

August 13, 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: **De Minimis Exception to the Swap Dealer Definition – 17 CFR Part 1 (RIN 3038-AE68)**

Dear Secretary Kirkpatrick,

NEX Group plc appreciates the opportunity to comment on the CFTC's proposed amendment to the De Minimis Exception to the Swap Dealer Definition which appeared in the Federal Register on June 12, 2018. See **De Minimis Exception to the Swap Dealer Definition**, 83 Fed. Reg. 27444 (June 12, 2018). We support the proposed amendment/clarification which is proposed by the CFTC – a clarification that exempts amended and replacement swaps which come out of a Multilateral Portfolio Compression Exercise (MPCE) from being counted towards the De Minimis amount for purposes of being considered a Swap Dealer. See Id at 27463-4. As discussed in more detail below, we believe this exemption is justified on policy grounds and would be consistent with prior CFTC Rules and No Action positions. Further, we join ISDA and SIFMA in supporting 2 additional MPCE clarifications/codifications related to long standing CFTC positions which exempt amended or replacement swaps coming out of MPCEs from mandatory SEF trading and mandatory DCO clearing.

**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 supportive of codifying the 2012 CFTC Staff Letter No. 12-62 (December 21, 2012) position related to excluding from the De Minimis Swap Dealer calculation any amended or replacement swaps which come out of a MPCE cycle. See **De Minimis Exception to the Swap Dealer Definition – 17 CFR Part 1**. 83 Fed. Reg. 27444, 63 -64. (June 12, 2018). We believe such an exemption is justified based on sound policy considerations and consistent with 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.

#### **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.

The 2012 No Action Relief related to swaps coming out of a Multilateral Portfolio Compression Exercise is on point here. 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). The Staff considered and provided relief to market participants who compressed swaps in a MCPE from having to count the amended or replacement swaps which remained after the MCPE cycle. This relief encouraged market participants to continue to “compress” swaps without fear that they’d have to “count” a replacement or amended swap which remained post MPCE. This relief avoided the “double counting” of the amended or replacement swaps – which merely replaced the original swaps which had been entered into and which had been already been counted for purposes of Swap Dealer De Minimis calculations. In the 6 years since this relief was issued, it has led to significant reductions in outstanding notional in swap portfolios held by market participants as discussed above. We’d like to see the continued reduction in the notional amount of swaps portfolios through MPCEs. Codifying the 2012 No Action Letter will reassure market participants and promote continued use of MPCEs which help reduce not only gross to net notional amounts but also help eliminate the significant operational risks associated with the periodic repricing of large gross notional swaps portfolios. This is good policy and good government in action. We strongly support the Commission’s proposal to codify the 2012 No Action letter.

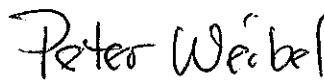
We join ISDA and SIFMA in supporting two additional MPCE items. As you will note from the joint ISDA and SIFMA comment letter, they are supportive of clarifying/codifying longstanding CFTC positions which exempt amended and replacement swaps which come out of MPCE cycles from the mandatory

SEF trading and DCO clearing obligations. See CFTC Staff Letter No. 13-01, No Action Relief from Required Clearing for Swaps resulting from Multilateral Portfolio Compression Exercises (March 18, 2013). We strongly support both of the ISDA/SIFMA recommendations. The Industry would welcome CFTC restatement/codification of these 2 MPCE positions, which would serve to encourage market participants to reduce swaps notional amounts and reduce operational risks through participation in MPCEs. 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. We would not object to these 2 MPCE clarifications/codifications being included in the De Minimis Exemption from the Swap Dealer Definition rulemaking or in the forthcoming SEF Rule Rewrite proposal which is expected this Fall. It is our view that either vehicle would be appropriate.

Further, we respectfully suggest that the Commission should be consistent with prior actions which distinguish between, and promote, MPCE activities due to the significant risk reducing nature of such activities. We have recently commented upon the CFTC’s proposal related to Margin on Uncleared Swaps. See 17 CFR Part 23 Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 83 Fed. Reg. 23842 (May 23, 2018). In our Comment Letter, we noted the potentially adverse impact on compression of Legacy Swaps going through MPCEs. We have suggested that the Commission 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. This type of an exemption would promote continued compression and reduction in Legacy Swaps portfolios, would be good policy and would be consistent with past Commission actions in this area.

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](mailto:Patrick.mccarty@nex.com) or 201 577 4702.

Regards,

  
Peter Weibel *by PSM*  
Co Chief Executive Officer  
TriOptima

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