

**Council of Institutional Investors Letter to
House Financial Services Committee Chairman Barney Frank Regarding the
Over-the-Counter Derivatives Markets Act of 2009 (H.R. 3795)
Summary of Key Points
November 13, 2009**

- Unregulated trading in OTC derivatives contracts, especially credit default swaps, was at the heart of the global financial crisis.
- The global OTC derivatives market is enormous, yet virtually exempt from all regulation under the Commodity Futures Modernization Act of 2000. Prices are hidden, speculation is rampant and leverage is high.
- Although derivative contracts can help manage risk, left unchecked, they can also multiply and spread risk throughout the financial system, increasing the possibility of enormous damage.
- The Council is concerned about the “exception” to the Act for end users of OTC derivatives. That exception leaves a gaping hole in the regulation of derivatives that will likely be exploited by self-interested parties to the detriment of investors and the capital markets.
- We respectfully request that as you contemplate amendments to strengthen the Act, you consider the following two important improvements to Act’s provisions:
- All OTC derivative transactions that can be cleared centrally should be required to be brought to a clearinghouse.
 - The Act narrowly limits the clearing requirement to transactions between swap dealers or major swap participants.
 - Thus, a large volume of OTC derivative transactions that can be cleared will not be cleared because, as is often the case, one of the parties to the transaction is a not a swap dealer or a major swap participant, but a hedge fund, investment fund, or other financial or nonfinancial firm.
 - This deficiency leaves the entire financial system unnecessarily exposed to systemic risks that could otherwise be reduced if the Act simply requires that all clearable transactions be required to cleared centrally.
- All standardized OTC derivative contracts that can be exchange traded should be required to be traded on a regulated exchange.
 - The transparency provided by exchange trading not only lowers systemic risks, but, importantly, enhances the price discovery function of the markets.
 - The result should be lower costs for pension funds leaving more assets available to better provide for the retirement security of millions of U.S. workers.