

**From:** bert.fuqua@ubs.com  
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**To:** SEFRules <SEFRules@CFTC.gov>; rule-comments@sec.gov  
**Subject:** Comment Letter re: SEFs and the trade execution requirements of Dodd-Frank  
**Attach:** DOC001.PDF; disclaim.txt

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To: Mr. David A. Stawick  
Secretary, CFTC

Ms. Elizabeth M. Murphy  
Secretary, SEC

Please find attached a comment letter from UBS Securities LLC on SEFs and the trade execution requirements of Dodd-Frank. We appreciate the opportunity to provide these comments.

Regards,  
Bert Fuqua

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December 15, 2010

Mr. David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Dear Ms. Murphy and Mr. Stawick:

UBS Securities LLC ("UBS") is submitting this letter in advance of rulemaking from the Commodity Futures Trading Commission (the "CFTC") and the Securities and Exchange Commission (the "SEC" and together with the CFTC, the "Commissions") on trade execution under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). We appreciate the opportunity to comment on this topic.

Sections 723 and 763 of Dodd-Frank, respectively, provide that, with respect to a transaction involving a swap or security-based swap subject to the mandatory clearing requirement of Dodd-Frank (the "Clearing Requirement"), counterparties shall execute the transaction on a designated contract market (a "DCM") or swap execution facility (a "Facility"), with respect to a transaction involving a swap, or on an exchange or security-based swap execution facility (a "SBSEF", and any Facility or SBSEF, a "SEF"), with respect to a transaction involving a security-based swap (the "Trade Execution Requirement"), unless no DCM, exchange or SEF, as applicable, makes the relevant transaction "available to trade".<sup>1</sup>

### **Implications of Application of the Trade Execution Requirement Without Any Transition Period**

#### **(A) Adverse Effects on Competition**

While we still await guidance on how the crucial concept of "available to trade" should be interpreted, we believe that the Trade Execution Requirement, if triggered immediately and automatically each time that a determination is made that a swap is subject to the Clearing Requirement, could have serious consequences for all market participants, including negative impacts on liquidity and competition.

If at the point in time when the Clearing Requirement becomes applicable to a particular type of swap the Trade Execution Requirement were to automatically apply ("Automatic Application of the Trade Execution Requirement"), it would be immediately unlawful for any market participant to execute such type of swap other than on a trading platform where such type of swap is "available

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<sup>1</sup> For convenience, references in this letter to "swap" are also intended to include "security-based swap" and those to "swap execution facility" (and to "SEF") are also intended to include "security-based swap execution facility."

to trade". For example, if only one trading platform that makes a particular type of swap available to trade has registered as a SEF at the time of the Automatic Application of the Trade Execution Requirement, then such SEF will have a monopoly over the market. Moreover, if a market participant has not established connectivity to such SEF at the time of the Automatic Application of the Trade Execution Requirement, such market participant would not be able to trade, risk manage or even unwind existing positions in swaps of a type that are available to trade exclusively at such SEF. Concentrating the trading of swaps at a single platform solely because of the timing of the implementation of the Clearing Requirement is likely to have serious anti-competitive implications and could also introduce new systemic risk into the financial markets.

Consistent with the pro-competition core principles for DCMs and SEFs set out in Dodd-Frank and to maintain the efficient functioning of the market and the orderly transition of cleared swaps to trading platforms, we would recommend that the Trade Execution Requirement should apply to a particular type of swap only after a reasonable transition time has elapsed following the application of the Clearing Requirement to such type of swap. Such a transition period would allow multiple trading platforms for a particular type of swap to develop naturally over time and grant existing execution platforms and new entrants alike the time needed to develop and expand their offerings while putting the necessary systems and infrastructure in place to permit trading and execution of additional swaps on their respective platforms. It would also encourage trading platforms to compete more fairly for a share of the swap trading market based on the quality of their offering rather than on being the first to receive approval. This approach would mirror the way in which a large number and diverse range of other types of trading facilities have developed competitively over time.

#### (B) Increase in Systemic Risk

We expect that there will be multiple entities seeking to register as DCMs, exchanges or SEFs once the relevant provisions of Dodd-Frank are effective. This is consistent with Chairman Gensler's view that there will be at least 30 to 40 such DCMs or SEFs.<sup>2</sup> However, many market participants, most notably customers and end-users, will not have the necessary technological and operational resources to connect to all of them. Market participants will need to assess which trading platforms will be most likely to attract the most liquidity for the products that they trade and then invest to build the necessary connectivity to such platforms. Given the proposed timing for application of the Trade Execution Requirement and related rules, market participants are likely to have to make the decision to invest in a particular trading platform before such platform is approved to operate as a DCM, exchange or SEF, as applicable. In other words, under the current proposed timing, market participants will be forced to make an early "best guess" of which platform(s) to connect to in order to be ready for the Automatic Application of the Trade Execution Requirement. The decision of which platform(s) to connect to may turn out to be wrong, resulting in negative consequences for the relevant market participant.

We anticipate that applications, approvals and launches of different trading platforms will not take place at exactly the same time. If a market participant decides to build connectivity to fewer than all trading platforms and one platform to which it has not connected obtains approval before the others, then the Automatic Application of the Trade Execution Requirement would place that market participant in a very difficult position since it would not have the necessary connectivity to trade, manage its risks or even unwind positions. It is important, therefore, that market participants not be forced to decide to which trading platform(s) to connect (or be forced to connect to all of them) merely in order to be ready to comply with the Trade Execution

<sup>2</sup> See Chairman Gensler's remarks expressed on October 4, 2010 at a conference on SEFs hosted by the Wholesale Markets Brokers' Association.

Requirement before such platform(s) have had time to register, test their systems and launch their services. The Trade Execution Requirement should only apply once market participants have had time to properly assess, test and connect to such platforms so that they do not find themselves abruptly unable to execute the transactions that they need to hedge their financial risks.

The Automatic Application of the Trade Execution Requirement could force market participants to trade via platforms where they would not otherwise choose to trade, or to rapidly seek connection to multiple platforms, solely in order to access the only source of legal liquidity in the transactions that they wish to execute. This rush would not only increase costs and operational risks due to lack of time to test and implement, but may also push liquidity to sub-optimal platforms at the same time as disadvantaging other platforms that seek to compete for liquidity.

When determining what would be a reasonable period of time for a safe, competitive and credible swap trading market to develop, the Commissions should consider the time that is reasonable and necessary for:

- an institution to apply for approval as a DCM, exchange or SEF, as applicable;
- the relevant Commission(s) to review of that application; and
- a DCM, exchange or SEF, as applicable, to market its offering, test its systems and provide ample opportunity for both market makers and customers to connect to its platform in a sufficient number to establish liquidity.

Based on our recent experiences implementing major changes to the structure of the derivatives market, and taking into consideration the number of market architecture projects that are already ongoing (and the significant amount of resources that those existing projects already require from market makers and customers alike), we would propose that the Commissions should not consider requiring the Trade Execution Requirement to apply to a particular type of swap until at least 6-12 months have elapsed from the application of the Clearing Requirement to that type of swap. During that period, market participants should still be able to trade and execute transactions involving such type of swap outside of a DCM, exchange or SEF, as applicable.

\* \* \*

UBS would like to thank the Commissions for the open manner in which they have addressed the issues arising in connection with the implementation of Dodd-Frank. We would welcome the opportunity to provide any additional information regarding our view on the topic of trading and execution of swaps, as well as any other issues related to Dodd-Frank. In particular, we look forward to the imminent publication of the Commissions' respective proposed rules on SEFs.

Respectfully submitted



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Managing Director, Legal

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