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

February 13, 2012

Re: Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available To Trade (RIN 3038-AD18)

Dear Mr. Stawick:

UBS Securities LLC appreciates the opportunity to submit comments to the Commodity Futures Trading Commission (the "**Commission**") in response to the Commission's proposed rule on the Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available To Trade (the "**Proposed Rule**").¹

Providing a meaningful public comment period in connection with an "Available to Trade" determination

The implementation of the trade execution requirement may have significant consequences for the swaps market.² An "available to trade" determination will result in the covered swaps migrating from bilateral OTC trading to electronic trading, leading to significant changes around price discovery and modalities of execution. This transition has the potential to adversely impact market liquidity as market participants may be compelled to transact across a fragmented market, on the one or more swap execution facilities or designated contract markets (collectively, "**Trading Facilities**") that list the relevant swap for trading. By listing products, Trading Facilities are not exposed to the same direct financial risks as clearinghouses, but the impact of listing a product is equally important given the effect it may have on liquidity. The key concern is that such an absence of direct financial risk, combined with commercial incentives to be "first-to-market" and gain overall market share, may result in some Trading Facilities seeking to list products that are not sufficiently liquid and aggressively expand the number of products subject to the trade execution requirement. We consider this to be similar to the "race-to-the-bottom" risks mentioned in the context of implementing the mandatory clearing requirement, risks that market participants are able to address there, however, through the public comment periods provided as part of the process for reviewing swaps for mandatory clearing.

Given these concerns, and the similar potential impact of an "available to trade" and a mandatory clearing determination, we urge the Commission to ensure that a meaningful public comment period is provided in connection with the "available to trade" determination process. We acknowledge that some degree of transparency is achieved by the Commission's proposal to apply Part 40 of its regulations to an "available to trade" determination,³ but we believe that it is critical for all market participants to have an opportunity to provide input to the Commission following a Trading Facility submission.

¹ Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available To Trade, 76 Fed. Reg. 77728 (December 14, 2011).

² We also refer to our comment letter submitted to the Commission on December 15, 2010 regarding potential implications of the trade execution requirement.

³ For example, a Trading Facility will be required to post notice and a copy of any submission to the Commission on its website and a 30-day public comment period will be provided if the CFTC stays a self-certification by a Trading Facility under §40.6(c).

We also believe that systematically providing a public comment period would be helpful to the Commission and consistent with the Commission's concerns expressed in the Proposed Rule about being qualified to independently make an "available to trade" determination prior to gaining sufficient experience in overseeing the swaps market.⁴ As a result, the "available to trade" determination process would resemble the Commission's more inclusive process for reviewing swaps for mandatory clearing; ensuring, at the same time, that the mandatory clearing and trade execution reviews remain distinct by affording market participants the ability to separately provide comments on each.

An "Available to Trade" determination should be made on a swap-by-swap basis and should not automatically include "economically equivalent" swaps

We believe that "available to trade" determinations should be made on a swap-by-swap basis, rather than as a blanket decision for a group, category, type or class of swaps. Trading Facilities should be considering the factors enumerated by the Commission separately for each swap instrument listed for trading, rather than grouping similar swaps together and considering the relevant factors with respect to the group as a whole. Similarly, we believe that a Trading Facility should only be permitted to submit an "available to trade" determination for a swap that it actually lists for trading for a certain period of time in order to ensure that the submitting Trading Facility has sufficient market experience with the product in order to conduct a thorough analysis of the factors enumerated by the Commission. We believe that it could be problematic to allow a Trading Facility to submit an "available to trade" determination for a swap that it has not yet listed for trading, as the Trading Facility is unlikely to have direct knowledge of its liquidity characteristics or the necessary trading protocols in place to support trading in this product on its platform. In addition, this could result in bilateral trading in a product being prohibited prior to it actually being traded on any platform.

Furthermore, just as Trading Facilities should be making "available to trade" determinations on a swap-by-swap basis and subject to public comment, a determination by a Trading Facility that a specific swap is "economically equivalent" (and therefore "available to trade") should also be subject to Commission review and public comment, particularly given the current lack of clarity around the proposed definition of "economically equivalent", such as whether a stringent fungibility test is intended.

Effective date of an "Available to Trade" determination

Finally, we believe that the Commission should consider increasing the time period between an "available to trade" determination and the effective date of the trade execution requirement. Under the Proposed Rule, it is possible that a Trading Facility could self-certify an "available to trade" determination, thereby requiring, absent a stay by the Commission, the relevant swap and all "economically equivalent" swaps to be traded on a Trading Facility within approximately 40 days of such self-certification submission.⁵ Particularly in the initial stages following implementation of the final rules, market participants may be required to connect to a number of different Trading Facilities depending on the "available to trade" determinations that are approved by the Commission. In addition, products that are subject to the trade execution requirement may initially be listed for trading only on a small number of Trading Facilities and in a fragmented manner. As a result, we believe the Commission should consider extending the proposed timeframe of 30 days from the certification of an "available to trade" determination.

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UBS is grateful for the open manner in which the Commission has addressed issues arising in connection with the implementation of the Dodd-Frank Act. We would welcome the opportunity to provide any additional information regarding our views on this topic, as well as any other issues related to the Dodd-Frank Act.

⁴ See Proposed Rule at 77731.

⁵ A self-certification under §40.6 will be deemed effective after 10 business days, absent a stay issued by the Commission. The Proposed Rule provides that the trade execution requirement will be effective on the later of (a) the applicable deadline established under the compliance schedule for the clearing requirement and (b) 30 days after the swap is first made "available to trade".

Respectfully submitted,


David Kelly
Managing Director



Paul Hamill
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