

# Bankruptcy in Relation to FTRs

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# FTRs, Futures, Bankruptcy Code

- The Bankruptcy Code (the “Code”) has been designed to permit futures-type contracts, whether traded on an exchange or not, to proceed unhampered by the filing of a bankruptcy by one of the parties thereto.
- The key protections provided by the Code are that
  - if such termination is expressly permitted by the terms of the contract the non-debtor counterparty may terminate the contract upon a bankruptcy filing,
  - the automatic stay will not apply to prevent setoff or the enforcement by the non-debtor counterparty of its rights against any collateral that may be securing the debtor’s obligations under the contract
  - any setoffs that have occurred prior to bankruptcy will not be subject to claw-back provisions
- The applicable Code provisions require that there be a “forward contract,” and that the non-debtor counterparty be a “forward contract merchant.”
- The term “forward contract” is very broadly defined, and, it is believed, should include FTRs
- While somewhat less certain, it is also believed that the “forward contract merchant” requirement may be satisfied, particularly in the wake of changes to the Code in 2005 expanding eligibility requirements

# Benefits of Bankruptcy Protection

- The key protections provided by the Code are that
  - if such termination is expressly permitted by the terms of the contract the non-debtor counterparty may terminate the contract upon a bankruptcy filing,
  - the automatic stay will not apply to prevent setoff or the enforcement by the non-debtor counterparty of its rights against any collateral that may be securing the debtor's obligations under the contract
  - any setoffs that have occurred prior to bankruptcy will not be subject to claw-back provisions

# Necessary Changes to Enhance Bankruptcy Protection

- Define tariff language specifying the following:
  - FTRs are considered “Forward Contracts”
  - ISO-NE is considered a “Forward Contract Merchant” for purposes of the Bankruptcy Code
  - The ISO be provided the right to liquidate FTRs upon cause (default)