Elizabeth M. Murphy
Secretary
Securities Exchange Commission
100 F Street, NE
Washington DC 20549-1090

File Number S7-08-11 – Comment Letter on SEC Proposed Rule on Clearing Agency Standards for Operation and Governance

Dear Ms. Murphy

TriOptima AB welcomes the opportunity to comment on SEC Proposed Rule referred to above (the "**Proposed Rule**").

TriOptima operates the triReduce portfolio compression and early termination service. triReduce is a service that allows multiple participants to compress their existing swap portfolios in order to (i) reduce counterparty risk, (ii) reduce the number of outstanding swaps, and/or (iii) reduce outstanding notional values by participating in a single, coordinated algorithmic compression cycle. TriOptima also operates the triResolve portfolio reconciliation and counterparty exposure management service. triResolve is a collateral management service that allows users to reconcile their portfolios and manage their margin calls through e.g. margin call calculation and comparison, administration functionality as well as reconciliation of key economic terms in order to streamline the margin call process and reduce operational and credit risk.

The Proposed Rule, if adopted as currently drafted, appears to require TriOptima to register as a Clearing Agency within the meaning of Section 17A of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), with respect to triReduce. It may also require TriOptima to register as a Clearing Agency with respect to the triResolve service.

TriOptima believes that there are very few public policy benefits to treating triReduce and similar portfolio compression services as clearing agencies, since the existing regulations give full regulatory transparency over the pre-compression and post-compression transactions and the compression service itself does not effectuate the termination, amendment or execution of any of the compressed transactions. Consequently, any registration requirements should be limited so that they do not increase costs or reduce efficiency to a degree that would reduce the participation of market participants in trade compression cycles.

TriOptima believes that the registration requirement with respect to triResolve and similar collateral management services is inappropriate and would place unnecessary burdens on entities providing swap market participants useful back-office tools that are intended to improve the efficiency of collateral management systems in a manner that reduces systemic risk.

TriOptima AB
PO Box 182
101 23 Stockholm
Sweden

Tel +46 8 545 25 130
Fax +46 8 545 25 140
Company reg no. 556584-9758

Courier address: Blekholmsgatan 2F
Visiting address: Klarabergsviadukten 63

1. A Compression Service is not a clearing agency

The Proposed Rule sets out a description of a portfolio compression service[1] (described in the Proposed Rule as a "Tear-up/Compression Service"; in this letter, we refer to it as a "**Compression Service**"). TriOptima broadly agrees that the description set out in the Proposed Rule is a workable summary of the operation of a Compression Service. We do not agree, though, with the preliminary view expressed by the Commission that a Compression Service, as described,

> "would generally fall within the definition of clearing agency and would need to register because, among other activities, it would be acting as an intermediary that *provides facilities for the comparison of data regarding the terms of settlement of securities transactions, to reduce the number of securities transactions, or the allocation of securities settlement responsibilities*."[2]

TriOptima recognizes that the italicized text closely follows in part the statutory definition of a clearing agency in Section 3(a)(23)(A) of the Exchange Act. However, in response to the Commission's request for comment as to whether there is "additional information about any of the security-based swap services described [in the Proposed Rule] that would affect the consideration of whether these activities trigger the definition of clearing agency", we would observe that the triReduce service does not offer the central functions that, from a public policy perspective, characterize a clearing agency: it does not facilitate the settlement of securities transactions.

"Settlement" is not defined in the Exchange Act or the Securities Act of 1933, as amended (the "**Securities Act**"), nor in any of the rules promulgated thereunder. However, it can generally be understood, in the context of a traditional securities transaction, to be the delivery of the security in question against the payment of the purchase price (or equivalent value).

According to the legislative history[3], Section 17A was enacted in 1975 to address problems in the settlement of securities transactions that were revealed in the "paperwork crisis" of the late 1960s, when securities firms were unable to process the volume of securities transactions undertaken in the market, resulting in late deliveries of cash and securities, lost securities certificates, loss of control of recordkeeping and, ultimately, the failure of a number of securities houses. The legislative history then goes on to analyze the legislative amendments in terms of the way they address the problem of "the completion of securities transactions"[4] or "the securities handling process"[5]. The participants in the "securities handling process" are identified – exhaustively, according to the Senate Report – as "clearing agencies, depositories, corporate issuers and transfer agents."[6] Neither the Senate Report nor the House Report elaborates on the definition of clearing agency, but the Senate Report states that "[a]lthough

[1] At 76 FR 14495 and 14496
[2] 76 FR 14496, emphasis added
[3] See Senate Report No. 94-75 (P.L. 94-29) on the Securities Acts Amendments of 1975 at p. 4
[4] *Idem* at p. 5
[5] *Idem* at p. 55
[6] *Ibid*

… there may be certain theoretical differences between clearing agencies and depositories, it appears that clearing agencies and depositories currently are sufficiently similar in their operations to warrant placing them under the same regulatory umbrella."[7]

There are almost no functional similarities between a depository and a Compression Service. Further, nowhere in the legislative history, or in the Commission's subsequent releases on clearing agencies was the treatment of activities described in the Proposed Rules summary of a Compression Service contemplated as a clearing agency function. The reason for that, we believe, is simple: a clearing agency is a forum for the settlement of securities transactions.

By contrast, a Compression Service is essentially an algorithm whose output is a set of proposed transactions that, if accepted by the relevant users, would be settled elsewhere – by a clearing agency in the case of a cleared swap, or bilaterally in the case of an uncleared swap. In either case, the transaction would be subject to full regulatory oversight by the Commission under the proposed rules applicable to reporting, record-keeping, securities-based swap dealers and the provisions of the Proposed Rule applicable to clearing agencies that are central counterparties. In addition, it should be noted that Compression Services like triReduce do not represent a systemic risk to the viability of the markets, since a compression cycle will either be completed or the cycle participants will be left with their existing security-based swap positions; nor do such Compression Services represent a credit risk to the cycle participants, since the failure of the Compression Service provider would have no effect on any outstanding swaps.

For the above reasons, TriOptima believes that (a) it is not intended that Compression Services should fall within the definition of a clearing agency, (b) it would not benefit the proper regulatory oversight of the security-based swap market to treat Compression Services as clearing agencies, and (c) it would not further any public policy objective to require Compression Service providers to register as clearing agencies. Indeed, if the Proposed Rule is adopted, the result may be to deter commercial Compression Services from entering or continuing in the market, thereby increasing systemic risk by depriving market participants of an instrumental and effective risk management tool, inconsistent with the stated public policy of reducing risk. We therefore encourage the Commission to reconsider this aspect of the Proposed Rule.

2. Collateral management services and trade matching services should not be treated as clearing agencies

The Proposed Rule also states that collateral management services, which calculate collateral requirements and facilitate the transfer of collateral between counterparties, and trade matching services, which compare users' trade data and provide a set of binding matched terms, should be required to register as clearing agencies. TriOptima believes that this requirement is mistaken, onerous and could result in the loss to market participants of a significant risk management tool.

[7] *Ibid*

With respect to collateral management services, the Proposed Rule states that entities that calculate net payment obligations among counterparties for security-based swaps and provide instructions for payments are likely acting as an intermediary in making payments or deliveries or both in connection with transactions in securities.[8]

This interpretation overstates the role of post-trade services also offering collateral management services, such as triResolve, and could have significant unintended consequences for market participants. triResolve allows users to use a web-based interface to proactively reconcile their swap portfolios, in order to agree the trade populations and, to the extent possible, the valuation of the swaps, thereby assessing and mitigating credit risk. triResolve provides a work flow process for resolving and managing breaks that is transparent and efficient, both to the user and to its counterparties. triResolve also compares users' data on collateral posting requirements under swap transactions, in accordance with applicable documentation, and identifies discrepancies in order to determine the agreed-upon amount of collateral, based on the data provided by the participating users. Based on the triResolve output, the users themselves can promptly post collateral and resolve the amounts in dispute. The functionality described above comprehends important risk mitigation tools for market participants. No settlements or payments are effected on triResolve. According to the Proposed Rule, these activities alone would not constitute a clearing agency function.

However, triResolve may also give users the opportunity to provide their custody bank details, so that the program can automatically generate an instruction to the users (and ultimately the users' custodians) to transfer the agreed-upon amounts to the intended beneficiaries. Under a normal interpretation, simply generating a payment instruction would not result in the program being treated as an "intermediary". Indeed, while the term is not defined in the Securities Act or the Exchange Act, the intermediary is usually considered to be the bank that actually processes and facilitates the transfer. It would be a peculiar regulatory result, inconsistent with the stated public policy of reducing operational risk, if collateral management providers would have to register as clearing agencies simply because they offer the convenient service of generating a payment instruction to a user to be forwarded to such user’s bank to make the necessary transfer. The result would be that the collateral management provider would give the results to the individual users, who would then have to generate the payment instruction themselves, introducing the likelihood of delay and errors into the collateral transfer in a wholly avoidable way.

TriOptima encourages the Commission to reconsider this aspect of the Proposed Rule. We believe that it does not serve any rational regulatory purpose and would result in more, rather than less, risk than currently exists in the market.

TriOptima is also concerned that a portfolio reconciliation and counterparty exposure management service like triResolve may also fall within the definition of a trade matching service. It is not clear from the Proposed Rule whether the Commission considers that a collateral transfer constitutes a "settlement" of a securities transaction. If that is the Commission's position, TriOptima is concerned that the provision of valuable collateral management services will

[8] 76 FR 14495

become significantly more onerous for the service providers, while offering very little meaningful benefit to the Commission or other regulators. Collateral positions change daily for over-the-counter derivatives, and requiring collateral management providers to register and comply with the Proposed Rule will not change either the amount of collateral required or the safety and soundness of the institutions involved in the chain of custody. It will, however, result in increased costs to the collateral management service providers and, consequently, to their customers and may result in some entities electing to bear additional risk rather than the additional cost of subscribing to the collateral management service.

3. Applicable regulations should be commensurate to Compression Service functions

If, in spite of the arguments set out above, the Commission determines that Compression Services should be required to register as clearing agencies, the applicable regulations should be commensurate to the risks and benefits that Compression Services afford.

TriOptima acknowledges that the Commission has already gone some way toward recognizing that a Compression Service is a very different type of business that presents singularly different risks than those of a classic central counterparty ("**CCP**"). While the more limited set of rules applicable to non-CCP clearing agencies are helpful, we believe that the remaining rules still contain provisions that are inappropriate to non-CCP clearing agencies and that would, if retained, deter non-CCPs from offering risk management services.

The Commission has requested comments on the applicable rules, which are set out below:

Proposed Rule	Terms of Proposed Rule	Response
17Ad-22(c)(2)	Clearing agencies must provide audited annual financial statements	The requirement for a clearing agency to publish audited annual financial statements is appropriate where the clearing agency represents a credit risk that users need to evaluate. Compression Services and collateral management providers do not represent such a risk. They do not receive or hold funds or securities from users. Users are not exposed to the credit risk of the Compression Service or collateral management provider in any way. Even if a Compression Service were to fail while a live compression cycle is being run (a process which takes less than half a business day to complete), the cycle would fail and the users would simply be left with their existing security-

Proposed Rule	Terms of Proposed Rule	Response
		based swap positions. If a Compression Service were to fail after a live compression cycle has been run and accepted by the participants in such cycle, the users' security-based swap portfolios have been changed in accordance with the proposal and this is not affected by the Compression Service's failure. Similarly, if a collateral management provider fails, its customers would not lose any of the collateral they had outstanding with counterparties, and would be free to appoint a different provider.
17Ad-22 (d)(1)	Provide for a well founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions	In practice, this will be a central feature of any well-founded Compression Service or collateral management service. Service providers offering services that do not represent a systemic risk to the viability of the markets, such as the triReduce Compression Service and the triResolve collateral management service, should be free to implement and amend such documentation as they consider necessary to operate their business, without undue regulatory delay or oversight. The ultimate test of the contractual terms offered by a Compression Service or collateral management provider will be their acceptance by market participants.
17Ad-22 (d)(2)	Require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency; have procedures in place to monitor that participation requirements are met on an ongoing basis; and have participation	The term "meet obligations arising from participation in the clearing agency" is not appropriate to a non-CCP clearing agency (and neither is an ongoing monitoring requirement). It implies that a Compression Service must perform due diligence on each of its users to confirm that they have the financial means to perform their obligations under the security-based swap transactions resulting from participation in the compression cycle. This is clearly not a function that a Compression Service is capable of performing, nor is it necessary, since the Compression Service is not involved in the financial

Proposed Rule	Terms of Proposed Rule	Response
	requirements that are objective, publicly disclosed, and permit fair and open access.	settlement of any transactions. The Compression Service simply aggregates existing exposure and presents a solution to reduce the inherent risk. It does not have any role in the ongoing relationships that result from the compression cycle. Instead, since the proposed transactions would be settled elsewhere (bilaterally or through a CCP), each counterparty (or the applicable CCP) should make its own credit assessment, as per existing arrangements. Similarly, a collateral management provider merely runs a set of calculations and does not hold or control any of its users' assets for any purposes.
17Ad-22 (d)(3)	Hold assets in a manner whereby risk of loss or of delay in its access to them is minimized; and invest assets in instruments with minimal credit, market and liquidity risks.	It should be clarified that this rule applies to customer assets only, and not to the assets of the clearing agency (or its sponsor). That way, this provision would not apply to Compression Services or collateral management providers that do not take in or retain any assets of their users.
17Ad-22 (d)(4)	Identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures; implement systems that are reliable, resilient and secure, and have adequate, scalable capacity; and have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations.	As with the contractual terms noted above in the context of rule (d)(1), operational risk management and disaster recovery systems will be a central feature of any well-founded Compression Service. Compression Services should be free to implement and amend such procedures as they consider necessary to operate their business, without undue regulatory delay or oversight. The robustness of a Compression Service's systems will be a competitive issue that will be determinant of the commercial viability of the Compression Service. Furthermore, as mentioned above, Compression Services do not represent a systemic risk to the viability of the markets. With respect to collateral management

Proposed Rule	Terms of Proposed Rule	Response
		services, there is even less risk since the collateral management provider merely runs a set of calculations for collateral management purposes. Systems integrity is a central feature of the provider's contractual framework and system design and, ultimately, its ability to attract users; the risk of data loss is, in practice, very small.
17Ad-22 (d)(5)	Employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks, that is, its credit and liquidity risks from the use of banks to effect money settlements with its participants; and require funds transfers to the clearing agency to be final when effected.	It should be clear that this rule is only applicable to clearing agencies that take in or process securities or funds of their users. It should not apply to Compression Services and collateral management providers that do not hold or process any of their users' assets.
17Ad-22 (d)(6)	Be cost-effective in meeting the requirements of participants while maintaining safe and secure operations.	Portfolio compression and collateral management are undertakings in which cost effectiveness is a dominant feature of the commercial viability of any service provider. Unless a service provider is systemically important or market participants are obliged to purchase its services, each service provider should be free to set fees in a fair and commercial manner that encourages broad participation while permitting sufficient flexibility to offer favorable rates to high-volume users, early adopters, magnet clients and other key participants. As mentioned above, Compression Services like triReduce and collateral management services like triResolve do not represent a systemic risk to the viability of the markets.
17Ad-22 (d)(7)	Evaluate the potential sources of risks that can arise	Prudent risk management is central to effective portfolio compression and collateral management, as is open and

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	when the clearing agency establishes links either crossborder or domestically to clear trades, and ensure that the risks are managed prudently on an ongoing basis.	effective crossborder availability of Compression Services and collateral management tools. Regulations that restrict the global availability of Compression Services and collateral management services will necessarily reduce the effectiveness of the risk-management service, by reducing the geographic scope of counterparties to which domestic users can connect. This rule should be modulated to encourage prudent but global portfolio compression and collateral management.
17Ad-22 (d)(8)	Have governance arrangements that are clear and transparent to fulfill the public interest requirements in section 17A of the Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.	Any rules relating to governance requirements should be commensurate to the low risk presented by Compression Services and collateral management providers to the security-based swap market and its participants. Unduly onerous requirements would impose unnecessary burdens and costs on the service providers and, consequently, on their users.
17Ad-22 (d)(9)	Provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using its services.	Compression Services operate on the basis of clear, standardized documentation and present few risks to users. If a compression cycle fails, the users' pre-existing transactions remain in effect. The risks can be disclosed in user documentation. The same is true for collateral management services.
17Ad-22 (d)(10)	Immobilize or dematerialize securities certificates and transfer them by book entry to the greatest extent possible when the clearing agency provides central	This rule is not applicable to Compression Services or collateral management services.

Proposed Rule	Terms of Proposed Rule	Response
	securities depository services.	
17Ad-22 (d)(11)	Make key aspects of the clearing agency's default procedures publicly available and establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.	Detailed default procedures are neither necessary nor relevant for Compression Services and collateral management services, since users are not required to perform any obligations once they have submitted their trade information. User default would not jeopardize the capability of the Compression Service, collateral management service or any other user to meet its obligations on an ongoing basis.
17Ad-22 (d)(12)	Ensure that final settlement occurs no later than the end of the settlement day; and require that intraday or real-time finality be provided where necessary to reduce risks.	It should be clarified that this does not apply to Compression Services or collateral management services. Once the compression solution or agreed-upon collateral amount has been accepted by users, it is the users' responsibility to settle transactions in accordance with existing trade and regulatory requirements, whether in the cleared market or on a bilateral basis and in each case outside of the Compression Service or collateral management service. The Compression Service or collateral management provider is not involved in, and cannot take responsibility for, users' compliance with their settlement obligations.
17Ad-22 (d)(13)	Eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.	This rule is not applicable to Compression Services or collateral management services.
17Ad-22 (d)(14)	Institute risk controls, including collateral requirements and	This rule is not applicable to Compression Services or collateral management services.

Proposed Rule	Terms of Proposed Rule	Response
	limits to cover the clearing agency's credit exposure to each participant exposure fully, that ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle when the clearing agency provides central securities depository services and extends intraday credit to participants.	
17Ad-22 (d)(15)	State to its participants the clearing agency's obligations with respect to physical deliveries and identify and manage the risks from these obligations.	This rule is not applicable to Compression Services or collateral management services.
17Ad-23	Each clearing agency shall establish, implement, maintain, and enforce written policies and procedures reasonably designed to protect the confidentiality of any and all transaction information that the clearing agency receives.	Confidentiality is an essential element of users' participation in a Compression Service or collateral management service. A service provider that fails to maintain the confidentiality of its users' data will not survive. Regulations should not be imposed that impair or prescribe the confidentiality solutions selected by the service provider. Any applicable regulations should, however, permit a user to authorize a service provider or its sponsor or affiliates to use the data provided by the user in connection with other commercial activities agreed by the user.
17Ad-25	Each clearing agency shall establish, implement, maintain and enforce written policies and	Conflicts of interest are of significantly less concern in the context of Compression Services and collateral management services than they are for CCP services. Users of Compression

Proposed Rule	Terms of Proposed Rule	Response
	procedures reasonably designed to identify and address existing or potential conflicts of interest. Such policies and procedures must also be reasonably designed to minimize conflicts of interest in decision making by the clearing agency.	Services or portfolio collateral management services look for the broadest possible universe of participants, in order to maximize the reduction to their portfolio exposure. A service provider that restricts access, applies discriminatory pricing or is perceived to act in the interests of a small group of interests is counterproductive and is unlikely to survive. Conflict of interest rules, therefore, should permit the service providers to address their users' concerns without being overly prescriptive or restricting ownership or control of the Compression Service or collateral management service.
17Ad-26(b)(2)	Director qualifications providing criteria for expertise in the securities industry, clearance and settlement of securities transactions, and financial risk management	As noted above, Compression Services and collateral management services present very few risks or conflicts of interest to users or potential users. Clearly, they must be efficiently managed and directors must have sufficient expertise to ensure the success and viability of the business. However, a Compression Service or collateral management service can just as well be run by a closely-held independent company as by a large association of market participants. Rules relating to directors and management should be sufficiently flexible to acknowledge and support this.

4. Registration and compliance costs could be a significant deterrent to Compression Services and collateral management service providers

The commercial viability of Compression Services (and collateral management services) would be strained if onerous registration requirements would apply to the service provider, even if these costs were channeled through to the user community.

5. TriOptima supports the Commission's exemptive discretion

We note that the Commission is seeking in the Proposed Rule to broaden the scope and timeframe of its discretion to exempt certain clearing agencies from the full scope of the regulations. Given the nascent state of the regulated market for security-based swaps and the interest of all parties to ensure that the ultimate outcome is enhanced risk management and reduced systemic risk, TriOptima believes that this is a positive and necessary step for the Commission to take.

Conclusion

TriOptima believes that Compression Services and collateral management services will continue to have a significant role in risk reduction in the security-based swap industry. TriOptima supports the efforts by the Commission to establish clear and practical rules for service providers, but believes that important revisions remain necessary in order to develop a full infrastructure for market participants to manage their risk. The regulations should be designed to support and enhance the development of that infrastructure, and not to create undue burdens for small or negative benefits. For that reason, TriOptima endorses the suggestions set out above and looks forward to a productive dialogue with the Commission to develop the final rules.

Please contact us at your convenience with any questions.

Yours Sincerely,

Christoffer Mohammar
General Counsel
TriOptima Group