



Eidgenössische Finanzmarktaufsicht FINMA
Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
Swiss Financial Market Supervisory Authority FINMA

CH-3003 Bern

Priority

Hon. Gary Gensler
Chairman
Commodity Futures Trading Commission
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Office of the
Secretariat

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Received
CFTC

Reference: SKR

Contact: Reto Schillknecht, +41 31 327 19 21
Bern, 5 July 2012

Swap Dealers Registration under Dodd-Frank Act

Dear Chairman Gensler

We are writing to express our concerns about the potential extraterritorial effects of registration rules for swap dealers.

We understand that the implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of July 2010 requires substantial rulemaking and have followed the related regulatory developments with interest. We share the view that closer monitoring of the derivatives business may, contribute to higher market confidence and mitigate systemic risks in highly interconnected markets. As regards the CFTC regulations, it is our understanding that the final rules adopted so far only address registration issues, while details of specific requirements remain pending.

According to our information, registration with the CFTC is required by September, probably before the exact reach and scope of the U.S. swap dealer regulatory regime will have been clarified. The CFTC released a Proposed Interpretive Guidance and Policy Statement on 29 June 2012 for public consultation to address – among other issues - the cross-border application of U.S. swap dealer requirements. The principle of substituted compliance may thereby only be recognized for certain entity level requirements of non-U.S. swap dealers and if the CFTC concludes that the foreign jurisdiction's laws and regulations are comparably robust and comprehensive. Beyond that the demand for direct extraterritorial access to transaction data and books and records as well as to entity level information on capital, compliance, risk management is not addressed in the guidance. The potential extraterritorial reach of the requirements still remains unclear to us. Hence, for the time being, we are not in a position to fully assess the consequences of a registration with the CFTC and whether these can be reconciled with Swiss regulatory standards, domestic laws, and supervisory practice. Nonetheless, we have serious doubts as to whether the registration as a swap dealer of a Switzerland-domiciled bank as a whole can be reconciled with Swiss practice.



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We are particularly concerned about potential CFTC margin requirements for swap deals that are not cleared by a central counterparty. If such margin requirements are applied to a Swiss-based entity, this may duplicate the requirements and may possibly conflict with international and domestic capital adequacy rules, thereby leading to prudential inefficiencies. Furthermore, certain of the proposed reporting requirements, in particular those regarding trade data and end-customer data, and access requirements may raise Swiss privacy and data protection issues as well as enforcement difficulties. Due to these concerns, we cannot exclude that FINMA may have to deny financial institutions permission to supply certain information or grant direct access to U.S. supervisors.

We are conscious that UBS and Credit Suisse are planning to register as swap dealers with the CFTC. In this context, the registration of UBS's swap business may be particularly challenging. Contrary to other swap market participants, UBS does not book its derivative transactions through foreign affiliates of the group, but carries these out largely through a branch network. Most of the derivatives traded with U.S. counterparties are currently booked in the UBS London or Stamford branches. The bank is currently working on shifting its derivatives business to a standalone legal entity (UBS Limited London). This process is expected to take several years.

Based on our current understanding, we are not comfortable with the idea of a Swiss-based bank as a whole registering with the National Futures Association (NFA) and the CFTC while the extraterritorial effects of the registration remain unclear.

We are confident, however, that viable alternatives which comply with both of our prudential mandates can be found. Such alternatives could include the provisional registration of those foreign branches of Swiss-based banks in which swap transactions with U.S. persons are booked until a separate legal entity has been set up, or the registration of a US incorporated entity acting as information transfer agent for the bank.

We thank you for your consideration and look forward to discussing these issues with you in more detail. Our office will contact you to schedule a telephone call.

Yours sincerely

Swiss Financial Market Supervisory Authority FINMA



Patrick Raaflaub
Chief Executive Officer



Mark Branson
Head of Banks Division

Reference: SKR

cc: Hon. Mary Shapiro, Chairperson, Securities and Exchange Commission, 100 F Street,
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