

**COMMITTEE LETTER • ISSUED JOINTLY
WITH INDUSTRY ASSOCIATIONS**
**Supporting the Bankruptcy Provisions of the
Bankruptcy Abuse Prevention and Consumer
Protection Act of 2005**

March 3, 2005

The Honorable Bill Frist
Majority Leader
U.S. Senate

The Honorable Harry Reid
Democratic Leader
U.S. Senate

The undersigned organizations thank you for your leadership in securing favorable passage of the comprehensive bankruptcy reform bill, "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" (S. 256), which includes the Financial Contracts Provisions. These provisions strengthen and clarify the enforceability of early termination and close-out netting provisions and related collateral arrangements in U.S. insolvency proceedings. They have bipartisan support, have passed the House and Senate a number of times without opposition, reflect years of work with the President's Working Group on Financial Markets, and include much needed improvement of the payment risk reduction and netting provisions of the Bankruptcy Code and bank insolvency laws.

The legal uncertainty created by the Bankruptcy Code treatment of financial contracts has resulted in U.S. companies receiving less favorable credit treatment from their trading counterparties than companies that are not subject to the U.S. insolvency laws. The disparate treatment of financial contracts under different insolvency regimes increases risks associated with cross-border insolvencies by providing an incentive for debtors (or their creditors) to initiate insolvency proceedings in different or in multiple jurisdictions. Enactment of these provisions would improve harmonization between U.S. insolvency laws and other jurisdictions such as England, Canada, Australia, France, Germany, and Japan. Additionally, these uncertainties have been a major impediment to the adoption of cross-product netting documentation developed by the industry. Removing these uncertainties will make it easier for providers of credit to ascertain their risks, thereby assisting in providing needed credit to American businesses.

Federal Reserve Chairman Alan Greenspan has testified and submitted letters in favor of the netting provisions for many years, and other federal regulators including the Treasury, FDIC, SEC, and CFTC have supported passage of the netting provisions. **We urge you and**



your Senate colleagues to pass the comprehensive bankruptcy reform measure so that yet another opportunity for enactment of the netting provisions is not missed.

Sincerely,

ABA Securities Association

American Bankers Association

The Bond Market Association

Edison Electric Institute

EMTA (Emerging Markets Traders Association)

The Financial Services Roundtable

The Foreign Exchange Committee

Futures Industry Association

International Swaps and Derivatives Association, Inc.

Investment Company Institute

Managed Funds Association

Securities Industry Association

