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Filed electronically via email (rule-comments@sec.gov)
March 21, 2022

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Position Reporting of Large Security-Based Swap Positions; RIN 3235-AK77 ("*Proposal*")

Dear Ms. Countryman:

T. Rowe Price Associates, Inc. and its affiliates ("***T. Rowe Price***") serve as investment advisers to numerous individuals, institutions and investment funds, including mutual funds, common trust funds, UCITS, pension plans and other investment funds and products. As of February 28, 2022, T. Rowe Price managed approximately $1.41 trillion in assets.

T. Rowe Price regularly uses security-based swaps ("***SBS***") in its portfolios to manage risk and to implement our investment strategies in furtherance of our clients' financial goals. For these reasons, we have a vested interest in the fair and transparent functioning of the SBS markets and we appreciate the opportunity to comment on the Proposal.

We understand the Securities and Exchange Commission's ("***Commission***") desire to increase general market awareness of large swap positions. However, given that the Proposal requires near real-time public disclosure of sensitive proprietary and confidential position information, it should be evaluated on the basis of whether its benefits outweigh the harms. The benefits cited in the Proposal are vague and speculative in our view, nor does the Proposal put forth any persuasive data to support these perceived benefits. This lack of compelling benefits does not justify nor countervail the significant detrimental effects the Proposal would impose on a large swath of market participants. For one, the public nature of the reports and the almost immediate dissemination departs drastically from existing securities public reporting regimes in the United States and will likely compromise the ability of investment advisers to implement investment strategies on behalf of their clients. It will also lead to an increase in market volatility and negatively impact liquidity. There are also a number of currently effective reporting regimes on which the Commission could rely to gather information on market participants' positions for the purpose of carrying out its supervisory duties. The complexity of the threshold calculations, the breadth of information required to be reported and the short timeframe in which to report will also impose significant monitoring, operational and compliance burdens.

For these reasons, we urge the Commission to withdraw the Proposal. If the Commission nevertheless decides to move forward with the Proposal, we recommend revisions that would mitigate some of the detrimental

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effects.

1. The Proposal should be withdrawn as the stated benefits do not outweigh the detrimental effects and the Commission has access to sufficient information to perform its market oversight role

A. *The stated benefits do not justify the burdens*

The Proposal enumerates three benefits that the reporting requirement would bring about: "(1) providing market participants . . . with access to information that may indicate that a person. . .is building up a large security-based swap position, which in some cases could be indicative of potentially fraudulent or manipulative purposes; (2) alerting market participants and regulators to the existence of concentrated exposures to a limited number of counterparties, which should inform those market participants and regulators of the attendant risks, allow counterparties to risk manage and lead to better pricing of the security-based swaps with respect to transactions with persons holding large positions in those security-based swaps; and (3) in the case of manufactured or other opportunistic strategies in the CDS market, providing market participants and regulators with advance notice that a person (or a group of persons) is building up a large CDS position which could create an incentive to vote against their interests as a debt holder, possibly with an intent to harm the company, even if such conduct is not inherently fraudulent."[1]

As to the first stated benefit, the Proposal does not elaborate much further than the conclusory statement cited in the prior paragraph. The Proposal does not establish any links between large SBS positions and fraudulent or manipulative purposes, whether in terms of causation or correlation, nor does it assert the holders of large SBS positions are more likely to commit fraud or engage in manipulative behaviors. Nevertheless, the practical import of seeking to impose a reporting obligation on a wide set of market participants as a regulatory response presumes every holder of a large SBS position has a potentially fraudulent or manipulative intent. Given the lack of evidence put forth that such fraud or manipulation is a pervasive issue, we question the need for the proposed reporting framework.

The second stated benefit appears to be a response to the Archegos event in the Spring of 2021, which as the Commission knows, involved a hedge fund defaulting on various large equity swap positions with a number of prime brokers and causing large losses to some of these brokers. Reacting to this event, the Proposal's stated goal is to "alert" counterparties like these prime brokers to "the existence of concentrated exposures" so as to "inform" the prime brokers of "attendant risks" and "allow" them to "risk manage".[2] We believe that this approach lacks proportionality as it seeks to respond to a discrete issue between prime brokers and their customers by placing significant burdens on all market participants, most of whom have never been nor will ever be involved in

[1] Proposal at 62.

[2] *Id.*

similar scenarios.

Prime brokers have many tools at their disposal to manage counterparty risk and they are acutely aware that a typical hedge fund customer often has relationships with multiple prime brokers. This is evidenced by the fact that in this incident, a number of brokers incurred no losses because of the properly calibrated margin requirements they imposed on the Archegos fund and their robust risk management practices.[3]

More importantly, the unavailability of the proposed large position reports was not a significant factor that led to the large losses at some of the prime brokers involved in the Archegos event. The most authoritative view into those events is provided by the internal review conducted by the prime broker that incurred the largest losses, Credit Suisse.[4] We would draw the Commission's attention to the fact that by the prime broker's own admission, lack of information was not a factor in the resultant losses as the relevant decision makers "had all the information necessary to appreciate the magnitude and urgency of the Archegos risks".[5] This puts into question not only whether "allow[ing] counterparties[6] to risk manage"[7] is an appropriate goal of a broad reporting regime but also whether these reports would even accomplish the Proposal's stated benefit. Thus, we do not see benefits being realized that would justify subjecting all market participants to an onerous and detrimental reporting regime in order to aid a small group of sophisticated prime brokers in their risk management practices, which they can demonstrably carry out successfully without such reports.

Finally, the Proposal states that public reporting of large CDS positions would presumably curtail the occurrence of "opportunistic strategies" by providing "advance notice" to "market participants and regulators", about positions that "could create incentives" for opportunistic strategies. First, the practice of these opportunistic strategies has been limited to a relatively small number of hedge funds whereas the Proposal would impose a burden on the entire market to address a relatively insular issue. This is not to say the risks posed by these practices to the CDS markets are not real. However, we believe that the actions ISDA has taken to amend the

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[3] *Credit Suisse and the Wild West of synthetic prime brokerage,* Risk.net, May 11, 2021 (stating that two of the six prime brokers Archegos dealt with "held more than 20% margin against their exposures, enabling them to exit the trades without reporting losses" and that one even returned some collateral to Archegos while the other "made a small profit.")

[4], *Credit Suisse Group Special Committee of the Board of Directors Report on Archegos Capital Management,* July 29, 2021 ("CS Report")

[5] The CS Report states: "The Archegos-related losses sustained by CS are the result of a fundamental failure of management and controls in CS's Investment Bank and, specifically, in its Prime Services business. The business was focused on maximizing short-term profits and failed to rein in and, indeed, enabled Archegos's voracious risk-taking. There were numerous warning signals—including large, persistent limit breaches—indicating that Archegos's concentrated, volatile, and severely under-margined swap positions posed potentially catastrophic risk to CS. Yet the business, from the in-business risk managers to the Global Head of Equities, as well as the risk function, failed to heed these signs, despite evidence that some individuals did raise concerns appropriately.

The Archegos default exposed several significant deficiencies in CS's risk culture, revealing a Prime Services business with a lackadaisical attitude towards risk and risk discipline; a lack of accountability for risk failures; risk systems that identified acute risks, which were systematically ignored by business and risk personnel; and a cultural unwillingness to engage in challenging discussions or to escalate matters posing grave economic and reputational risk. The Archegos matter directly calls into question the competence of the business and risk personnel who had all the information necessary to appreciate the magnitude and urgency of the Archegos risks, but failed at multiple junctures to take decisive and urgent action to address them."

[6] Based on the Proposal's context, "counterparties" encompasses a range of participants, including brokers, dealers and prime brokers.

[7] Proposal at 63.

credit definitions and give added discretion to the determinations committees have been effective in reducing or eliminating them. Second, it is unclear how any of the stated beneficiaries of these reports could benefit from the information or what types of preemptive measures they could take prior to any CDS holder revealing an intent to engage in an opportunistic strategy. As with the first benefit discussed above, the Proposal practically imputes suspicious motives to any holder of a large CDS position without providing any evidence that holders of large CDS positions are more likely to engage in opportunistic strategies. As we noted in the case of the prior two benefits cited by the Commission, the Proposal imposes a near real-time position disclosure requirement which would compromise the integrity of investment strategies of many market participants that have no intent to engage in opportunistic strategies.

B. *The Commission has the information available in order to carry out its supervisory obligations*

A number of currently effective reporting requirements provide information that the Commission could use to construct reports on positions that could closely approximate the information being required under the Proposal. Under Sections 13(d) and (g) of the Securities and Exchange Act of 1934 (the "***Exchange Act***"), investors are required to report their equity holdings in issuers that exceed 5% of the class of equity securities. Under Section 13(f) of the Exchange Act, institutional investors are required to report their holdings of equity securities quarterly. Under the large trader reporting regime of Section 13(h) of the Exchange Act, the Commission can request information from broker/dealers about the positions of investors that qualify as large traders under certain quantitative thresholds.

Finally, under the recently implemented Regulation SBSR transaction reporting, the Commission has begun to receive detailed information about SBS transactions. The data reported under Regulation SBSR includes information about both counterparties, execution agent ID, trading desk ID, the type of swap, terms of the swap and life cycle events, including termination. Even though individual transactions and not aggregate positions are reportable, over time, the Commission will be able to aggregate individual transactions into positions and have a clear view into outstanding exposures between specific pairs of counterparties. In fact, as the Commission notes in the Proposal, SBS data repositories are required to maintain position level information for all reporting persons, so that information would be readily available to the Commission upon request. Data on SBS positions could be paired with the data collected under the other reporting regimes to gain an accurate view into a market participant's overall position in a particular issuer.

To conclude, while we do not believe the proposed rule will meaningfully add to the Commission's oversight capabilities, it will significantly and negatively affect market participants by compromising the integrity of their investment strategies through early public disclosure of their positions and greatly increasing their compliance burdens.

2. Should the Commission decide to move forward with the Proposal, we set out a number of revisions to alleviate the significant detrimental effects

In the sections below, we address several aspects of the Proposal and provide recommendations to mitigate its detrimental effects to investment advisers. Accordingly, we urge the Commission to adopt the following recommendations:

A. Positions should not be aggregated across several funds and accounts solely based on the fact that they are managed by the same investment adviser;

B. Reports should not be publicly available;

C. The time to submit reports should be extended to 45 days after the end of the calendar quarter in which a threshold is crossed;

D. The notional threshold for equity SBS positions should be removed;

E. The intermediate 2.5% threshold for equity SBS positions should be removed; and

F. The underlying securities should not be reportable with the SBS position.

A. *Positions should not be aggregated across several funds and accounts solely based on the fact that they are managed by the same investment adviser*

The proposed rule "would require any person (and any entity controlling, controlled by or under common control with such person)" to file position reports.[8] We are concerned that the proposed rule's formulation could be interpreted to deem any fund managed by an investment adviser to be under common control with any other fund managed by the same adviser. Consequently, SBS swap positions held by multiple funds in a fund complex would be aggregated into a single position for reporting purposes.

While we don't think this is the correct interpretation, we urge the Commission to confirm that the aggregation scenario described above is not intended by the Proposal. For the reasoning behind this view, we refer the Commission to the comment letter submitted by the Investment Company Institute (the "***ICI Letter***"), which we fully support.

Aggregation across multiple funds would also be inconsistent with one of the Proposal's principal rationales

[8] Proposed rule 240.10B-1(a)(1).

– namely that public reporting of swap positions should aid "market participants" (like prime brokers and dealers) in their risk management practices by providing them with a view into their customers' exposures across all counterparties. Prime brokers and SBS dealers are exposed to customers that are distinct legal entities and their recourse is typically limited to the pool of assets owned by their customer entity. That reality would not change if the customer were an investment fund that is part of a fund complex managed by a single investment adviser. Thus, prime brokers and SBS dealers surveilling their customer's total exposures would benefit from reports submitted by the legal entity that reflect such entity's holdings without aggregation across other funds with a common adviser.

For the reasons outlined above, we urge the Commission to confirm that different funds managed by the same investment adviser would not be considered to be under "common control" solely because they are managed by the same investment adviser.

B. *Reports should not be publicly available*

Next day public availability of sensitive position information would cause significant harm to the ability of investment advisers to successfully implement their strategies and serve their clients. It would encourage copycat and coattail investing, reverse engineering of trading and investment strategies and an increase in market volatility. We address these harms in greater detail further below. As far as the proposed public nature of the reports, to the extent that the Proposal has articulated its benefits, they inure to a small segment of the market and have a disproportionately negative effect on most other market participants. To reverse these disparate outcomes, the Commission should not require the reports to be public.

We believe there is a question as to whether the public reporting requirement appropriately reflects the intent of Congress. As the authorizing statute, Dodd Frank, demonstrates, Congress is cognizant of the potential harms posed by publication of sensitive information and, when it wants to require publication, that intent is unequivocally expressed. For example, in section 763(i) of Dodd Frank, Congress amended Section 13 of the Exchange Act by adding a provision entitled "Public Availability of Security Based Swap Transaction Data."[9] That section expressly authorized the Commission to make limited swap transaction data publicly available in the context of real-time reporting of SBS transactions and mandated that reported "information does not identify the participants", "does not disclose the business transactions and market positions of any person" and that "public disclosure [does not] materially reduce liquidity." It is reasonable to conclude that when granting to the Commission authority to require large trader reporting of swap positions, Congress would have explicitly included the authority to make the reports public, if it had so intended.

[9] The authority for the Proposal is under Section 763(h) of Dodd Frank.

C. *The time to submit reports should be extended to 45 days after the end of the calendar quarter in which a threshold is crossed*

The Proposal provides that once a threshold has been exceeded, the report must be submitted by the end of the next business day.[10] Next day public reporting will likely cause significant harm to investment advisers by allowing competitors to reverse engineer investment strategies with negative effect on investment returns for the advisers' clients. It will also encourage copycat and coattail investing, where positions of prominent institutional investors are blindly copied by other market participants, which has the effect of greatly amplifying market volatility.

These negative consequences strike at the core of an investment adviser's value proposition to its clients. Investment advisers distinguish themselves by developing and implementing various investment strategies in service to their clients and demonstrating a successful track record over time. This requires large investments in personnel, research, counterparty relationships, operational capabilities, trading capabilities, client service, legal, compliance and numerous other functions. Success often requires a decades-long patient approach. The result is the adviser's "intellectual property" or "IP" as it is commonly referred to in the industry. As with any IP, apart from the ingenuity and effort expended in its creation, a crucial portion of its value comes from its confidential nature and the ability to prevent unlicensed use.

Publishing large positions in near real-time will erode the confidentiality and thus diminish the value of an adviser's IP. It will disseminate to the market highly confidential and proprietary information that a competitor or a predatory trader could use to reverse engineer the adviser's strategy and begin to anticipate the adviser's subsequent investment decisions. This activity will dilute the effectiveness of the investment adviser's strategies and cause direct harm to its clients in the long run.

In the short run, the publicly available large positions of reporting persons could be easily replicated or traded against by other market participants. This would increase market volatility as numerous copycat investors would copy the published long or the short positions of institutional investors without knowing the rationale behind the investment decisions. For example, a large short position could prompt copycats to cause a rapid decline in the underlying stock even though the original investment decision that led to the position being implemented could have been a part of a complex investment strategy or a risk management exercise and not just an expression of a pure negative view on the underlying stock. Similarly, a large long position could cause copycats to rapidly bid up a stock to form a "bubble" which then becomes prone to a sudden reversal in price. The amplified market volatility caused by these reactive moves would be a negative for the US securities markets.

To summarize, next day public disclosure of large SBS and the underlying security positions would allow many market participants to profit unfairly at the expense of an investment adviser's strategy and the adviser's

[10] Proposed rule 240.10B-1(a)(2).

clients. In the case of T. Rowe Price, our clients include millions of individuals that invest in our mutual funds and other products to save for retirement or accomplish other financial goals.

For these reasons, we urge the Commission to reconsider the next day reporting requirement. The Proposal has not put forth any justification for why a large position in SBS would need to be made publicly available with such urgency, especially when compared to other reporting regimes under the Exchange Act which provide for much more reasonable timeframes. For example, under Section 13(g), institutional investors are required to report 45 days after the end of the calendar year.[11] Under Section 13(f), reporting is required 45 days after the end of the calendar quarter. We believe that these timeframes strike the correct balance between the competing interests of market transparency and the protection of investment advisers' IP. Accordingly, we ask the Commission to adopt the same timeframe for the purposes of the proposed rule and provide for the filing of reports within 45 days after the end of the calendar in which an applicable threshold is exceeded.

D. *The notional threshold for equity SBS positions should be removed*

For equity SBS, the Proposal sets forth two separate methodologies for calculating thresholds – the $300 million notional threshold and the 5% of outstanding class of securities threshold and provides that a position exceeding the lesser of the two would be reportable. This adds unnecessary complexity to an already far-reaching and onerous reporting requirement. In order to streamline the significant monitoring and compliance burdens, we urge the Commission to disregard the notional threshold and retain the 5% threshold. We refer the Commission to the ICI Letter for further discussion and support of this proposition.

E. *The intermediate 2.5% threshold for equity SBS positions should be removed*

The Proposal introduces an intermediate threshold for equity SBS as part of the 5% threshold test. Once an equity SBS position exceeds in notional value 2.5% of a class of equity securities, the holder is required to include any holdings of the underlying stock in the calculation of its position size. For the reasons discussed in the following section F, we believe that this provision unfairly discriminates against users of SBS. Accordingly, we urge the Commission to remove it from the threshold calculation methodology as it shifts the reporting regime's focus away from large swap positions by having traditional equity positions determine outcomes.

F. *The underlying securities should not be reportable with the SBS position*

Among the information to be reported the Proposal includes, for equity SBS, "all equity securities underlying a security-based swap" and, for a debt SBS including CDS, "all debt securities underlying a security-based swap."[12] The effect is that market participants, by way of a relatively small SBS position, will be required to

[11] We are aware that the Commission has issued a proposal to amend and shorten these times but even the proposed timeframes, which are concerning in their own right, do not approach the ones in the Proposal.

[12] Proposed rule 240.10B-101.

publicly report their entire holdings of the underlying securities in near real-time.

More generally, this requirement unjustifiably punishes investors that use SBS by imposing a drastically compressed reporting deadline on equity and debt securities than what would otherwise apply. To use an example, consider investor X that acquires an equity swap with a notional of $250.0001 million and a stock position equal to $250 million and investor Y that acquires a stock position equal to $500 million. Under the Proposal, X would have to report the entire position on the next business day while the earliest time Y's position would have to be reported is 45 days after the end of the calendar quarter.[13] The Proposal does not explain why the use of SBS should lead to such different outcomes for otherwise similarly situated investors.

We are concerned that this requirement introduces a back-door near-real time reporting regime for a wide range of equity and debt securities and vastly oversteps the bounds of what is purportedly a swap reporting proposal. For this reason, we urge the Commission to limit the information to be reported under the Proposal to SBS positions alone.

We appreciate your consideration of our views on this proposal. If you have any questions or would like to discuss our letter, please do not hesitate to contact Predrag Rogic at (410) 345-4999, predrag.rogic@troweprice.com or Jonathan Siegel at (410) 345-2284, jonathan.siegel@troweprice.com.

Sincerely,

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[13] We are assuming Section 13(f) of the Exchange Act applies to this example.