

February 8, 2012

Statement for the Record

On behalf of the

ABA Securities Association (ABASA)

before the

Subcommittee on Capital Markets and Government Sponsored Enterprises

of the

Committee on Financial Services

United States House of Representatives



American
Bankers
Association

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Chairman Garrett, Ranking Member Waters, and members of the Subcommittee, the ABA Securities Association (ABASA) appreciates the opportunity to submit this statement for the record on limiting the extraterritorial impact of Title VII of the Dodd-Frank Act. ABASA is a separately chartered affiliate of the American Bankers Association (ABA) that represents those holding company members of the ABA that are actively engaged in capital markets, investment banking, and broker-dealer activities.

ABASA is grateful to this subcommittee for its leadership in addressing the many concerns that have arisen regarding Title VII, the derivatives title of Dodd-Frank. Although Title VII includes provisions that generally limit its extraterritorial reach, the language does not clearly delineate a standard for determining which cross border activities should be subject to U.S. jurisdiction. Nor does it address the competitive imbalances that might arise if swaps regulations apply differently to banks depending on the country where they are headquartered. Furthermore, Dodd-Frank does not address the jurisdictional scope with regard to cross-border swaps between bank affiliates.

Title VII of Dodd-Frank tasks the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) with promulgating regulations that do not apply to activities outside of the United States except in limited circumstances. Both agencies have indicated that they intend to issue something to solicit public comment on the proper scope of the derivatives regulation with regard to cross border activities, but neither has done so to date. *In the meantime, banks operating globally are uncertain about which U.S. regulatory requirements may or may not apply to some of their derivatives activities and whether the jurisdictional scope may*

differ depending on whether the country is headquartered in the United States or in another country.

ABASA's members are also concerned that subjecting cross-border inter-affiliate swaps to U.S. swap requirements would subject those transactions to multiple regulatory regimes. 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 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.

For all of these reasons, banks have consistently argued that inter-affiliate swaps should not be subject to the same rules intended for swaps entered into with a third party. Subjecting these risk-reducing transactions with regulatory requirements from multiple regulators could not only result in duplicative or inconsistent regulation but also would reduce market liquidity and potentially increase systemic risk. Cross-border inter-affiliate swaps should not, therefore, trigger U.S. swap regulatory requirements.

H.R. 3283, The Swap Jurisdiction Certainty Act, introduced by Congressman Himes and Chairman Garrett, would address all of the jurisdictional issues discussed above. It would also, however, require reporting of inter-affiliate swaps. ABASA is concerned that applying the same reporting standards to both inter-affiliate and other swaps transactions would duplicate and distort market information that will otherwise be available. ABASA would like to continue to work with the Committee on this reporting provision to ensure it accomplishes the goal of transparency without causing confusion to those using the reported information.

Conclusion

ABASA thanks the Committee for its strong leadership in this area. The Committee's efforts will provide much-needed clarity about the application of the swaps regulations. H.R. 3283 will also help ensure that the jurisdictional reach of the swaps regulations does not create competitive imbalances between banks solely because they may be headquartered in the United States or in another country.