) “Commodity contract” means:

(i) a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade designated as a contract market by the Commodity Futures Trading Commission under the federal Commodity Exchange Act or board of trade outside the United States;

(ii) an agreement that is:

1. subject to regulation under § 19 of the federal Commodity Exchange Act; and

2. commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract; or

(iii) an agreement or transaction that is:

1. subject to regulation under § 4c(b) of the federal Commodity Exchange Act; and

2. commonly known to the commodities trade as a commodity option.

(3) “Contractual right” means any right, whether or not evidenced in writing, arising under:

(i) statutory law, common law, or law merchant;

(ii) a rule or bylaw of a national securities exchange, national securities clearing organization, or securities clearing agency; or

(iii) a rule, bylaw, or resolution of the governing body of a contract market or its clearing organization.

(4) “Forward contract” means a contract, other than a commodity contract, for the purchase, sale, or transfer of:

(i) a commodity, as defined in § 1 of the federal Commodity Exchange Act; or

(ii) any similar good, article, service, right, or interest that presently

is or in the future becomes the subject of dealing in the forward contract trade, or a product or by-product thereof, with a maturity date more than 2 days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or a combination of these or an option on any of them.

(5) (i) “Netting agreement” means a contract or agreement, including terms and conditions incorporated by reference in the contract or agreement, that:

1. documents one or more transactions between the parties to the contract or agreement for or involving one or more qualified financial contracts; and

2. provides for the netting or liquidation of qualified financial contracts or the present or future payment obligations or payment entitlements under qualified financial contracts, including liquidation or close-out values relating to the obligations or entitlements, among the parties to the netting agreement.

(ii) “Netting agreement” includes a master agreement that, together with all schedules, confirmations, definitions, and addenda to and transactions under any thereof, shall be treated as one netting agreement.

(6) “Qualified financial contract” means a commodity contract, forward contract, repurchase agreement, reverse repurchase agreement, securities contract, swap agreement, or any similar agreement that the Commissioner determines by regulation or order to be a qualified financial contract for purposes of this subtitle.

(7) (i) “Repurchase agreement” or “reverse repurchase agreement” means an agreement, including related terms, that provides for the transfer of certificates of deposit, eligible bankers’ acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or an agency of the United States against the transfer of funds by the transferee of the certificates of deposit, eligible bankers’ acceptances, or securities with a simultaneous agreement by the transferee to transfer to the transferor certificates of deposit, eligible bankers’ acceptances, or securities as described above in this subparagraph at a certain date not later than 1 year after the transfers or on demand, against the transfer of funds.

(ii) For purposes of the definitions of “repurchase agreement” and “reverse repurchase agreement” in subparagraph (i) of this paragraph, the items that may be subject to a repurchase agreement or a reverse repurchase agreement include mortgage-related securities, a mortgage loan, and an interest in a mortgage loan, and do not include any participation in a commercial mortgage loan unless the Commissioner determines by regulation or order to include the commercial mortgage loan participation.

(8) (i) “Securities contract” means a contract for the purchase, sale, or

loan of a security, including:

1. an option for the repurchase or sale of a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof;

2. an option entered into on a national securities exchange relating to foreign currencies; or

3. the guarantee of a settlement of cash or securities by or to a securities clearing agency.

(ii) In subparagraph (i) of this paragraph, “security” includes a mortgage loan, mortgage–related securities, and an interest in any mortgage loan or mortgage–related security.

(9) “Swap agreement” means an agreement, including the terms and conditions incorporated by reference in the agreement, that is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross–currency rate swap agreement, currency future, currency option, or any other similar agreement, and includes any combination of agreements and an option to enter into an agreement.

(b) Notwithstanding any other provision of State law, a person may not be stayed or otherwise prohibited from exercising:

(1) a contractual right to terminate, liquidate, or close out any netting agreement or qualified financial contract with an insurer because of:

(i) the insolvency, financial condition, or default of the insurer at any time, provided that the right is enforceable under applicable law other than this subtitle; or

(ii) the commencement of a delinquency proceeding under this subtitle;

(2) any right under a pledge, security, collateral, or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract; or

(3) subject to any provision of § 9-229(b) of this subtitle, any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract if the counterparty or its guarantor is organized under the laws of the United States, a state, or a foreign jurisdiction approved by the Securities Valuation Office of the National Association of Insurance Commissioners as eligible for netting.

(c) (1) Notwithstanding a provision in a netting agreement that the nondefaulting party is not required to pay any net or settlement amount due to the defaulting party, on termination of the netting agreement, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under this subtitle, shall be transferred to or on the order of the receiver for the insurer, even if the insurer is the defaulting party.

(2) Any limited two-way payment provision in a netting agreement with an insurer that has defaulted shall be deemed to be a full two-way payment provision as against the defaulting insurer.

(3) Any such net or settlement amount shall be a general asset of the insurer, except to the extent such net or settlement amount is subject to one or more secondary liens or encumbrances.

(d) In making a transfer of a netting agreement or qualified financial contract of an insurer subject to a delinquency proceeding under this subtitle, the receiver shall:

(1) transfer to one party, other than an insurer subject to a delinquency proceeding under this subtitle, all netting agreements and qualified financial contracts between a counterparty or an affiliate of a counterparty and the insurer that is the subject of the delinquency proceeding, including:

(i) all rights and obligations of each party under each netting agreement and qualified financial contract; and

(ii) all property, including any guarantees or credit support documents, securing any claims of each party under each netting agreement and qualified financial contract; or

(2) transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in item (1) of this subsection, with respect to the counterparty and any affiliate of the counterparty.

(e) (1) If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, the receiver shall use its best efforts to notify any person who is party to the netting agreements or qualified financial contracts of the transfer by 12:00 p.m., the receiver's local time, on the business day following the transfer.

(2) In this subsection, "business day" means a day other than a Saturday, a Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(f) (1) Notwithstanding any provision of this subtitle other than paragraph (2) of this subsection, a receiver may not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract, or any pledge, security, collateral, or guarantee agreement or any other similar security

arrangement or credit support document relating to a netting agreement or qualified financial contract, that is made before the commencement of a delinquency proceeding under this subtitle.

(2) A transfer may be avoided under § 9-221 of this subtitle if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

(g) (1) In exercising any of its power under this subtitle to disaffirm or repudiate a netting agreement or qualified financial contract, a receiver shall take action with respect to each netting agreement or qualified financial contract and all transactions entered into in connection with each netting agreement or qualified financial contract, in its entirety.

(2) Notwithstanding any other provision of this subtitle, any claim of a counterparty against the estate arising from a receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or immediately preceding rehabilitation proceeding shall be determined and shall be allowed or disallowed:

(i) as if the claim had arisen before the date of the filing of the petition for liquidation; or

(ii) if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for rehabilitation.

(3) (i) The amount of the claim identified in paragraph (2) of this subsection shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract.

(ii) In subparagraph (i) of this paragraph, "actual direct compensatory damages" does not include punitive or exemplary damages, damages for lost profits or lost opportunity, or damages for pain and suffering, but does include normal and reasonable costs of cover or other reasonable measures of damages used in the derivatives market for the contract and agreement claims.

(h) All rights of counterparties under this subtitle shall apply to netting agreements and qualified financial contracts entered into on behalf of:

(1) the general account; or

(2) separate accounts if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

(i) This section does not apply to a person that is an affiliate of the insurer that

is the subject of a delinquency proceeding under this subtitle.

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