

To:

The governments of British Columbia,
New Brunswick, Prince Edward Island,
Ontario, Saskatchewan, and Yukon

Re. Capital Markets Act and Draft Initial Regulations (the “Consultation”)

Dear Sirs,

TriOptima AB (“**TriOptima**”) is pleased to submit the following overall comments in connection with the Consultation to the governments listed above (the “**CMR Jurisdictions**”). As discussed below in further detail, TriOptima is a provider of post-trade services to major market participants in the OTC derivatives markets.

Any defined terms used have the meaning prescribed to them in the Consultation, unless otherwise specified herein.

TriOptima

TriOptima offers post-trade services in the OTC derivatives markets. TriOptima is headquartered in Stockholm and also conducts its business through its four subsidiaries in New York, London, Singapore and Tokyo. The company’s client base is made up of major broker/dealer banks and other financial institutions globally.

TriOptima offers post-trade services for the OTC markets such as:

- *triReduce*: a service for early termination of OTC derivatives - so called portfolio compression¹,
- *triResolve*: a service for the reconciliation of counterparty positions in OTC derivatives, margin management and operational risk management; and
- *triBalance*: a service for the mitigation of portfolio risk imbalances across bilateral and cleared OTC derivative exposures².

TriOptima’s overall comments on the Consultation**Regulation of post-trade services**

As a provider of post-trade risk reduction services for the OTC-market and for reasons described below, TriOptima is seeking clarity to ensure that providers of post-trade risk reduction services (as further defined below) do not inadvertently fall within the scope of market participant or clearing agency or otherwise as a regulated entity.

¹ See Annex 1.

² See Annex 2

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The scope of activities that would classify as post-trade risk reduction services is limited as these services only aim at reducing risks for derivatives transactions already entered into. Examples of specific post-trade risk reduction services include:

- **Portfolio compression:** Counterparties wholly terminate or change the notional value of some or all of the transactions submitted by the counterparties and depending on the methodology employed, replace the terminated transactions with other transactions whose combined notional value is equal to or less than the combined notional value of the terminated transactions in the compression exercise.
- **Counterparty risk balancing:** Counterparty risk management that rebalances counterparty risk exposure between multiple CCPs and bilateral relationships.

Post-trade risk reduction services can be clearly differentiated from trading activities in that they do not involve the interaction of buying and selling interests and are not price-forming. Instead, they are designed to reduce counterparty credit risk, basis risk and/or operational risk. Post-trade risk reduction services operate with some variation but there are common parameters that reflect their risk-reducing function and differentiate them from trading activity:

- They are multilateral and need to be executed in bulk as a single compound transaction to achieve the identified risk-reduction result and cannot be executed in part by any individual participant;
- There is no price negotiation – participants are not able to post bids or offers to enter into specific positions;
- They are designed to provide a result which is overall market risk neutral for each participant;
- They are designed to reduce unwanted secondary risks, such as counterparty credit risk, basis risk and/or operational risk – these risks have arisen as a result of contracts already entered into by the participants (e.g. because of their normal trading activities);
- They are non-continuous and non-real time – they operate on an overnight or intra-day basis using stale valuations.

Providers of post-trade risk reduction services are not party to any transactions and do not provide advice in relation to any transactions. Rather, providers of post-trade risk reduction services perform a calculation exercise based on

parameters received from participants participating in the service and report the calculated result back to the participant that verifies the result and decide whether or not to implement the calculated result.

Facilitates for trading in derivatives

Post-trade risk reduction services may be inadvertently captured by the concept of being a facility for trading in derivatives as described in the Consultation due to the fact that reducing counterparty credit risk, basis risk and/or operational risk in a portfolio requires terminating, replacing and/or putting on trades between participants. It should be clarified that post-trade risk reduction service providers should not be regarded as being in the business of trading derivatives since such services do not involve any 'trading activity', e.g. to take on or hedge market positions. For example in relation to trade compression, this view would also be in line with US³ and European regulation⁴.

Clearing agency

Post-trade risk reduction services may be inadvertently captured by the concept of being in the business of a clearing agency since such services propose terminations, replacements and/or new trades in order to reduce counterparty credit risk, basis risk and/or operational risk in a portfolio of derivatives. Specifically, such services could be captured by the interpretation that a person should be considered to be a clearing agency where it "arranges or provides, on a multilateral basis, for the settlement or netting of obligations arising under a derivative executed by its participants". It should be clarified that providers of post-trade risk reduction services should not be regarded as being in the business of a clearing agency as such providers only perform a risk-reducing calculation based on parameters provided by participants and report the result back to the participants. E.g., in a trade compression run, TriOptima merely calculates a compression proposal that would enable participants to reduce their gross position to be closer to their net position and participants verify the calculated proposal and decide whether to accept or reject the proposal. The transactions in a compression proposal would be settled outside of TriOptima's systems – by a clearing agency in the event of a cleared transaction, or bilaterally in the case of an uncleared transaction. Also, TriOptima does not (and other post-trade risk reduction service providers would typically not) interpose itself as buyer to every seller and seller to every buyer: i.e. no central counterparty services are offered in connection with these post-trade risk reduction services.

It should be noted that post-trade risk reduction services do not represent a systemic risk to the viability of the markets, since a post-trade risk reduction cycle

³ See CFTC's final rule on Core Principles and Other Requirements for Swap Execution Facilities 78 FR at 33480-33482.

⁴ Recital (27) and Article 31 of the Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 (MiFIR).

will either be completed or the cycle participants will be left with their existing derivative positions; nor do such post-trade risk reduction services represent a credit risk to the cycle participants, since the failure of the provider would have no effect on any outstanding swaps.

Conclusion

We would urge the CMR Jurisdictions to clarify that providers of post-trade risk reduction services would not fall into the scope of market participants, clearing agency or otherwise.

To assist, we have suggested below some key components that define these post-trade risk reduction services and that could serve as a basis for the clarification:

“Post-trade risk reduction services which reduce non-market risks in derivatives portfolios are characterized by:

- being designed to be overall market risk neutral for each participant;
- the participants do not submit bids and offers to enter into a specific position;
- being cycle-based and multilateral (e.g. including at least two participants), and must be accepted in full by all participants or it will not be effected;
- being designed to reduce secondary risks emerging from existing derivatives transactions, such as counterparty credit risk, operational risk and/or basis risk.”

We are happy to provide further information on the above, if and as required.

Yours faithfully,

TriOptima AB

Per Sjöberg
Chief Executive Officer

Christoffer Mohammar
General Counsel

Annex 1

Because of the interconnectedness of derivatives trading, active market participants have at any one time large numbers of contracts outstanding with multiple counterparties, each creating counterparty credit risk and an operational burden to manage and oversee. However, when these risks are viewed on a portfolio basis and compared against the portfolios of other participants, there are ready opportunities to reduce certain risks without changing one's market risk. triReduce compression allows participants to terminate contracts early in order to eliminate counterparty credit risk, lower the gross notional value of outstanding contracts, and reduce operational risks by decreasing the number of outstanding contracts. triReduce is operated for rates, credit and commodity derivatives and has helped remove in excess of \$700 trillion of gross notional exposure from the financial system since its launch in 2003 including, more recently, cleared transactions. triReduce has approximately 180 subscribing legal entities.

A multilateral compression exercise results in the complete termination of some transactions and the aggregation or reducing of the notional value of other transactions. As defined in Art 2(47) of MiFIR, portfolio compression means

“a risk reduction service in which two or more counterparties wholly or partially terminate some or all of the derivatives submitted by those counterparties for inclusion in the portfolio compression and replace the terminated derivatives with another derivative whose combined notional value is less than the combined notional value of the terminated derivatives.”

In accordance with the above definition, compression can be accomplished through (i) the “amended trade” method where transactions are wholly or partially terminated to represent (as closely as possible) the net notional exposures between a pair of counterparties, or (ii) the “replacement trade” method where transactions are wholly terminated and compression replacement transactions which reflect more closely the net notional exposures between a pair of counterparties (hereinafter called “replacement trade”) are entered into. As noted above, there is no change in the counterparties, reference entity, or maximum maturity in either the “amended trade” or “replacement trade” method.

Annex 2

The objective of the G20 commitments adopted in Pittsburgh 2009 is to mitigate systemic risk, and the actions supported by the G20 (including mandatory clearing) are means toward that end. While many OTC derivatives will be suitable for central clearing, some OTC derivatives will remain bilateral and not be cleared, and the combination of cleared and uncleared components in a portfolio may create risk imbalances within such portfolios and increase initial and variation margin requirements. The portfolio imbalances can however be effectively rebalanced by lowering counterparty risk/DV01 in a portfolio.

Injections of off-setting trades between specific counterparties can rebalance risk exposures across multiple CCPs and bilateral counterparties alike. Proactive risk rebalancing helps reduce systemic risk and is a valuable tool for both CCPs and their members in the administration of their default recovery and resolution situations. In a multilateral context, these trades can be generated without changing participants' market risk and funding risk. TriOptima's triBalance (counterparty risk rebalancing) service was launched to enable rectification of such portfolio imbalances.