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Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

Submitted electronically via SEC Internet Comment Form

August 21, 2023

Dear Ms. Countryman:

**Reopening of Comment Period for Position Reporting of Large Security-Based Swap Positions (File. No. S7-32-10)**

The Alternative Investment Management Association (“AIMA”)<sup>1</sup> appreciates the U.S. Securities and Exchange Commission’s (“SEC” or “Commission”) determination to reopen (the “Reopening Release”)<sup>2</sup> the comment period for proposed Rule 10B-1, which would establish a large trader position reporting rule for security-based swaps (“SBSs”) (the “Proposal”).<sup>3</sup> The Reopening Release invites interested

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<sup>1</sup> AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA’s fund manager members collectively manage more than \$2.5 trillion in hedge fund and private credit assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 250 members that manage \$800 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialized educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA’s website, [www.aima.org](https://www.aima.org).

<sup>2</sup> Proposed Rule; Reopening of Comment Period, “Reopening of Comment Period for Position Reporting of Large Security-Based Swap Positions”, 88 Fed. Reg. 41,338 (June 26, 2023) (the “Reopening Release”).

<sup>3</sup> Proposed Rule, “Prohibition Against Fraud, Manipulation, or Deception in Connection With Security-Based Swaps; Prohibition Against Undue Influence Over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions”, 87 Fed. Reg. 6,652 (Feb. 4, 2022) (the “Proposed Rule”).



persons to comment on additional analysis from the SEC's Division of Economic and Risk Analysis ("DERA") regarding the Proposal's reporting thresholds<sup>4</sup> in the equity SBS market (the "DERA Memo").<sup>5</sup>

AIMA's members include institutional investment managers and other market participants, many of whom are active members in the SBS market and would therefore be adversely impacted by the Proposal. The Proposal would be highly detrimental both to the broader financial ecosystem and our members' trading, investing and risk management strategies.

At the outset, we question the Proposal's necessity and the creation of a new, costly reporting regime that singles out position-level data for SBSs.<sup>6</sup> The data underlying the DERA Memo clearly demonstrates that the Commission already has access to extensive, granular data available via SBS data repositories ("SBSDRs") and can effectively cross-reference it with other data.<sup>7</sup> Furthermore, SBSDR data has been publicly disseminated since February 14, 2022,<sup>8</sup> which also yields an appropriate amount of transparency for market participants to assess certain SBS market dynamics. We therefore encourage the Commission to rely upon and use existing SBSDR data instead of pursuing the adoption of the Proposal.

#### Disclosure of Schedule 10B Reports

Despite the DERA Memo, we still believe that the proposed reporting thresholds lack a rational basis and are likely to materially harm market efficiency. Notwithstanding this concern, which we address later, our most significant concern with the Proposal is the Commission's preliminary determination to publicly disclose reporting persons' Schedule 10B reports.

Under the Proposal, persons that trigger one of three SBS thresholds must file with the Commission a Schedule 10B report and include information on nine specific items, including the name of the reporting person, the type of the reporting person and the reporting person's Legal Entity Identifier ("LEI"), if applicable.<sup>9</sup> This report must be filed no later than the end of the first business day following the day of execution of the SBS position that triggered the reporting requirement, i.e., T+1 reporting, and it would be made publicly available immediately upon filing.<sup>10</sup> The Commission believes that this extensive, position-level reporting will lead to several benefits, e.g., market participants could better assess counterparty risk, leading to an increase in market integrity.<sup>11</sup>

As we explained in our initial response to the Proposal, the Commission fails to recognize that disclosing Schedule 10B reports with the proposed level of granularity will ultimately undermine the

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<sup>4</sup> The proposed reporting threshold for equity SBSs is the lesser of a gross notional amount of \$300 million or a position that represents more than 5% of a class of equity securities. *Id.* at 6,671-72.

<sup>5</sup> DERA Analysis on Equity SBS Market (the "DERA Memo").

<sup>6</sup> The Commission and the public already have extensive data on market participants' positions, especially the positions of institutional investment managers that file Form 13F. We do not believe the Commission has sufficiently justified why it has singled out a specific asset class for granular, attributed, next-day reporting.

<sup>7</sup> See DERA Memo, *supra* note 5, at 4 (cross-referencing SBSDR data with Schedule 13D data).

<sup>8</sup> Proposed Rule, *supra* note 3, at 6,653.

<sup>9</sup> *Id.* at 6,673.

<sup>10</sup> *Id.* at 6,668.

<sup>11</sup> *Id.* at 6,687.

benefits it believes the Proposal will achieve.<sup>12</sup> We believe that disclosing individual market participants' SBS positions, either with or without identifying information, e.g., name and LEI, will lead to the following negative outcomes:<sup>13</sup>

- Most market participants are highly sensitive to the publication of what essentially amounts to their proprietary trading strategies and, as a result, may exit the SBS market or significantly limit their trading, investing or risk management activity to avoid triggering one of the proposed reporting thresholds. This outcome will surely harm market liquidity, competition and capital formation.
- Additional disclosure of market participants' portfolios via Schedule 10B reports will further erode the importance of developing critical proprietary investment information and risk harming markets, market participants and investors.
- The attributed disclosure could lead to copycat trading, market squeezes or other targeted trading behavior, despite the Proposal only paying cursory acknowledgment to this likelihood.
- Assuming market participants curtail their SBS trading to avoid the attributed disclosure, it follows that they may also limit their hedging and risk management practices, an outcome the Commission most certainly does not intend to encourage, yet the Proposal could effectively do.

Although the Commission believes several benefits will accrue to it and the market from the disclosure of Schedule 10B reports, the contrary outcome is more likely. The DERA Memo fails to address the likelihood of the negative consequences discussed above, not only from the proposed thresholds but, primarily, from the public disclosure of reported positions. As a result, the Commission still lacks a rational basis for its proposed thresholds. Furthermore, we question why the Commission continues to ignore the above harms vis-à-vis the Proposal when it explicitly examines the same negative outcomes that can result from too much granular disclosure in its Short Sale Reporting Rule.<sup>14</sup> Therefore, if the Commission proceeds with the adoption of the Proposal, we strongly encourage any final rule to aggregate, anonymize and delay the disclosure of reported SBS positions, thereby adopting a framework similar to that contemplated in the Commission's Short Sale Reporting Rule.

### The DERA Memo

Again, we are disappointed that the DERA Memo does not address the most glaring issue with the Proposal – the T+1, attributed disclosure discussed above and its likely harmful impacts. The DERA Memo includes several other omissions that it should have addressed. First, we appreciate DERA analyzing the Proposal's impact on "activist" investing strategies; however, the DERA Memo fails to distinguish this strategy from many others that would be impacted by the Proposal. Second, the DERA Memo, like the Proposal, fails to address whether the proposed thresholds are, in fact, appropriate,

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<sup>12</sup> AIMA's response to the Proposed Rule is available [here](#).

<sup>13</sup> *Id.*

<sup>14</sup> Proposed Rule, Short Position and Short Activity Reporting by Institutional Investment Managers, 87 Fed. Reg. 14,950 (Mar. 16, 2022) (the "Short Sale Reporting Rule"). Under the Short Sale Reporting Rule, the Commission would publish aggregated and anonymized short sale data within one month after the end of the reporting calendar month. A similar framework should be instituted for credit default swaps ("CDS"), debt-based SBSs and equity SBSs if the Commission proceeds with adopting a final version of the Proposed Rule.



especially given the concerns raised above. Third, because of the inefficiency and incompleteness of the data and it only covering such a brief period of time, it does not provide commenters with the ability to draw any real, material conclusions, particularly given the volatility reflected in the data.<sup>15</sup>

Notwithstanding these glaring omissions, the DERA Memo estimates that an astounding number of equity SBS positions would be reported and disclosed under the current equity SBS thresholds. For example, during the Sample Period, an average of 868 large positions would be submitted on a daily basis by an average of 97 market participants under the proposed \$300 million equity SBS threshold.<sup>16</sup> Furthermore, even the higher thresholds explored in the DERA Memo would capture a significant number of market participants and positions. For example, during the Sample Period, using an alternative \$1 billion equity SBS threshold, an average of 154 large positions would be submitted on a daily basis by an average of 38 market participants.<sup>17</sup>

We are unsure where the thresholds for filing Schedule 10B reports should be drawn for equity SBSs, debt-based SBSs and credit default swaps, especially if the Commission adopts the T+1, attributed disclosure outlined in the Proposal. Moreover, we do not believe *any* reporting threshold is appropriate if the Commission adopts the proposed disclosure framework. Accordingly, it would be beneficial to the SEC and the public for DERA to conduct further analysis of the number of Schedule 10B reports filed and market participants impacted, regarding both the proposed CDS and debt-based reporting thresholds. This analysis should also assess the impact of the proposed T+1, attributed disclosure framework on market liquidity, competition and efficiency.

In conclusion, we do not believe that the Commission should proceed with adopting a final SBS data reporting rule because, as the DERA Memo demonstrates, the Commission, its staff and the public have sufficient SBS data available through SBSDRs. If, however, the Commission does proceed with adopting a final rule, we reiterate the importance of not disclosing Schedule 10B reports in any form and instead aggregating and anonymizing reported positions before any dissemination to the public.

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We would be happy to elaborate further on any of the points raised in this letter. For further information, please contact Daniel Austin, Director of U.S. Policy and Regulation, by email at [REDACTED]

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<sup>15</sup> DERA Memo, *supra* note 5, at 12:

Our analysis is subject to significant limitations in our ability to identify equity [SBS] positions associated with an activist investor. . . .These data on positions do not account for direct equity holdings due to data constraints. Data regarding equity holdings, although potentially available in a smaller number of cases, have yet to be successfully merged broadly with equity security-based swap data positions because of differences in underlying reference data identifiers. Hence, the analysis may undercount the number of activist investors who might need to file Schedule 10B when aggregating both beneficial ownership and equity security-based swap positions.

<sup>16</sup> *Id.* at 15.

<sup>17</sup> *Id.* at 17.



Yours sincerely,

A handwritten signature in blue ink, appearing to read "Jiří Król". The signature is fluid and cursive, with the first name "Jiří" and the last name "Król" clearly distinguishable.

Jiří Król  
Deputy CEO, Global Head of Government Affairs  
AIMA

Cc: The Honorable Gary Gensler, Chair  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Caroline A. Crenshaw, Commissioner  
The Honorable Mark T. Uyeda, Commissioner  
The Honorable Jaime Lizárraga, Commissioner  
Dr. Haoxiang Zhu, Director, Division of Trading and Markets  
Dr. Jessica Wachter, Chief Economist and Director, DERA