

***Statement for the Record***

*On behalf of the*

**American Bankers Association**

*before the*

**Subcommittee on Capital Markets and Government Sponsored Enterprises**

*of the*

**Committee on Financial Services**

**United States House of Representatives**

**Statement for the Record**

*on behalf of*

**American Bankers Association**

*before the*

**Subcommittee on Capital Markets and Government Sponsored Enterprises**

*of the*

**Committee on Financial Services**

**United States House of Representatives**

**October 14, 2011**

Chairman Garrett, Ranking Member Waters, and members of the Subcommittee, the American Bankers Association (ABA) appreciates the opportunity to submit this statement for the record on legislative proposals that would bring certainty to the over-the-counter derivatives market. ABA represents banks of all sizes and charters and is the voice of the nation's \$13 trillion banking industry and its two million employees.

ABA appreciates the efforts of this Committee to ensure that implementation of the derivatives title of the Dodd-Frank Act agrees with the intent of Congress. ABA has consistently supported the objective of increasing transparency and appropriate supervision of credit default swaps and other financial products of systemic importance. Several pieces of legislation being reviewed by the Committee today achieve that goal and also preserve the ability of banks to serve as engines for economic growth and job creation.

The Committee is considering today multiple pieces of legislation that would further define and clarify elements of Title VII of the Dodd-Frank Act including the following:

- H.R. 1838 would repeal Section 716 of the Dodd-Frank Act, which will prohibit swap dealers from receiving various forms of federal assistance including FDIC insurance and access to the Federal Reserve discount window. This provision will essentially require banks that are swap dealers to “push out” many swaps transactions to a nonbank affiliate. ***ABA supports repealing the push-out provision because failing to do so would have a negative impact on bank and bank customer risk management practices and create competitive imbalances between U.S. and foreign banks.***
- H.R. 2779 would exempt inter-affiliate swaps from certain regulatory requirements put in place by the Dodd-Frank Act. ***ABA supports exempting inter-affiliate swaps from many of the anticipated swap regulations, as failing to do so would undermine bank internal risk management procedures and distort market information.***

The remainder of this statement provides more detail on ABA's position on these bills.

### ***ABA Supports Repeal of the Dodd-Frank “Push-Out” Provision***

Banks currently have the ability to centralize risk management for each customer relationship by conducting a customer’s swaps transactions together with that customer’s other transactions. ***In other words, banks can assess the credit risk of the customer and negotiate loan, swap, collateral, and other credit terms as part of a complete package.*** Customers benefit because they can receive more attractive loan terms or a higher credit limit if the bank can net and setoff different exposures from each of the customer’s transactions. ***If the push-out provision is not repealed, bank customers will face higher costs and reduced credit availability.***

Many customers also prefer to have a bank as a swap counterparty because it enables customers to centralize their own risk management of loans and other forms of credit. Customers now have “one stop shopping” for all of their credit needs, including swaps that may offset their credit risk. Swap customers may also prefer to have a bank as a counterparty from a credit risk standpoint. If banks have to push out some swaps transactions into a separate affiliate, then customers will not be able to centralize credit risk management with a bank even if it is their preferred swap counterparty.

The push-out provision would also create competitive imbalances between U.S. banks and their foreign counterparties. To date, it does not appear that other countries are considering adopting “push-out” requirements. Therefore, it is likely that foreign banks will still be able to offer integrated credit and risk management products in one entity. Customers who still want “one stop shopping” for their credit needs – including swaps – may choose to move their business to foreign banks.

If banks have to create a separate affiliate to conduct swaps transactions, then the affiliate also will have to be funded separately and meet separate capital requirements. The capital requirements for the affiliate may be entirely different from bank capital requirements if the swap transactions are done through a broker-dealer affiliate. Bank customers would have to sign new credit agreements with the bank and its affiliate. Considering all of these costs and complexities, it is likely that only large financial institutions would be able to create, fund, and capitalize a separate affiliate to conduct swaps activities that need to be “pushed out” of a bank.

### ***ABA Supports Exempting Inter-Affiliate Swaps From Certain Regulatory Requirements***

For certain financial institutions, inter-affiliate swaps are an important tool for accommodating customer preferences and managing interest rate, currency exchange, or other balance sheet risks that arise from the normal course of business. Inter-affiliate trades, in fact,

reduce systemic risk by making it possible to increase the use of netting with clients and, by bringing together a diversified portfolio in one entity (e.g., the risk-managing entity), to use more offsets to manage and reduce risk. Inter-affiliate swaps do not create additional counterparty exposure outside of the corporate group and do not increase interconnectedness between third parties, which is why banks have argued that these swaps should not be subject to the same rules intended for swaps entered into with a third party. ***ABA is, therefore, very supportive of provisions in H.R. 2779 that would exempt inter-affiliate swaps from certain regulatory requirements.***

However, other provisions in this legislation would require additional reporting of these inter-affiliate transactions. This requirement would ***not*** add relevant market information. ***Rather, it would be duplicative and would distort information that is already available.*** ABA would like to continue to work with the Committee on this reporting provision to ensure it accomplishes the committee's goal of transparency without causing confusion to the users of reported information.

## **Conclusion**

ABA thanks the Committee for its strong leadership in this area. The Committee's efforts will facilitate better functioning of credit markets and maximize credit options for businesses large and small that are critical to job growth.