

July 23, 2018

Mr. Christopher J. Kirkpatrick
Secretary
Commodity Futures Trading Commission
1155 21 Street, N.W.
Washington, DC 20581

Comments submitted via CFTC Comments Portal
<https://comments.cftc.gov>

RE: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants – 17 CFR Part 23 (RIN 3038-AE71)

Dear Secretary Kirkpatrick,

NEX Group plc appreciates the opportunity to comment on the CFTC's proposed amendment to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants which appeared in the Federal Register on May 23, 2018. See **Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants**, 83 Fed. Reg. 23842 (May 23, 2018). We support the proposed amendment/clarification which is proposed by the CFTC – a clarification that amending the ISDA Master Agreements so that the Regulatory Stay Provision is applied to all swaps does not convert Legacy Swaps into “Covered Transactions.” As discussed in more detail below, we suggest that the CFTC (and the Prudential Regulators) should provide an additional exemption which would clarify that Legacy Swaps which are “compressed” in a multilateral portfolio compression exercise do not become “covered transactions” which would be subject to margining after completion of the compression exercise. This exemption is justified on policy grounds and would be consistent with prior CFTC Rules and No Action positions.

NEX Group – Multilateral Portfolio Compression

NEX Group plc is a world leader in the provision of Post Trade Risk Reduction Services – including compression. TriOptima, a wholly owned subsidiary of NEX Group plc, runs a multilateral portfolio compression service for both cleared and uncleared swaps called TriReduce. This service has been in existence since 2002 and has compressed out of existence over \$1.2 Quadrillion in swaps' notional amounts.

NEX Group is suggesting an additional exemption to the general rule that any changes to a Legacy Swap convert the Legacy Swap into a “covered transaction.” We understand the CFTC and Prudential Regulators approach and resistance to having to determine whether an amendment/change to a Legacy

Swap is “material” or “non material.” Id at 23844 and 83 Fed. Reg. 7413, at 18 fn. 37 (February 21, 2018). Such an approach would result in hundreds, if not thousands, of requests for determinations annually as to whether a particular amendment to a Legacy Swap is “material” or not. We understand that such an approach would be very time consuming, could lead to arbitrary decisions, and could take away from other regulatory duties which would not be workable for the CFTC and the Prudential Regulators. We are not proposing such a broad-based approach. Rather, we are suggesting a very narrowly tailored exemption which would apply solely to Legacy Swaps which are compressed in Multilateral Portfolio Compression Exercises (MPCE). See 17 CFR Part 23.500(h). We believe such an exemption is justified based on policy considerations, past CFTC treatment of MPCE.

As noted above, MPCEs have eliminated a huge amount of notional and operational risk - \$1.2 Quadrillion - from the Swaps Market Ecosystem (both “cleared” and “uncleared” swaps). We would note that in the last 3 years NEX Group has compressed roughly \$600 Trillion in swaps notional value out of existence. As you may be aware, the current outstanding swaps notional amount is estimated to be roughly \$450 Trillion. NEX Group can, and does, compress both cleared and uncleared swaps. The amount of Legacy Swaps (those which were entered into prior to Mandatory Clearing coming into force) has dropped (estimated at approximately \$100 Trillion) yet it remains a significant portion of the Swaps Market Ecosystem and remains on the books of the largest financial institutions. Further, we note that “compression” does not change the counterparties to a transaction, the currency, the tenor or any other material term in the swaps contract other than the “notional” amount. There is no “change” in the risk profile. Compression of Legacy Swaps has heretofore been encouraged by the CFTC through various rules and no action positions.

Multilateral Portfolio Compression Exercises Regulatory Treatment.

The CFTC has a long history of treating Multilateral Portfolio Compression Exercise (MPCE) services and swaps which go through them differently than other swap activities. For instance, swaps which go through MPCEs are not subject to real time reporting requirements. See **Real-Time Public Reporting of Swap Transaction Date – 17 CFR Part 43**, 77 Fed. Reg. 1182 at 1187 (Jan. 9, 2012). MPCEs are not considered to be SEFs due to the fact that they provide a “netting mechanism” as opposed to swaps trading or execution. See **Core Principles and Other Requirements for Swap Execution Facilities – 17 CFR Part 37**, 78 Fed. Reg. 33476 at 33482 (June 4, 2013). Further, the CFTC has provided No Action Relief to swaps coming out of MPCEs to not count towards the Swap Dealer De Minimis calculation. See **CFTC Staff Letter No. 12-62, No Action Relief: Request that Certain Swaps Not Be Considered in Calculating Aggregate Gross Notional Amount for Purposes of Determining Swap Dealer De Minimis Exception for Persons Participating in Multilateral Portfolio Compression Activities** (Dec. 21, 2012). And the CFTC has also provided No Action Relief from Required Clearing of Legacy Swaps which go through a MPCE. See **CFTC Staff Letter No. 13-01, No Action Relief from Required Clearing for Swaps resulting from Multilateral Portfolio Compression Exercises** (March 18, 2013). The CFTC has a long history of recognizing the risk reduction benefits from compression of swaps and promoting MPCE via rulemakings and no action letters. We note that the CFTC has recently proposed to “codify” the No Action Relief related to the Swap Dealer De Minimis calculations, which we support strongly. See **De Minimis Exception to the Swap Dealer Definition – 17 CFR Part 1**, 83 Fed. Reg. 27444, 63 -64. (June 12, 2018).

The 2013 No Action Relief related to Legacy Swaps from Required Clearing is probably most on point here. See [CFTC Staff Letter No. 13-01, No Action Relief from Required Clearing for Swaps resulting from Multilateral Portfolio Compression Exercises](#) (March 18, 2013). The Staff considered and provided relief to Legacy Swaps which were “uncleared” and went through a MPCE after the Mandatory Clearing Determination became effective. This relief encouraged market participants to continue to “compress” Legacy Swaps without fear that they’d have to “clear” a replacement or amended swap which remained post MPCE. In the 5 years since this relief was issued, it has led to significant reductions in outstanding Legacy Swap portfolios. We’d like to see the continued reduction in the approximately \$100 Trillion in Legacy Swaps portfolios through MPCEs but that won’t happen if the CFTC (and the Prudential Regulators) maintain their stance that a Legacy Swap which goes through a MPCE will be considered to have “lost its Legacy Swap status” and become a “covered transaction” which must be margined consistent with the Margin on Uncleared Swaps Rules. We respectfully suggest that the Commission should be consistent with prior actions related to Legacy Swaps going through MPCEs and provide a very narrow, targeted exception for Legacy Swaps which go through a MPCE so they are not considered, post MPCE, to be “covered transactions” which would be subject to margining.

We appreciate the opportunity to comment on the proposed rule. Please let us know if you have any questions by contacting Patrick J. McCarty at Patrick.mccarty@nex.com or 201 577 4702.

Regards,

Peter Weibel by PSM
Peter Weibel
Co Chief Executive Officer
TriOptima

Cc:

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