

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

**RIN 3038-AD20 – Comment Letter on CFTC Proposed Rule 17 CFR 49 –
Swap Data Repositories**

Dear Mr. Stawick,

TriOptima AB welcomes the opportunity to comment on CFTC Proposed Rule 17 CFR 49 – Swap Data Repositories (the "**Proposed Rule**"), establishing the regulatory regime for Swap Data Repositories ("**SDRs**") operating under Section 21 of the Commodity Exchange Act of 1936, as amended (the "**CEA**").

TriOptima's comments reflect our extensive experience serving as a key provider of OTC derivatives market infrastructure offering operational and counterparty credit risk management tools to the OTC derivatives market. TriOptima has significantly contributed to the promotion of better and safer OTC markets including:

- Terminating interest rate swap derivatives in 23 currencies with a notional principal value of \$108 trillion, with the participation of more than 150 dealing institutions globally over the course of the past ten years;
- Terminating and compressing more than \$68.2 trillion in notional value of credit derivatives since 2005, eliminating 50 percent of the global gross notional outstanding in 2008 alone;
- Maintaining extensive data for more than 6 million live OTC derivatives contracts covering all asset classes (interest rates, credit, commodity, FX, equity, etc.) from more than 3,450 legal entities, representing approximately 75 percent of all non-cleared OTC derivatives, for the purpose of reconciling and ensuring the accuracy of that data;
- Developing and supporting the global Interest Rates Trade Reporting Repository (the "**Rates Repository**") which produces weekly reports covering 3.9 million OTC interest rate derivative transactions with a notional value of \$486 trillion for the global regulatory community.

Based on our experience as the provider of the Rates Repository, we believe that SDRs represent an unprecedented opportunity to create transparency in the OTC derivatives market.



TriOptima supports the stated policy objectives of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "DFA") of reducing risk, increasing transparency and promoting market integrity within the financial system. SDRs play an integral role in creating transparency for both regulators and market participants in the swaps market. TriOptima submits that, in furtherance of those objectives, the Proposed Rule should be designed to ensure a fair and impartial regulatory regime that creates a level playing field for all prospective SDRs.

The current draft of the Proposed Rule goes a long way toward that goal, but contains some significant restrictions which would limit both the range of entities that could act as SDRs and the geographic extent of their data collection activities, materially impeding the means to achieve some of the public policy goals of the DFA to enable monitoring of systemic risk.

TriOptima is of the opinion that SDRs will function best, and provide optimal transparency, if they operate on a global scale, commensurate with the global nature of the swaps market that they will serve. SDRs that operate on a solely national or regional basis will necessarily provide only a fractional picture of the real activity in any particular derivative type, which would prevent regulators from fully assessing the dispersal of risk throughout the market and would hinder market participants from obtaining a full picture of pricing and volume in a reported swap product. Therefore, the Proposed Rule should encourage internationally active entities acting as SDRs, in order to provide the best service to both regulators and swap users.

Furthermore, a significant part of the proposed rules concerns governance issues, including rules to address conflict of interests, that are relevant when ownership or control of an SDR is in the hands of swap market participants. Many of the structural conflicts of interest addressed by the Proposed Rule do not apply to independent service providers and, if the Proposed Rule were implemented as currently drafted, would constitute a barrier to entry for such organizations. TriOptima, for example, is a third-party service provider, wholly owned by ICAP plc (indirectly), and consequently independent of any market participants subscribing to the Rates Repository.

These restrictions and their possible impact are discussed in more detail below.

A. *Global access and global transparency*

Derivatives contracts such as interest rate and cross-currency swaps are traded 24-hours a day on a global basis. Many of the entities that the DFA intends to regulate are active around the clock, acting out of financial centers across the world.

TriOptima believes that in order to bring maximum transparency to the swaps markets, swap data should be reported and aggregated on a global basis, corresponding to the global nature of the swaps market. This is consistent with the directive to the CFTC in the DFA "to consult and coordinate with foreign regulatory authorities regarding the establishment of consistent international standards for the regulation of swaps and various "swap entities". The registration and compliance rules adopted by the CFTC should encourage the

development of global (or at least, multiregional) SDRs and should be drafted with sufficient flexibility to permit an SDR to comply with more than one regulatory scheme without undue duplication or burden.

Recognition of equivalent foreign registration – Section 21 of the CEA, as inserted by the DFA, does not contain provisions which expressly permit the CFTC to exempt from registration as an SDR a repository that is registered under an equivalent non-US financial regulatory schemes, in such a way as to avoid the need for dual-registration or to reconcile conflicting demands of the US and non-US regulations. By comparison, the CFTC does have that discretion in connection with, for example, a Derivatives Clearing Organization (see CEA Section 5b(h)). Given the global dispersal of interest rate swap market participants, an SDR would only be effective in advancing the public policy goals of swap market regulations if it compiled data from both US and non-US market participants. Regulators in other jurisdictions, notably the European Union and members of IOSCO, have recognized this and are preparing rules or guidelines containing equivalence and recognition provisions for third country supervised repositories.

The CFTC has discretion to give broad and comprehensive recognition to non-US regulatory schemes under which SDRs may be established outside the United States, particularly in circumstances where a "Memorandum of Understanding" exists between the CFTC and the non-US regulator. For example, the CFTC could permit a non-US trade data repository to register as an SDR under the CEA scheme on the basis of a "notice" filing and could treat compliance with the non-US regulations as satisfactory compliance with the corresponding CFTC regulations. Where the non-US regulations do not cover an item expressly required by the CFTC regulations, the non-US SDR would have to comply with those additional items, or obtain a specific derogation from the CFTC. By virtue of its registration with the CFTC, a non-US SDR would be subject to CFTC jurisdiction and the CFTC would remain capable of investigating and examining the non-US SDRs activities and compliance with the CEA and the rules promulgated thereunder. Nonetheless, the non-US SDR would be supervised by a single primary regulator, acting where necessary in conjunction with the CFTC. This system has worked successfully for many years with respect to a number of other types of registered entities under the existing CEA and is particularly appropriate to a global entity such as an SDR. TriOptima encourages the CFTC to consider establishing such a regime for SDR registration, in the interest of providing better oversight of the global swaps market by all interested regulators.

Disclosure of information to other regulators – need for confidentiality and indemnity – Section 21(d) of the CEA, and regulation 49.18 in the Proposed Rule, require an SDR to obtain a "confidentiality and indemnification agreement" from any regulator other than the CFTC prior to disclosing any swaps data. This is a new requirement imposed by the DFA, and it is clear from the guidance note that the CFTC is aware of the potential difficulty of obtaining such an agreement from a non-US regulator. As noted above, TriOptima believes that swap market transparency will be greatly enhanced if SDRs can operate on a global basis, compliant with multiple regulatory systems. Systemic risk can only be fully measured if SDRs can gather and report data on swaps within a particular asset class on a global basis and disseminate information to multiple regulators. We

encourage the CFTC to adopt as flexible an interpretation as possible to facilitate disclosure where required by non-US regulators, particularly where the non-US regulator has a Memorandum of Understanding with the CFTC.

B. Conflicts of interest

Control of SDRs

The conflict of interest provisions of the Proposed Rule seem to have been drafted on the assumption that the SDR will be an entity established, directly or indirectly, by a consortium of swap market participants. The Proposed Rule does not particularly contemplate, and in some cases discriminates against, the registration of independent service providers not owned or controlled by market participants, such as TriOptima.

TriOptima believes that, as drafted, the Proposed Rule would have the effect of deterring independent service providers from registering as an SDR.

TriOptima suggests that the CFTC's very proper concerns with the avoidance of conflicts of interest, and compliance with the Core Principle set out in Section 21(f)(3) of the CEA, should be addressed by more tailored rules, which distinguish between wholly independent SDRs ("**Independent SDRs**") and SDRs that are, actually or presumptively, controlled by swap market participants ("**Tied SDRs**"). The definition of a Tied SDR should be an SDR, (a) more than 50 percent of whose voting stock is owned or controlled, directly or indirectly, by one or more participants of such SDR, or (b) a majority of whose board of directors was nominated or appointed, directly or indirectly, by one or more participants of such SDR, or (c) which the CFTC, following examination and review, has determined is under the effective control of one or more participants of such SDR.

Many of the business organization requirements for an SDR, including limitations on ownership and voting rights, are suitable for Tied SDRs but not for Independent SDRs. TriOptima supports a two-tier approach to the conflict of interest rules:

- Tied SDRs should be subject to the proposals for structural safeguards against conflicts of interest, including, to the extent that the CFTC sees fit to adopt them, the restrictions on ownership and voting rights, the provisions for board nominations procedures and public directors and the requirements for policies and procedures to ensure that board members and key committees do not favor the interests of a control group, all as referred to in the request for comments on Core Principle 2.
- Independent SDRs should be subject to conflict of interest rules that concentrate on procedures, reporting and examination to ensure that changes to the SDR's business or organization do not adversely affect the SDR's impartiality.

In the event that a change in the ownership or management of an Independent SDR occurs, such that its status changes to that of a Tied SDR, the Proposed

Rule should provide for prompt notice to the CFTC and a short but manageable transition period to permit the SDR to comply with the wider regulations applicable to a Tied SDR and file an amended Form SDR.

Directors and board transparency

The Proposed Rule sets out requirements for the qualifications of the SDR's directors and members of key committees. The guidance notes also request comments as to whether the Proposed Rule should require a minimum number of "public" directors to serve on the board of the SDR. (A "public" director is, essentially, an independent director not appointed by an equity owner.) The guidance notes also request comments on whether the Proposed Rule should require public nominations of directors and the right for certain interest groups (such as participants on the SDR) to nominate their own candidates, and require annual reviews of board directors and the ability to remove a director whose conduct is "likely to be prejudicial to the sound and prudent management of the SDR".

TriOptima believes that, in most jurisdictions, it is a normal requirement for a board director to act in the best interests of the company. TriOptima further believes that the best interests of a regulated entity such as an SDR, include the satisfaction of the SDR's regulatory purpose and the maintenance of its good standing with its regulators. This is true regardless of who nominated the director to the board. Consequently, TriOptima does not believe that the proposed requirements for "public directors" would materially add to the existing obligations of the board of directors or to the furtherance of the CFTC's policy objective of ensuring that the SDR is managed with an "independent perspective".

If the public director concept is adopted, for the purposes of an Independent SDR, it should be defined as a person who is not an owner (or representative of the owner), employee or consultant of the SDR and otherwise has the requisite knowledge and experience. This would be akin to an "independent director" in many jurisdictions that recognize the concept.

Public disclosure of corporate decisions

The Proposed Rule also requires key decisions of the board of directors and any key committees to be made public. TriOptima believes that there is a legitimate regulatory interest in disclosure to the CFTC of changes in operational matters, such as access to the SDR and the procedures for submitting data, but we do not believe that this interest is best served by forced disclosure of board decisions. To the extent that any decision by the board or a key committee of an SDR would affect the compliance of the SDR with the applicable regulations, TriOptima submits that the CFTC's regulatory objective is adequately served by regulations requiring an SDR to make ongoing reports of changes to its procedures and compliance status.

C. *Other issues*

Financial resources

The Proposed Rule requires the SDR to maintain minimum levels of capital, including enough to cover 12 months (on a rolling basis) of operating costs. The Proposed Rule should be drafted broadly enough to recognize that an SDR may be a stand-alone entity or a unit or division of a larger entity, and the capital restrictions should be limited to the SDR activities and not to the broader activities of the entity as a whole.

Chief compliance officer

Section 21 of the CEA and the Proposed Rule require an SDR to appoint a chief compliance officer ("**CCO**"), and set out both detailed qualifications for that individual and obligations that must be performed. TriOptima recognizes the importance of a dedicated compliance function within a regulated entity, and endorses the principle of appointing a CCO. However, we also note that, since some SDRs expect to operate under various regulatory regimes, the requirements for a CCO should be sufficiently flexible to allow a single individual to perform that function globally.

Furthermore, TriOptima believes that the responsibilities the Proposed Rule would impose on the CCO go beyond compliance functions to include customary operations functions which we consider are impractical and unreasonable. We request that the Proposed Rule focus the responsibilities of the CCO on establishing, monitoring and reporting on the SDR's compliance policies, and do not encroach on operational functions that are more properly carried out by other members of the SDR's management, particularly the Chief Operating Officer and Chief Executive Officer.

Ancillary services

Third-party service providers may have an interest in offering market participants other services beyond those required of an SDR. These services may include trade analysis, non-regulatory data recording and portfolio trade compression. The services would only be offered to market participants that voluntarily subscribe to them and specifically agree to the use of information provided to the service provider in its capacity as an SDR, as contemplated by Proposed Rule 49.17(g). TriOptima does not believe that such services would be prohibited by the Proposed Rule as currently drafted; indeed the inclusion of the safeguard in regulation 49.17(g) tacitly accepts that they may be offered. However, it would be helpful if the Proposed Rule could clarify that an SDR, or its affiliates, is not restricted from offering such services at whatever commercial terms are agreed between the service provider and the subscribing market participants.

Monitoring, screening and analyzing swap data

Proposed Rule 49.13 requires an SDR to "monitor, screen, and analyze all swap data in its possession in such a manner as [the CFTC] may require". Most SDRs will use bespoke information technology to provide their SDR service, which may need modification in order to respond to any such requests from the CFTC in a

timely manner. It is critical, therefore, that the CFTC provides more detail on the anticipated requirements for swap data monitoring, screening and analysis as promptly as possible, so that the SDRs can make any necessary software changes in good time.

TriOptima is pleased to participate in the development of the SDR rules, and looks forward to the introduction of rigorous but fair regulations designed to provide the best possible regulatory oversight by the most qualified service providers. Please do not hesitate to contact us should you wish to discuss any of the points raised in this letter in more detail.

Yours sincerely,



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