

November 29, 2011

To: Members of the House Financial Services Committee

From: Floyd Stoner, Executive Vice President, Congressional Relations & Public Policy

Re: ABA's Views on H.R. 2779, to exempt inter-affiliate swaps from certain regulatory requirements put in place by the Dodd-Frank Act; H.R. 2586, the Swap Execution Facility Clarification Act; H.R. 2682, the Business Risk Mitigation and Price Stabilization Act of 2011; and H.R. 3213, the Small Company Job Growth and Regulatory Relief Act.

On behalf of the members of the American Bankers Association (ABA) and the ABA Securities Association (ABASA), I am writing to share our views on legislation scheduled for consideration before the House Financial Services Committee on November 30, 2011. Among other things, these bills state the intent of Congress when it passed the provisions in the Dodd-Frank Act (DFA) relating to end users of derivatives, inter-affiliate swaps, and swap execution facilities.

H.R. 2779 would exempt inter-affiliate swaps from certain regulatory requirements that DFA put in place. For certain financial institutions, inter-affiliate swaps are an important tool to accommodate customer preferences and manage 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.

**ABA is supportive of provisions in H.R. 2779 that would clarify that inter-affiliate swaps should be exempt from many of the anticipated swap regulations.** Failing to do so would undermine bank internal risk management procedures. There are other provisions in this legislation that would require reporting of these inter-affiliate transactions, which could be duplicative and would distort market information that will otherwise be 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.

H.R. 2586, the Swap Execution Facility Clarification Act, would clarify that a swap execution facility (SEF) shall not be required to have a minimum number of participants receive or respond to quote requests or to display quotes for a certain period of time. Furthermore, the regulators would not be permitted to limit the means of contract execution or to require trading systems to interact with each other. **ABA supports H.R. 2586 and believes that absent these clarifications the rules will limit the availability of swaps and constrain liquidity in a manner inconsistent with Congressional intent.**

H.R. 2682, the Business Risk Mitigation and Price Stabilization Act of 2011, would clarify that end users would not be subject to margin requirements for uncleared swaps. The DFA does not require regulators to impose margin requirements on end users, and the legislative history makes it clear that Congress did not intend to impose margin requirements on end users. Nonetheless, end users currently face uncertainty about whether they will be subject to margin requirements, and this legislation would provide much-needed clarity.

ABA supports an end-user exemption from margin requirements for uncleared swaps and believes that all end users – including banks that use swaps to hedge or mitigate risk – should be exempt. However, H.R. 2682 would limit the margin exemption to end users that are not financial entities. Imposing margin requirements on any end users would discourage the use of swaps to hedge or mitigate risk, so it would both increase risk in the system and vitiate the end-user clearing exemption.

If the Committee wants to make a distinction between the margin requirements for bank end users and other end users, then we urge the Committee to consider imposing only variation margin for end-user banks, rather than both initial and variation margin requirements. ABA stands ready to assist the Committee if it decides to distinguish between margin requirements for bank end users and other end users.

The Committee also is scheduled to consider H.R. 3213, the Small Company Job Growth and Regulatory Relief Act. This legislation would exempt public companies with less than \$500 million in market capitalization from Section 404(b) of the Sarbanes-Oxley Act. While the Sarbanes-Oxley Act placed some important new financial reporting requirements on public companies, Section 404(b) continues to impose a disproportionately negative cost burden on smaller public companies. The Securities and Exchange Commission (SEC) initially estimated the costs of Section 404 to be \$91,000 per year, but a 2009 SEC study found that Section 404 costs companies an average of \$2.3 million every year in direct compliance costs. The 2009 study also revealed that the long-term cost burden on smaller companies is more than seven times greater than those imposed on larger firms. **ABA supports H.R. 3213 and urges the Committee to pass this legislation.**

We appreciate the Committee taking action on these measures and we look forward to working with the Committee as these bills move forward.