

**Ms. Elisabeth M. Murphy**  
 Secretary  
 U.S. Securities and Exchange  
 Commission  
 100 F Street NE  
 Washington, D.C. 20549-1090

Dear Ms. Murphy,

**File Number S7-53-10 – Comment Letter on SEC Proposed Rule on Security-Based Swap Data Repository Registration, Duties, and Core Principles**

TriOptima is pleased to submit the following comments in connection with the Securities and Exchange Commission (“**SEC**” or “**Commission**”) proposed rulemaking on Security-Based Swap Data Repository Registration, Duties, and Core Principles (the “**Proposed Rule**” or “**SBSDR Rule**”). As discussed below in detail, TriOptima is a provider of post trade swap and security-based swap services to the OTC derivatives market. We currently provide post trade services to (major) market participants within the OTC derivatives market (“**Swap Participants**”). TriOptima has a proven record of protecting trade data which it receives today either directly from Swap Participants or from third parties holding Swap Participants’ trade information, where the Swap Participants, being counterparties to the relevant trades, have consented to and authorized the third parties to disclose granular trade information (“**Written Client Disclosure Consents**”) to TriOptima. We ask the SEC to clarify the final rule so that it is clear that third party service providers (such as TriOptima) can get direct and timely access to trade information held in Security-Based Swap Data Repositories (“**SBSDRs**”) where Written Client Disclosure Consents have been provided by the counterparties to the relevant trades.

**TriOptima background**

TriOptima is a provider of post-trade infrastructure for the OTC derivatives market. Our headquarters are in Stockholm and we have offices in London, New York, Singapore and Tokyo. Our business comprises three main operations:

- triReduce: a portfolio compression service;
- triResolve: a service centered around portfolio reconciliation; and
- a trade reporting repository for interest rate derivatives (expected to be wound down in the not too distant future).

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Our post trade services are provided to Swap Participants for a variety of OTC derivatives, including interest rate swaps, credit default swaps and commodities. TriOptima currently receives granular trade information on approximately 4.28 million trades (double counted) on a daily basis from third parties where the counterparties to the trades have provided Written Client Disclosure Consents authorizing the third parties to release granular trade information to TriOptima. The notional amount of the 4.28 million trades is currently approximately USD 45 trillion (double counted) and the information received pertains to 1,395 separate accounts where Written Client Disclosure Consents are in place. TriOptima uses the daily trade data that it receives in connection with providing post trade swap services to Swap Participants, including portfolio compression services and portfolio reconciliation services. These important services increase the efficiency and accuracy in the participants' SBS portfolios – also in respect of trading data recorded in a participant's internal systems vis-à-vis the corresponding trading data recorded by an SBSDR.

### **SBSDRs as hubs for post-trade information**

TriOptima supports the stated policy objectives of the Dodd-Frank Wall Street Reform and Consumer Protection Act of reducing risk, increasing transparency and promoting market integrity within the financial system. SBSDRs play an important role in creating transparency for regulators by retrieving, storing and updating trade data for market participants and making that data available to regulators.

An SBSDR will maintain granular trade data (“**SBSDR Information**”) that is valuable to third party service providers like TriOptima. It will be appropriate and helpful to the market if the SEC can clarify in the final rule that SBSDRs shall provide third party service providers, who have been authorized to access information by the counterparties to the relevant trades under Written Client Disclosure Consents, with access to SBSDR Information.

Scale economies mean that SBSDRs will necessarily be concentrated with a limited number of service providers. The risks related to such concentration of key derivative market data in a limited number of SBSDRs are well recognized, e.g. in the current EMIR Council text.<sup>1</sup> While the primary purpose of SBSDRs is to ensure effective systemic risk oversight by supervisors, it also remains key that the Proposed Rule establishes fair, secure and efficient market functioning for market participants. An important element in this connection is the establishment of clear rights and obligations governing access to SBSDR Information, since the SBSDR Information plays an important role in enabling Swap Participants to manage and mitigate their OTC derivative risks, as well as enhancing market transparency. As recognized by the SEC in the Proposed

<sup>1</sup> See preamble 22a of the Presidency compromise text of 19 September 2011.

Rule,<sup>2</sup> it is important that the practices and procedures of an SBSDR do not impede competition from Swap Participants or third party service providers and do not stifle innovation and the competition in the provision of post-trade processing services. As further described below, we would like to stress the importance of enhanced non-discriminatory access rights to SBSDR Information for third party service providers in order to maintain competition and innovation within the post-trade area, especially where such third party service providers have been authorized to access SBSDR Information under Written Client Disclosure Consents.

### **Non-discriminatory access to SBSDR Information**

The SEC has gone a long way to address a third party's (such as a service provider's) non-discriminatory access rights to granular SBSDR Information in the SBSDR, e.g. by including provisions on (i) fair and not unreasonably discriminatory dues, fees and charges, to be applied consistently across all similarly situated users, including third party service providers, and (ii) fair, open and not unreasonably discriminatory access to services offered and data maintained by the SBSDR, as well as fair, open and not unreasonably discriminatory participation by third party service providers that seek to connect to or link with the SBSDR.<sup>3</sup>

### **We encourage the SEC to clarify and elaborate on fair, open and not unreasonably discriminatory access to data**

The Proposed Rule does not impose an obligation on the SBSDR to provide full and unrestricted access to SBSDR Information (including granular trading data), to a third party service provider. Of course this obligation should apply where the counterparties to the relevant trades have provided Written Client Disclosure Consent to the SBSDR to disclose granular trading data to the third party service provider. As noted above, TriOptima is a third party service provider and

<sup>2</sup> See Proposed Rule [RIN 3235-AK79], 75 Fed. Reg. at 77321 (December 10, 2010): "The Commission is concerned, among other things, that an SDR, controlled or influenced by a market participant, may limit the level of access to the services offered or data maintained by the SDR as a means to impede competition from other market participants or third party service providers. To satisfy the requirements of this proposed rule, an SDR should seek to ensure that its practices and procedures do not stifle innovation and competition in the provision of post-trade processing services."

<sup>3</sup> See *id.* at 77368: "Ensure that any dues, fees, or other charges imposed by, and any discounts or rebates offered by, a security-based swap data repository are fair and reasonable and not unreasonably discriminatory. Such dues, fees, other charges, discounts, or rebates shall be applied consistently across all similarly-situated users of such security-based swap data repository's services, including, but not limited to, market participants, market infrastructures (including central counterparties), venues from which data can be submitted to the security-based swap data repository (including exchanges, security-based swap execution facilities, electronic trading venues, and matching and confirmation platforms), and third party service providers /..." and "Establish, monitor on an ongoing basis, and enforce clearly stated objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data maintained by the security-based swap data repository as well as fair, open, and not unreasonably discriminatory participation by market participants, market infrastructures, venues from which data can be submitted to the security-based swap data repository, and third party service providers that seek to connect to or link with the security-based swap data repository /..."

currently has Written Client Disclosure Consents covering 1,395 accounts. These Written Client Disclosure Consents authorize the release of granular trade data to TriOptima and TriOptima currently receives granular trade data on approximately 4.28 million trades on a daily basis under the consents, which is used to deliver important risk mitigating post trade services, including portfolio compression and portfolio reconciliation. We believe that where Written Client Disclosure Consents have been given to an SBSDR by the counterparties to the relevant trades, access to such data should be provided to the third party service provider indicated in the disclosure consents. This type of system works well today and the final rule should specifically recognize its existence.

Further, it is clear that an SBSDR should provide Swap Participants with access to their own trade data. We note that the third party service provider, for whom a Written Client Disclosure Consents is given, is actually exercising the Swap Participant's right to access their own trade information which is held by the SBSDR. An SBSDR should be required to treat a third party service provider with a disclosure consent as acting as an "agent" for the owner of the trade information and provide the third party service provider with the same type of access which the owner of such data is entitled to, subject to any restrictions set out in the disclosure consent.

**Thus, we encourage the SEC to clarify in the final rule that, in order for an SBSDR to fulfill the requirement to ensure open access to data maintained by the SBSDR,<sup>4</sup> an SBSDR should be obliged to provide full and unrestricted access to the SBSDR Information (including granular trade data) to a third party (service provider) where Written Client Disclosure Consents have been given to the SBSDR, by the counterparties to the relevant trades.**

An explicit obligation for an SBSDR to provide such full and unrestricted access to SBSDR Information to a third party (service provider) is important in order to uphold a fair, secure and efficient post-trade market; an SBSDR should not restrict access to SBSDR Information on other grounds than integrity risks to the SBSDR Information.

Furthermore, in the Proposed Rule, the SEC has identified several important examples of conflict of interests that should be considered by an SBSDR, such as conflicts between, among or with persons associated with the SBSDR, affiliates of the SBSDR and non-affiliated third parties.<sup>5</sup>

<sup>4</sup> See *id.*

<sup>5</sup> See Proposed Rule [RIN 3235-AK79], 75 Fed. Reg. at 77325 (December 10, 2010): "Proposed Rule 13n-4(c)(3) would provide general examples of conflicts of interest that should be considered by an SDR, including, but not limited to: (1) Conflicts between the commercial interests of an SDR and its statutory responsibilities, (2) conflicts in connection with the commercial interests of certain market participants or linked market infrastructures, third party service providers, and others, (3) conflicts between, among, or with persons associated with the SDR, market participants, affiliates of the SDR, and nonaffiliated third parties /.../".

**In this connection, we would like to stress the importance that data access rights and requirements imposed on a third party (service provider) seeking to access SBSDR Information, are applied equally to the SBSDR itself when providing ancillary services and to affiliated service providers within the same group as the SBSDR; the SBSDR should not have discretion to offer advantages in respect of its own ancillary services or services offered by affiliated service providers vis-à-vis other third party service providers.**

#### **Technical separation to protect privacy and integrity and secure transfer of information**

An SBSDR will receive and hold proprietary and highly sensitive trade information. TriOptima acknowledges that the privacy and integrity of this SBSDR Information must be ensured. To this end we are applying very high security measures to protect our clients' data. The security measures include the following:

TriOptima and all its subsidiaries are ISO 27001 certified. ISO 27001 is the international ISO standard for Information Security Management. A full reassessment is required every 3 years, and surveillance audits, which focus on different parts of the Information Security Management System ("ISMS"), are performed annually. The ISMS covers all aspects of information security, technical as well as non-technical. When it comes to system access control, TriOptima applies the 'least privilege' principle, making sure access to systems is only granted based on what is needed, and that systems accessing other systems are granted minimal required access. Furthermore, all user and administration accounts are unique, justified, authorized and regularly reviewed, all default accounts on new servers are deleted, all default passwords are changed and all significant activity is logged, stored, and reviewed. Access to audit trails is restricted. Only TriOptima employees working with a particular client in some form have access to the data and all TriOptima employees enter into confidentiality agreements. Data is only distributed from TriOptima to a client using the client-specific web site (HTTPS) or accessed by the client through secure file transfer protocols (sftp). TriOptima maintains a policy of shredding all paper copies that could contain confidential information and any hardware or storage media that has been used to hold confidential information is appropriately and professionally erased and destroyed when taken out of service. In respect of equipment connected to the Internet, TriOptima applies multiple layers of firewalls deployed with default-deny policies; only explicitly configured services are allowed. The firewall configurations are backed up daily. Unauthorized access attempts trigger alerts. All events are reported to the TriOptima Information Security group and acted upon whenever needed. Penetration tests are regularly performed on TriOptima's system by renowned external vendors; also, internal TriOptima audits are performed regularly (by internal or external auditors). TriOptima maintains an auditing control environment and IT processes as well as policy and process compliance.

To date (during our nine years of offering compression services), we have not had any privacy incidents or data breaches related to the trade information we receive from third parties under Written Client Disclosure Consents. From a technical perspective, there are several well-established solutions in the current swaps market that enable holders of proprietary information (such as an SBSDR) to segregate different user accounts. Such solutions ensure that information pertaining to a particular user can only be accessed by a third party in favor of whom the user has provided a Written Client Disclosure Consent (a “Recipient”), without jeopardizing the privacy or integrity of information not subject to relevant disclosure consent. TriOptima’s trade reporting repository for interest rate swaps provides logical separation of user accounts through permission layers and no information can be retrieved by any other user than the user holding the account and its Recipients. Another solution is to segregate information covered by Written Client Disclosure Consents and make such information available to the Recipient through a separate server. By making information available through a separate server, the privacy and integrity of information not covered by such disclosure consents will be maintained (e.g. by use of sftp relating to the specified server and the information designated for disclosure to the Recipient).

#### **An SBSDR’s privacy policies and procedures**

In relation to the SEC’s preliminary perception that where an SBSDR shares information with a nonaffiliated third party, the SBSDR should consider requiring the nonaffiliated party to consent to being subject to the SBSDR privacy policies and procedures as a condition of receiving any sensitive information from the SBSDR,<sup>6</sup> **we would like to note the following: where trading counterparties have given Written Client Disclosure Consents in favor of a third party service provider to access their SBSDR Information, there is no need to have the third party service provider observe the SBSDR’s privacy policies and procedures.** Invariably, the third party service provider and the relevant counterparties will have agreed on the conditions for access and use of their SBSDR Information (otherwise no disclosure consent would have been granted) and if the counterparties to a trade authorize the third party service provider to use their information, an SBSDR should not be able to restrict or limit such use through privacy policies and procedures when the owners of the information have provided appropriate consents and authorizations.

<sup>6</sup> See Proposed Rule [RIN 3235-AK79], 75 Fed. Reg. at 77340 (December 10, 2010): “The Commission preliminarily believes that to the extent that an SDR or any person associated with the SDR shares information with a nonaffiliated third party, an SDR’s policies and procedures should ensure the privacy of the information shared. For instance, an SDR should consider requiring the nonaffiliated party to consent to being subject to the SDR’s privacy policies and procedures as a condition of receiving any sensitive information from the SDR.” and “Should the proposed SDR’s protection of privacy extend to any other person (e.g., third party service providers, market infrastructures, or venues from which data can be submitted to the SDR)?”.

### Bundling of services

Under the Proposed Rule 240.13n-4 (c)(1)(ii), an SBSDR is generally allowed to bundle services but *market participants* should have the right to access services provided by an SBSDR separately.<sup>7</sup> TriOptima agrees with the SEC that it is important that market participants have the ability to access specific services offered by the SBSDR separately. However, we would encourage the SEC to clarify that this should apply to all users of an SBSDR, including third party service providers with Written Client Disclosure Consents seeking to access the SBSDR Information, and not just market participants who submit trade data. **I.e., users of an SBSDR should have the right to access services provided by an SBSDR separately.** TriOptima would like the final rule clear as to its ability to access services which an SBSDR provides.

Please contact us at your convenience with any questions.

Yours sincerely,

Christoffer Mohammar  
General Counsel TriOptima Group

<sup>7</sup> See *id.* at 77368: “Permit market participants to access specific services offered by the security-based swap data repository separately /.../”.