

Dear Sirs,

TriOptima AB ("TriOptima") is pleased to respond to the "Questionnaire on MiFID/MiFIR 2, by Markus Ferber MEP", in accordance with the below. First, however, TriOptima would like to offer some background:

TriOptima offers post-trade services in the OTC markets. Post-trade services refer to services offered in relation to transactions already entered into, here primarily OTC derivatives. The company's client base is made up of banks and other financial institutions across the globe. TriOptima is today licensed to receive and transmit orders in accordance with the existing MiFID directive, as implemented through the Swedish Securities Market Act (2007:528).

TriOptima offers three post-trade risk mitigation services for the OTC markets:

- triReduce: a service for early termination of OTC derivatives, so called portfolio compression;
- triResolve: a service revolving around the reconciliation of counterparty positions in OTC derivatives; and
- a global trade reporting repository for interest rate derivatives (expected to be closed down in the not so distant future).

The triReduce portfolio compression and early termination service allows multiple participants to compress their existing OTC derivative portfolios in order to reduce (i) counterparty risk, (ii) operational risk and costs, (iii) the number of outstanding swaps contracts, and/or (iv) outstanding notional values, by participating in a single, coordinated algorithmic compression cycle.

The triReduce service – like many other post-trade services – reduces both counterparty and operational risks, as well as costs, without changing the participants' market positions. That the market positions remain unchanged means that the service is not used for buying or selling purposes, i.e. the participants do not take a view on the market when using the service. Consequently, these services cannot be used for price discovery or price transparency purposes. Moreover, since the compression process as a whole will contain just as many closed out long as short OTC derivatives positions, a participant will be completely indifferent to any price level on the single transactions included in the compression cycle, because the long and short OTC derivatives positions are valued equally. This is further supported by the fact that the result of the compression process is one single multilateral "all or nothing" transaction, which must be accepted in full by all participants. The single OTC derivatives contracts being compressed, and in relevant cases replaced with transactions with corresponding economical terms, are therefore not relevant as single transactions; the participants accept or reject the compression proposal as a whole.

To conclude, this points to the significant differences between compression and similar post-trade services, on the one hand, and ordinary trading, on the other, where two counterparties meet in a single transaction with the intention to change their respective market positions, and where these parties have an interest in obtaining the best possible price. Accordingly, in ordinary trading price does carry an information value for others in the market, something which is not the case in post-trade services. This *significant difference* between risk-reducing post-trade services and ordinary trading means that regulatory frameworks for ordinary trading are ill-suited for such important post-trade services.

We are happy to provide further information if needed.

TriOptima AB

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Chief Executive Officer

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Review of the Markets in Financial Instruments Directive

Questionnaire on MiFID/MiFIR 2 by Markus Ferber MEP

The questionnaire takes as its starting point the Commission's proposals for MiFID/MiFIR 2 of 20 October 2011 (COM(2011)0652 and COM(2011)0656).

All interested stakeholders are invited to complete the questionnaire. You are invited to answer the following questions and to provide any detailed comments on specific Articles in the table below. Responses which are not provided in this format may not be reviewed.

Respondents to this questionnaire should be aware that responses may be published.

Please send your answers to econ-secretariat@europarl.europa.eu by **13 January 2012**.

Theme	Question	Answers
Scope	1) Are the exemptions proposed in Directive Articles 2 and 3 appropriate? Are there ways in which more could be done to exempt corporate end users?	[TriOptima has not taken any view]
	2) Is it appropriate to include emission allowances and structured deposits and have they been included in an appropriate way?	[TriOptima has not taken any view]
	3) Are any further adjustments needed to reflect the inclusion of custody and safekeeping as a core service?	[TriOptima has not taken any view]
	4) Is it appropriate to regulate third country access to EU markets and, if so, what principles should be followed and what precedents should inform the approach and why?	From a global perspective, and for reasons described below (post-trade risk mitigation services are global and need to be offered globally to maintain efficiency), TriOptima is of the

		<p>view that it should be possible for providers of, for example, risk-reducing post-trade services, to offer their services in third countries on basis of EU law (regulations, implemented directives, ESMA technical standards, etc.). I.e. that the third country recognizes EU law as equivalent to the third country regime and can grant registration exemption. Correspondingly, it should be possible for a third country provider of such services to offer these services to recipients within the EU based on the third country regime, provided that this third country regime offers suitable investor protection, sufficient corporate governance and compliance requirements, etc. If the EU requires “word-by-word” equivalence, there is an evident risk that third countries will do the same.</p> <p>For the following reasons, post-trade risk reducing services are truly global and need to be offered globally to maintain efficiency: The efficiency of several post-trade services is highly dependent on sufficient volume, both in terms of participants and in terms of the number of trades submitted. Accordingly, the ability to offer such services on a global level is critical to optimize the services’ risk-reducing effect. To limit that ability would be counter-productive to the G20’s explicit aims to better manage and limit risks on the OTC markets.</p> <p>Provisions on third country access must therefore avoid detailed requirements and exact correspondence between EU law and the applicable third country regime. Instead, the recognition of the third country regime should be based on a general correspondence of the underlying aims and purposes of the regulations in question.</p>
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Corporate governance	5) What changes, if any, are needed to the new requirements on corporate governance for investment firms and trading venues in Directive Articles 9 and 48 and for data service providers in Directive Article 65 to ensure that they are proportionate and effective, and why?	[TriOptima has not taken any view]
Organisation of markets and trading	6) Is the Organised Trading Facility category appropriately defined and differentiated from other trading venues and from systematic internalisers in the proposal? If not, what changes are needed and why?	<p>TriOptima fully supports the establishment of OTFs as such, since OTFs would fill a very important function for the OTC markets. On an OTF both voice broking and hybrid broking can continue to fulfil their important function, particularly where the market is illiquid or displays an episodic trading pattern. For example, in contrast to popular belief, the OTC markets are in parts highly illiquid and suggest episodic trading patterns.¹ In some cases even the most standardised OTC trades will have to be brokered through voice broking and hybrid broking, albeit executed on OTFs.</p> <p>TriOptima notes, however, that the OTF category is extremely broad, meaning that it may cover also certain forms of processes which in themselves do not constitute any execution of trading in the normal sense. For example could certain risk-reducing post-trade services for OTC derivatives be categorised as OTFs.</p>

¹ Global statistics from June 2010 regarding the OTC markets suggests that only in respect of the four biggest currencies (USD, EUR, JPY and GBP), the number of new rates swaps on a global basis exceeded a couple of hundred per day and currency. In most currencies, the number of new rates swaps per day and currency was *significantly* lower. In such illiquid and episodic markets, market makers must be able to quickly hedge their positions taken, or they will be stuck with transactions impossible to hedge at reasonable prices. In these cases voice broking may be the only viable way of broker series of trades that enable the market maker to make a market while at the same time only hold transactions within the risk limits acceptable to the market maker. To force illiquid and episodic markets onto exchange-like venues would impact bid-offer spreads, i.e. it would be considerably more expensive to use OTC derivatives, which are very important tools to manage real economic risks.

		<p>These post-trade services do not increase risks on the OTC markets; neither on a counterparty, operational or systemic level. Instead, they limit and reduce such risks. Neither do they change the market exposure or market position. Yet they risk having to comply with requirements drafted for completely different types of services, where the participants actually seek to take a view on the market and where price discovery, price transparency, investor protection, etc. actually may be relevant. Since the proposed set of regulations is not at all designed for risk-reducing post-trade services, license requirements may significantly impact the ability to offer such services to OTC market participants. This is not in line with the G20 policy aims, establishing that systemic risk should be mitigated on the OTC derivatives market; these types of post-trade risk-reducing services are designed to decrease risks, including systemic risk.</p> <p>Accordingly, TriOptima is of the view that it is critical, to achieve the explicit aims of MiFID II, that risk-reducing post-trade services are fully exempt from a possible classification as OTFs.</p> <p>In the event that the European Parliament does not share the view of a general exemption from classification as OTFs for post-trade risk-reducing services, TriOptima would suggest that specific exemptions from certain OTF requirements, which are ill suited to post-trade services, may be given by the regulator.</p>
	<p>7) How should OTC trading be defined? Will the proposals, including the new OTF category, lead to the channelling of trades which are currently OTC onto organised venues and, if so, which type of venue?</p>	<p>Please refer to our response to question 6) above and 11) below.</p>

	8) How appropriately do the specific requirements related to algorithmic trading, direct electronic access and co-location in Directive Articles 17, 19, 20 and 51 address the risks involved?	[TriOptima has not taken any view]
	9) How appropriately do the requirements on resilience, contingency arrangements and business continuity arrangements in Directive Articles 18, 19, 20 and 51 address the risks involved?	[TriOptima has not taken any view]
	10) How appropriate are the requirements for investment firms to keep records of all trades on own account as well as for execution of client orders, and why?	[TriOptima has not taken any view]
	11) What is your view of the requirement in Title V of the Regulation for specified derivatives to be traded on organised venues and are there any adjustments needed to make the requirement practical to apply?	<p>TriOptima is of the view that the requirement for transactions in standardised OTC derivatives to be concluded on a trading platform may be problematic, as it may lead to severely negative effects on risk management through use of post-trade services.</p> <p>For example, there are parts of the process of portfolio compression services which include entering into replacing OTC derivatives, even though these replacing OTC derivatives do not represent any change in market risk; these replacement transactions correspond to the value and terms of partially terminated OTC derivatives and as such do not introduce any new or increased risks. In the event that replacement/new transactions, which have been created following a post-trade</p>

		<p>risk-reduction cycle, must be concluded on a trading platform, this would severely complicate the process for use of post-trade risk-reducing services.</p> <p>For example would a compression service likely have to connect to a large number of trading platforms across the globe, with sometimes incompatible requirements in terms of where a transaction must be executed, which in addition to technical difficulties would mean that a large number of agreement structures and rule books would need to be consolidated. In the worst case, this would make important risk-reducing post-trade services essentially impossible to deliver, and in any case would it complicate the use of such services, both from a practical and cost perspective. In other words, it would simply limit the opportunities for the OTC markets to manage and limit its counterparty, operational and systemic risks.</p> <p>Accordingly, a general exemption from this general rule must be available, in relation to replacement/new transactions being concluded as part of the use of risk-reducing post-trade services.</p>
	12) Will SME gain a better access to capital market through the introduction of an MTF SME growth market as foreseen in Article 35 of the Directive?	[TriOptima has not taken any view]
	13) Are the provisions on non-discriminatory access to market infrastructure and to benchmarks in Title VI sufficient to provide for effective competition between providers? If not, what else is needed and why? Do the proposals fit	[TriOptima has not taken any view]

	appropriately with EMIR?	
	14) What is your view of the powers to impose position limits, alternative arrangements with equivalent effect or manage positions in relation to commodity derivatives or the underlying commodity? Are there any changes which could make the requirements easier to apply or less onerous in practice? Are there alternative approaches to protecting producers and consumers which could be considered as well or instead?	[TriOptima has not taken any view]
Investor protection	15) Are the new requirements in Directive Article 24 on independent advice and on portfolio management sufficient to protect investors from conflicts of interest in the provision of such services?	[TriOptima has not taken any view]
	16) How appropriate is the proposal in Directive Article 25 on which products are complex and which are non-complex products, and why?	[TriOptima has not taken any view]
	17) What if any changes are needed to the scope of the best execution requirements in Directive Article 27 or to the supporting requirements on execution quality to ensure that best execution is achieved for clients without undue cost?	TriOptima notes that the principle of best execution of order is important to maintain trust and confidence in the financial markets. However, in the event this principle is extended to cover OTFs – and to the extent post-trade services, despite TriOptima’s reservations expressed above, are classified as OTFs – it is important that an exemption is made for such post-trade services which are based on algorithmic, multilateral calculations. The principle of best execution can simply not be applied to a mathematical optimisation formula, which amongst other aspects takes into account the participants’ submitted

		tolerances.
	18) Are the protections available to eligible counterparties, professional clients and retail clients appropriately differentiated?	[TriOptima has not taken any view]
	19) Are any adjustments needed to the powers in the Regulation on product intervention to ensure appropriate protection of investors and market integrity without unduly damaging financial markets?	[TriOptima has not taken any view]
Transparency	20) Are any adjustments needed to the pre-trade transparency requirements for shares, depositary receipts, ETFs, certificates and similar in Regulation Articles 3, 4 and 13 to make them workable in practice? If so what changes are needed and why?	[TriOptima has not taken any view]
	21) Are any changes needed to the pre-trade transparency requirements in Regulation Articles 7, 8, 17 for all organised trading venues for bonds, structured products, emission allowances and derivatives to ensure they are appropriate to the different instruments? Which instruments are the highest priority for the introduction of pre-trade transparency requirements and why?	<p>TriOptima would like to stress the importance of regulations being based on thorough analyses of current conditions. TriOptima holds the view that the MiFID/MiFIR 2 proposal on extended transparency requirements severely lacks in this regard. Given the way OTC derivatives markets function, in TriOptima's opinion there is already a good balance between transparency and liquidity in the OTC derivatives markets.</p> <p>The proposed requirements on increased transparency can disturb the existing balance between transparency and liquidity, and substantially hinder market making and the liquidity brought about by market makers. This in the same way as the requirements risk having a negative impact on the bond markets outside of the Euro area and the other major world currencies,</p>

		<p>which are dependent on the market makers maintaining liquidity. The OTC derivatives markets are just like these bond markets dependent on the market makers' possibilities to ensure a sufficiently liquid market. (Also, see our response to question 6) above and footnote 1.)</p> <p>The requirements for increased transparency could have a very negative effect on these market makers' appetite to take risk and establish prices, which in its turn would have a negative effect on liquidity. In TriOptima's view would an effectuation of the proposals, as currently drafted, have a severe negative effect on the stability of parts of the OTC markets within the EU, something which can neither be an intended or desirable development.</p> <p>A European regulatory regime must take into account the particular preconditions of certain markets, such as the OTC derivatives markets. The provisions on pre- and post-trade transparency in MiFID/MiFIR 2 should accordingly be limited to such liquid and efficient markets, without episodic trading patterns, where market making is not a necessity for a well functioning market, and where no single participant will drive prices when trying to hedge out of a position.</p>
	<p>22) Are the pre-trade transparency requirements in Regulation Articles 7, 8 and 17 for trading venues for bonds, structured products, emission allowances and derivatives appropriate? How can there be appropriate calibration for each instrument? Will these proposals ensure the correct level of transparency?</p>	<p>Please refer to our response to question 21) above.</p>

	23) Are the envisaged waivers from pre-trade transparency requirements for trading venues appropriate and why?	Please refer to our response to question 21) above.
	24) What is your view on the data service provider provisions (Articles 61 - 68 in MiFID), Consolidated Tape Provider (CTPs), Approved Reporting Mechanism (ARMs), Authorised Publication Authorities (APAs)?	[TriOptima has not taken any view]
	25) What changes if any are needed to the post-trade transparency requirements by trading venues and investment firms to ensure that market participants can access timely, reliable information at reasonable cost, and that competent authorities receive the right data?	[TriOptima has not taken any view]
Horizontal issues	26) How could better use be made of the European Supervisory Authorities, including the Joint Committee, in developing and implementing MiFID/MiFIR 2?	[TriOptima has not taken any view]
	27) Are any changes needed to the proposal to ensure that competent authorities can supervise the requirements effectively, efficiently and proportionately?	[TriOptima has not taken any view]
	28) What are the key interactions with other EU financial services legislation that need to be considered in developing MiFID/MiFIR 2?	[TriOptima has not taken any view]
	29) Which, if any, interactions with similar requirements in major jurisdictions outside the EU need to be borne in mind and why?	Please refer to our response to question 4) above.

	30) Is the sanctions regime foreseen in Articles 73-78 of the Directive effective, proportionate and dissuasive?	[TriOptima has not taken any view]
	31) Is there an appropriate balance between Level 1 and Level 2 measures within MIFID/MIFIR 2?	[TriOptima has not taken any view]
Detailed comments on specific articles of the draft Directive		
Article number	Comments	
Article ... :		
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Detailed comments on specific articles of the draft Regulation		
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