American Bankers Association
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Floyd E. Stoner
Executive Vice President
Congressional Relations
& Public Policy
202-663-5339
fstoner@aba.com

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To: Members of the United States Senate

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

Re: Support for Senator Crapo's Amendment to H.R. 2112, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill for the Fiscal Year Ending September 30, 2012.

On behalf of the members of the American Bankers Association (ABA) and the American Bankers Association Securities Association (ABASA), I am writing to you in support of an amendment by Senator Mike Crapo (R-ID). Among other things, this amendment addresses fundamental deficiencies in the Dodd-Frank Act (DFA) rulemaking process related to derivatives regulation, and it clearly states the intent of Congress when it passed the provisions in the DFA relating to end users of derivatives.

ABA members use swaps and other derivatives to enable customers to hedge and mitigate risk. Banks also use swaps and other derivatives to manage and reduce their own risks just as other end users do. ABA members support the objectives of increasing transparency and reducing systemic risk in the derivatives markets. However, it is critically important that any new regulatory regime intended to do so is implemented in a way that does not disrupt the credit markets, create competitive inequities, or unnecessarily burden market participants that do not pose systemic risk.

Developing the framework for regulating the derivatives market is an enormous undertaking. The Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) have now proposed rules in almost every area required to implement the mandate for transparency and disclosure in the derivatives market. However, the CFTC and the SEC have been working under tight statutory deadlines to draft these proposed rules. We are concerned that they have not had sufficient time to do thorough cost-benefit analyses or to carefully consider the interconnected sequencing and implementation of these rules.

We also are concerned that banks and other market participants have not had sufficient time to consider the impact on their businesses and provide as much meaningful input as they can to the process. Many banks and members of the public assume that the new regulations will apply only to the largest banks that are the most active swaps users, but that is not true. If the rules are not implemented with appropriate deliberation and an understanding of the variety of ways that banks use swaps in risk-mitigating transactions, then banks of all sizes will be subject to a wide range of new regulations even if they only have a relatively modest swaps portfolio. For some banks, the cost of engaging in swaps would become prohibitive and they might stop offering these valuable tools for hedging risk. The result would be increased, rather than decreased, market risk.

The amendment introduced by Senator Crapo would require the CFTC, jointly with the SEC and the banking regulators, to adopt an implementation schedule through notice and comment rulemaking, and to complete an analysis of the effects of the new derivatives regime called for by

DFA. That analysis must address effects on economic growth, market liquidity, and international competitiveness, as well as consider the impact of lack of harmonization of the rulemaking by U.S. domestic regulators and their international counterparts. These are key issues to our members, including community banks that do not have the resources to remain current with the rapid rulemaking process and to evaluate the impact of these regulatory proposals on the overall derivatives market or their ability to continue to participate in it. All of our member banks are concerned about the potential competitive inequities that might result from hasty rule making. In addition, our global member banks are concerned that insufficient attention has been paid to the competitive inequities that could result if the United States proceeds with rulemaking well ahead of international counterparts. We support the sensible approach to rulemaking laid out in Senator Crapo's amendment.

In addition, the amendment would more clearly articulate Congress' intent when it passed the DFA regarding the imposition of margin requirements, treatment of affiliate derivative transactions, and the territorial scope of the derivatives provisions. Senator Crapo's language clarifies that, consistent with a commitment made during deliberation of the DFA, those derivatives users who use derivatives to hedge or mitigate risk should not be subject to margin requirements. ABA particularly supports treating the significant majority of banks that use derivatives only to hedge or mitigate risk as end users.

ABA also supports the provisions in Senator Crapo's amendment that recognize the importance of affiliate derivative transactions to centralize risk management using transactions that do not create additional exposure outside the corporate group. Burdening these risk-reducing derivatives transactions with unnecessary regulatory requirements will reduce market liquidity and potentially increase systemic risk.

Finally, we appreciate the provision in the amendment that reflects Congressional intent to properly delineate the territorial scope of derivatives regulation under the DFA. Extraterritorial application of U.S. laws is not only inconsistent with the historic U.S. approach but also could create competitive inequities and subject banks and swap transactions to duplicative and inconsistent regulation. The language of the Crapo amendment respects territorial boundaries while preserving the U.S. regulators' ability to regulate transactions reasonably expected to harm U.S. financial stability and to prohibit transactions designed to evade U.S. requirements.

We appreciate the efforts of Senator Crapo and the amendment co-sponsors to clarify these issues and respectfully urge you to support the amendment.