

**Meeting between Federal Housing Finance Agency (“FHFA”) staff and a representative of the  
Independent Community Bankers of America (“ICBA”)**

**September 20, 2011**

Participants: James Carley, Robert Collender, Thomas Joseph, Peggy Balsawer and Julie Paller (FHFA),  
and  
Mark Scanlan (ICBA).

**Summary:**

A representative of ICBA (Mr. Scanlan) met with FHFA staff to discuss ICBA’s concerns about the proposed rule of FHFA and other prudential regulators on margin and capital requirements for covered swap entities (“proposed rule”) under Title VII of the Dodd-Frank Act. Mr. Scanlan reiterated and elaborated on points raised in ICBA’s comment letter to the proposed rule, dated July 11, 2011.

**Attachments**

## DERIVATIVES – TITLE VII      **Key Points**

**Background** – Regulators are considering at least two proposals that could eliminate the ability of community banks to access to swaps markets, either to manage their own interest rate risks or to provide fixed rate financing to their customers.

### **Repledging / Rehypothecation**

- Middle market swap dealers receive capital from community banks for initial margin for swaps transactions. These dealers then repledge this margin to large financial firms on the other side of the swap to complete the transaction. Regulators have proposed eliminating this ability to repledge or rehypothecate capital for initial margin.
- This prohibition means that middle market swap dealers will have to raise additional capital of their own to pledge to larger firms to complete the swaps transactions on behalf of community banks. Doing so would be extremely costly to these dealers who will instead exit the market, denying community banks access to the swaps market.
- One result will be to increase safety and soundness risks to community banks, which will not be able to utilize swaps to hedge their own interest rate risks.
- A second result - community banks will no longer be able to use interest rate swaps to provide fixed rate financings to their customers, denying customers a valuable product. Customers will leave community banks in order to find institutions that can offer such products.
- There will be fewer participants in the Over-The-Counter market and greater concentration of activities within fewer institutions, hardly what Congress envisioned.
- The Dodd Frank Act did not require a prohibition against rehypothecation and in fact such language was removed from early draft(s).
- Until such time as these products are accepted for clearing, there should not be a prohibition on repledging for low risks swaps in the OTC marketplace. Regulators should instead focus on high risks swaps such as credit default swaps, which led to major problems for AIG.

### **Origination of Loans Exemption**

- The regulators have asked for input on how broadly to interpret the statutory exemption of swaps that banks arrange in connection with the “origination” of loans for their customers from causing banks to be considered as swap dealers. This exemption needs to allow for exempting swaps in connection to loan origination whether entered into prior, during or after the actual loan origination. Without broader flexibility, many community banks would be considered swap dealers and would therefore refrain from using swaps to serve customers.

## Commercial Banks

Table 1. Commercial Banks Lending to Agriculture by Asset Size.

Asset Size (\$ Million)	Percent of Ag Loans at Commercial Banks	Number of Banks
Less than \$100	16.09%	2,507
100-500	33.96%	2,677
500-1,000	10.44%	474
1,000-10,000	17.85%	347
Greater than 10,000	21.66%	66

Source: Call and Income Reports, 6/30/2008

**18% are publicly traded**

## Largest Banks

Table 2. Largest 15 Banks Lending to Agriculture, June 2008.

	Loans Secured by		Total Agricultural Loans (\$000)
	Farm Real Estate (\$000)	Nonreal Estate Agricultural Loans (\$000)	
Wells Fargo Bank	\$ 2,298,000	\$ 5,061,000	\$ 7,359,000
Bank Of America	1,395,453	1,325,665	2,721,118
Bank Of The West	775,373	1,611,853	2,387,226
U S Bank	788,882	1,084,962	1,873,844
Rabobank	1,348,721	491,479	1,840,200
Regions Bank	773,483	353,394	1,126,877
M&I Marshall & Ilsley Bank	725,463	388,266	1,113,729
Wachovia Bank	591,000	469,000	1,060,000
First National Bank Of Omaha	41,333	877,025	918,358
New Frontier Bank	346,710	402,182	748,892
Keybank	203,962	526,880	730,842
JPMorgan Chase Bank	191,000	524,000	715,000
National City Bank	245,168	265,917	511,085
Pinnacle Bank	180,608	309,293	489,901
Fulton Bank	380,599	106,031	486,630
	<b>\$ 10,285,755</b>	<b>\$ 13,796,947</b>	<b>\$ 24,082,702</b>
% of all commercial banks	17%	24%	20%

Source: Call and Income Reports, June 2008.

1 regated account for the counterparty, in accordance with  
2 such rules and regulations as the Commission shall pre-  
3 scribe for nonbank swap dealers, futures commission mer-  
4 chants, or derivatives clearing organizations, or the pri-  
5 mary financial regulatory agency shall prescribe for bank  
6 swap dealers. Any segregation requested under this sub-  
7 section shall be made available by a swap dealer to a  
8 counterparty on fair and reasonable terms on a non-dis-  
9 criminatory basis. This subsection shall not be interpreted  
10 to preclude commercial arrangements regarding the in-  
11 vestment of the segregated funds or other property and  
12 the related allocation of gains and losses resulting from  
13 any such investment, provided, however, that the seg-  
14 regated funds or other property under this subsection may  
15 be invested only in such investments as the Commission  
16 or the primary financial regulatory agency, as applicable,  
17 permits by rule or regulation, and shall not be pledged,  
18 re-hypothecated, or otherwise encumbered by a swap deal-  
19 er.”.

*Deleted*

20 **SEC. 719. CONFLICTS OF INTEREST.**

21 Section 4d of the Commodity Exchange Act (7 U.S.C.  
22 6d) is amended by—

23 (1) redesignating subsection (c) as subsection

24 (d); and

25 (2) inserting after subsection (b) the following: