ISDA® Safe, Efficient Markets

August 21, 2023

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

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

Dear Ms. Countryman:

The Institute of International Bankers ("IIB"), International Swaps and Derivatives Association ("ISDA") and the Securities Industry and Financial Markets Association ("SIFMA") (together, the "Associations")[1] appreciate the opportunity to provide comments to the Securities and Exchange Commission (the "Commission" or "SEC") in response to the Commission's above-captioned reopening of the comment period ("Reopening Release")[2] for its proposal regarding security-based swap ("SBS") position reporting requirements, as set forth in proposed Rule 10B-1 under the Securities Exchange Act of 1934 (the "Exchange Act") and proposed Schedule 10B ("Proposed Rule 10B-1").[3]

We appreciate the Commission's decision to seek additional comments on Proposed Rule 10B-1. As we expressed in our prior comment letter (the "2022 IIB/ISDA/SIFMA Comment Letter"),[4] rushing to implement Proposed Rule 10B-1, especially its public disclosure requirements, would result in a negative impact to the SBS markets and, importantly, to the global capital formation ecosystem that depends on vibrant SBS markets to hedge risk.

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[1] Descriptions of the Associations are included in the attached Appendix.

[2] Release No. 34-97762 (June 20, 2023), 88 Fed. Reg. 41338 (June 26, 2023).

[3] *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*, Release No. 34-93784 (Dec. 15, 2021), 87 Fed. Reg. 6652 (Feb. 4, 2022) ("Proposing Release").

[4] Comment Letter from the Associations Regarding the Proposing Release (March 21, 2022), *available at* https://www.sec.gov/comments/s7-32-10/s73210-20120774-272955.pdf.

We are also disappointed that the Reopening Release and associated economic analysis ("DERA Memo")[5] do not address the core concerns we raised in the 2022 IIB/ISDA/SIFMA Comment Letter. Most notably, the Reopening Release and DERA Memo do not address concerns that the data captured by Proposed Rule 10B-1 would be misleading and confusing when publicly disseminated. They also do not address the risk that opportunistic traders could cherry-pick that data in order to reverse engineer and front run other market participants' trading strategies.

The Reopening Release and DERA Memo further do not attempt to quantify or describe how the benefits of position-level disclosure under Proposed Rule 10B-1, on top of the already extensive transaction-level reporting under Regulation SBSR, would outweigh these costs and risks, in addition to the operational costs and burdens of establishing and maintaining new reporting systems and processes. These costs and burdens would be present even if the Commission limited Proposed Rule 10B-1 to regulatory reporting—firms would be required to expend significant resources to implement the rule with no material incremental benefit to the Commission, given that the Commission already has access to the data needed to understand and monitor the SBS markets, as evidenced by the DERA Memo itself.

In light of these gaps, below we supplement the 2022 IIB/ISDA/SIFMA Comment Letter with additional examples and explanation of the adverse impact that Proposed Rule 10B-1 would have on U.S. companies and investors. We further address how the Commission has failed to justify the adoption of Proposed Rule 10B-1. We conclude by responding to the specific requests for comment set forth in the Reopening Release.

I. Proposed Rule 10B-1 Would Result in Misleading and Harmful Public Disclosures

Market participants frequently use the SBS markets to achieve a variety of hedging and other trading objectives that help promote capital formation and economic expansion. Below we provide some specific examples of such use of the SBS markets and the harmful impact that Proposed Rule 10B-1's public disclosure requirements would have.

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[5] In connection with the Reopening Release, the Commission's Division of Economic and Risk Analysis ("DERA") released a memorandum providing "[s]upplemental data and analysis regarding the proposed reporting thresholds in the equity security-based swap market." Memorandum from DERA to SEC File No. S7-32-10 (June 20, 2023), *available at* https://www.sec.gov/comments/s7-32-10/s73210-207819-419422.pdf.

Credit Default Swap Examples

Market participants frequently purchase single-name credit default swaps ("CDSs") to hedge credit exposure. Examples include:

- A bank purchases CDSs to comply with internal risk limits when making additional loans to a borrower. Efficient access to the CDS market enables the bank to expand its lending capacity to borrowers with whom it has a long-term relationship, which is especially important to those borrowers during periods when general credit market conditions make it more difficult to access public debt markets;

- A swap dealer purchases CDSs to manage the credit risk associated with entering into swaps with a commercial end user entering into those swaps to hedge or mitigate its commercial risks. Efficient access to the CDS market enables the dealer to provide these hedging services during periods where increasingly volatile interest rate, foreign exchange, or commodity prices lead the dealer to assume greater potential credit exposure to its commercial end user counterparties, even as that volatility likewise makes access to such hedging services more important to those commercial end users; and

- An institutional investor purchases CDSs to hedge credit risks to issuers of bonds it has purchased. Efficient access to the CDS market enables the investor to continue to provide liquidity in primary debt capital market issuances during periods of increasing credit market volatility.

Requiring public disclosure of CDS positions in these circumstances would have several negative consequences. Most notably, it would make it much more costly to enter into the CDSs, possibly prohibitively so. When an SBS dealer provides liquidity in CDSs, it must in turn hedge that exposure. Only a handful of non-sovereign CDS names average 10 or more trades per day, which is 3% or less of the total universe of names that trade in the CDS market.[6] Therefore, depending on the size of the position, it can take the dealer days or even weeks to hedge that risk. If either the dealer or its customer is required to disclose its position publicly, opportunistic market participants could easily front run the dealer's hedging activity. The dealer would have to take that risk into account when deciding how to price or whether to provide the CDS. If the SBS dealer could not make the CDS available, or available at a suitable price, then the bank,

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[6] *See* ISDA, *Single-name CDS Market Update* (May 2023), *available at* https://www.isda.org/a/0jLgE/Single-name-CDS-Market-Update.pdf.

swap dealer, or investor may forgo its lending, hedge providing, or investing activity entirely.

Public disclosure would also create confidentiality concerns. In particular, disclosure of any related loan or swap positions on Schedule 10B would compromise the confidentiality of the loan and swap markets.[7] Disclosure of these related positions could, and in many instances would, violate confidentiality agreements. Even absent express disclosure of those related positions, market participants could likely infer an increase in borrowing by a company when new CDS positions referencing that company are disclosed.

Market participants and the general public may also misinterpret the disclosure of these CDS positions. For example, they might infer that an increase in open CDS interest for the relevant reference company indicates growing credit concerns for that company, even though the relevant CDS purchases merely reflect prudent risk management practices. This misinterpretation could trigger a self-fulfilling cycle, as other market participants likewise buy the company's CDSs or short its stock, possibly causing a run on the company.

While this section provides examples of firms purchasing CDSs for hedging purposes, there should be no public disclosure of *any* long CDS positions. A firm might, in certain circumstances, purchase CDSs as an efficient way to manage its portfolio exposures rather than transacting in the underlying instrument (*e.g.*, a firm could achieve its preferred bond exposures through the CDS markets rather than buying the underlying). There also should not be disclosure of short CDS positions. As with the immediately preceding example, a firm might sell CDS to efficiently manage its portfolio—for instance, a large portion of insurance companies' CDS market activity consists of selling CDSs.[8] Firms engage in CDS selling for other reasons as well. For example, a firm might, within its own risk limits, sell CDSs as credit support to certain transactions it underwrites, since the ability to hedge through CDSs can increase the supply of credit to firms by making corporate debt more attractive to certain investors based on their risk tolerances. In this regard, CDS markets support robust credit markets. More generally, the presence of CDS sellers ensures a robust and liquid market for firms seeking to purchase CDSs for hedging purposes described above. Public disclosure of any of these positions would distort and limit the usefulness of CDS markets.

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7 Although swap transactions are disseminated to the public, the Dodd-Frank Act does not permit public disclosure of the identities of parties to swap transactions.

8 NAIC, *Capital Markets Special Report* (2019), *available at* https://content.naic.org/sites/default/files/capital-markets-special-report-derivative-exposure-increased-2018.pdf.

Total Return Swap Examples

Market participants do not solely use the total return swap ("TRS") market to take directional views or obtain leveraged exposure to price movements. Frequently investors, including mutual funds, pension plans, insurance companies, municipalities, and sovereign wealth funds use TRSs in order to balance their overall portfolio risks. Examples include:

- An investor uses a range of advisers and sub-advisers who follow a variety of different investing strategies. Taken together, however, those strategies cause the investor's overall portfolio to be overweighted towards one or a small number of companies due to those companies' presence in multiple major indices or other benchmarks. The investor enters into TRSs on those companies in order to reduce this concentration risk;

- An investor looking to manage its overall market risk while retaining exposure to the "alpha" generated by the unique strategies of one or more advisers enters into one or more TRSs referencing exchange-traded funds that in turn reference one or more broad-based indices, which provide the "beta" exposure of the investor's portfolio;

- An investor that has a fundamental long or short view with respect to a particular company, but does not want broader exposure to that company's industry or geographic sector, enters into offsetting positions in TRSs on other major companies in that sector; and

- An investor that already has a position in a company's stock hedges it with a TRS, which can be more efficient and have less market impact than selling the stock position outright.

As in the CDS examples above, disclosure of these TRS positions would, depending on the size of the positions, significantly increase the costs of executing those positions because of front-running behavior by opportunistic traders.

Likewise, in these instances there also is a similar risk of misinterpretation by market participants and the public, who might wrongly infer that the TRS signals broader selling or buying interest in the underlying company. This misinterpretation would lead to negative consequences. For example, disclosure of a short TRS position could give rise to imitative trading (*e.g.,* by also putting on short positions), which could harm the underlying company, or retaliation by attempting a "short squeeze," which could harm the investor. In the case of a long TRS position, disclosure could also cause the underlying company or others take actions that they otherwise would not (*e.g.*, a

public company might activate its activist defense plan), which would ultimately distort the securities markets.

It is also notable that Proposed Rule 10B-1 would apply a different public disclosure regime to equity SBSs than those that apply to other methods for obtaining equity market exposure. In the derivatives markets, neither equity options nor equity futures currently trigger public disclosure of an individual market participant's particular positions. In the cash markets, the Commission's beneficial ownership disclosure rules for long equity positions are tailored to account for differences among different types of investors (*e.g.*, between activist and passive investors), have longer delays before public disclosure is required, and do not require the same extent of disclosure of related positions, among other differences. For short cash positions, the Commission's February 2022 short interest reporting proposal specifically declined to require public reporting, which was due to the same sorts of concerns we describe above.[9] Due to these differences, Proposed Rule 10B-1 would unjustifiably create incentives for regulatory arbitrage among different types of economically related financial instruments, including incentives to transact in instruments subject to the jurisdiction of other regulators.[10]

The Commission's stance here is all the more confusing given that it has, in similar circumstances, recognized the risks associated with public disclosure of equities positions. For example, the Commission's Form N-PORT reporting requirements applicable to certain investment companies apply on a quarterly basis. There, the Commission acknowledged that a quarterly public filing requirement

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[9] *See* Short Position and Short Activity Reporting by Institutional Investment Managers, Release No. 34-94313 (Feb. 25, 2022), 87 Fed. Reg. 14950 (Mar. 16, 2022), *available at* https://www.govinfo.gov/content/pkg/FR-2022-03-16/pdf/2022-04670.pdf. The Commission has long recognized that public disclosure of short positions could exacerbate market problems. *See id.* at 87 Fed. Reg. 14954 ("The Commission's determination to maintain the confidentiality of the information disclosed on Form SH was based in part on the concern that requiring public disclosure may have had the unintended consequence of giving rise to imitative short selling, thereby exacerbating already extreme levels of market volatility observed during the 2008 financial crisis. The Commission also stated that implementing a nonpublic, rather than public, disclosure requirement would help to prevent the potential for sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Moreover, the Commission stated at the time that requiring nonpublic submission of the form may help prevent artificial volatility in securities as well as further downward swings that are caused by short selling while also providing the Commission with valuable information to combat market manipulation.") (citations omitted).

[10] For example, a firm could choose to trade broad-based index swaps subject to Commodity Futures Trading Commission's oversight rather than economically similar ETF swaps subject to the Commission's oversight, merely due to the difference in disclosure regimes.

appropriately balances the interest in public transparency of fund holdings information against the need to protect sensitive fund portfolio management positions and strategies.[11]

II. The Benefits of Proposed Rule 10B-1 Do Not Outweigh Its Costs

The Proposing Release cites a number of "market developments" that purportedly support the need for public reporting of SBS and related positions.[12] Among the events often referenced to justify this type of regime is the failure of Archegos Capital Management ("Archegos") in 2021 due, in large part, to its TRS positions. The theory holds that, had Archegos been required to publicly report its TRS positions, its prime brokers (and others) would have been alerted to Archegos's positions earlier and, therefore, would have been able to avert, or at least mitigate, losses.

This theory is not correct and cannot be used to justify Proposed Rule 10B-1. A comprehensive investigation conducted on behalf of one of Archegos's prime brokers determined that the losses were "the result of a fundamental failure of management and controls," not a lack of information regarding Archegos's positions.[13] In fact, that prime broker had "numerous warning signals—including large, persistent limit breaches—indicating that Archegos's concentrated, volatile, and severely under-margined swap positions posed potentially catastrophic risk."[14] The Board of Governors of the Federal Reserve System has, likewise, stated that losses to that prime broker were the result of internal risk management failures, not a lack of information regarding Archegos's TRS positions.[15]

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11 *See* Investment Company Reporting Modernization, Release No. IC-32314, 81 Fed. Reg. 81870, 81910 (Nov. 18, 2016).

12 87 Fed. Reg. 6652, 6654-6655.

13 Credit Suisse Group Special Committee of the Board of Directors, *Report on Archegos Capital Management* 1 (July 29, 2021), *available at* https://www.credit-suisse.com/about-us/en/reports-research/archegos-info-kit.html (the "Archegos Report").

14 *Id.* The Archegos Report further found that "this is not a situation . . . where the architecture of risk controls and processes was lacking or the existing risk systems failed to operate sufficiently to identify critical risks and related concerns. The Archegos risks were identified and were conspicuous. The persistent failure of the business and risk to manage and remediate the risks, and pervasive issues of business competence and resourcing adequacy." *Id.* at 2.

15 *See* Order to Cease and Desist and Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended, *In the Matter of UBS Group AG et al.* (July 21, 2023), *available at* https://www.federalreserve.gov/newsevents/pressreleases/files/enf20230724a1.pdf (finding that "the risk posed by Archegos' increasingly concentrated TRS portfolio . . . continued to increase from mid-2020 through early 2021, such that Archegos breached . . . internal risk limits throughout that entire period" and that the prime broker did not take "any effective measures to reduce the known risks posed by Archegos' TRS portfolio").

The Proposing Release also cites certain "manufactured credit events or other opportunistic strategies" in the CDS market as a basis for a public reporting requirement.[16] While we agree that these types of events could raise concerns, the Commission has not demonstrated that Proposed Rule 10B-1 is a necessary response. In this regard, we note that the Commission has other rulesets already in place to address these types of concerns. First, the Commission recently finalized Exchange Act Rule 9j-1, which effectuates additional anti-fraud and anti-manipulation prohibitions in the SBS markets (including the CDS markets).[17] Additionally, the Commission promulgated Regulation SBSR to collect data on the SBS markets. The Commission can (i) identify manufactured credit events and other opportunistic strategies through Regulation SBSR data and (ii) enforce against any identified fraudulent or manipulative behavior using its Rule 9j-1 authority. Proposed Rule 10B-1 would add nothing to the Commission's toolbox; instead, as we have described, it is more likely to exacerbate unwanted market behavior.

The private sector has also taken proactive steps to address concerns about opportunistic trading in the CDS market. For example, ISDA has amended its credit derivatives definitions to address issues relating to "narrowly tailored credit events."[18] The Commission and other financial market regulators "welcome[d] these [private sector] developments" and noted that they "look forward to further industry efforts to improve the functioning of the credit derivative markets."[19]

More generally, the analysis reflected by the DERA Memo itself calls into question the need for Proposed Rule 10B-1, even solely for regulatory reporting to the Commission. The DERA Memo illustrates how Commission staff can use data already reported pursuant to Regulation SBSR to identify large positions. Should the Commission identify such a position, it could in turn request information from the position holder about its related positions. The Commission has not explained what meaningful incremental benefits it would derive from the additional reporting that Proposed Rule 10B-1 would require, except by citing that Proposed Rule 10B-1 would require public disclosure of individual market participants' SBS positions and related positions, which the Commission was not authorized to require as part of Regulation

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16 87 Fed. Reg. at 6655.

17 *See Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers*, Release No. 34-97656; 88 Fed. Reg. 42540 (Jun. 30, 2023).

18 *See* ISDA, 2019 Narrowly Tailored Credit Event Supplement to the 2014 ISDA Credit Derivatives Definitions (July 15, 2019), *available at* https://www.isda.org/a/KDqME/Final-NTCE-Supplement.pdf.

19 SEC, *Update to June 2019 Joint Statement on Opportunistic Strategies in the Credit Derivatives Market* (Sep. 19, 2019), *available at* https://www.sec.gov/news/public-statement/update-june-2019-joint-statement-opportunistic-strategies-credit-derivatives.

SBSR. But those aspects of Proposed Rule 10B-1 are what present the greatest costs and risks, as explained above.

We also note that the European Securities and Markets Authority ("ESMA") determined in an *ex-post* analysis of Archegos that regulatory reporting data that it receives pursuant to the European Market Infrastructure Regulation ("EMIR") made it "possible to track the steep increase in concentrated exposures that [Archegos] undertook in February and March 2021" and that such data can, more generally, "be used to monitor leverage and concentration risk in derivatives markets."[20] The Commission now has access (pursuant to Regulation SBSR, which had a first compliance date in November 2021, months after the Archegos collapse) to regulatory data comparable to the data that ESMA receives under EMIR. As demonstrated by the DERA Memo, such data would have enabled the Commission to identify the risks building up at Archegos; the Proposed Rule 10B-1 data would not have provided any material incremental benefit to the Commission.

III. The Exchange Act Does Not Support Adoption of Proposed Rule 10B-1

That the Commission has not adequately justified its policy rationale for Proposed Rule 10B-1 is especially concerning given the lack of any statutory mandate for the rule. The Proposing Release points to Section 10B of the Exchange Act as the legal authority for the rule. But Section 10B merely authorizes the Commission to establish position limits for SBSs that are "reasonably designed to prevent fraud and manipulation"[21] and, in connection therewith, further provides that the Commission may require firms "to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans."[22]

Interpreting Section 10B to authorize Proposed Rule 10B-1, particularly its public disclosure aspects, would inappropriately divorce the reporting aspects of the section from its broader position limit context. Properly understood, this section authorizes the Commission to require regulatory reporting of SBS positions in order to help set and enforce any SBS position limits set by the Commission.[23] This more

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[20] ESMA, *TRV Risk Analysis: Leverage and derivatives—the case of Archegos* (May 18, 2022) *available at* https://www.esma.europa.eu/press-news/esma-news/esma-publishes-ex-post-analysis-derivatives-risks-in-archegos.

[21] 15 U.S.C. § 78j-2(a). The Commission may also require aggregation of positions and adopt exemptions from position limits. *See* 15 U.S.C. § 78j-2(a), (b).

[22] 15 U.S.C. § 78j-2(d).

[23] The Commission has not, to date, proposed position limits for SBS positions.

circumscribed reading is consistent with other SBS reporting rules, as well as position limits regulations applicable to other derivatives markets.

It is also notable that Section 13(m) of the Exchange Act specifically prohibits security-based swap data repositories ("SBSDRs") from disseminating the identities of counterparties to any SBS transaction and "any information disclosing the business transactions and market positions of any person" for uncleared SBSs.[24] The Commission seeks to turn this prohibition on its head by suggesting that the lack of any similar prohibition in Section 10B means that the Commission, unlike an SBSDR, has authority to disseminate that information.[25] But this reading would clearly undermine Congressional intent, allowing the Commission to do indirectly what Congress prohibited from being done directly.

IV. If It Adopts Proposed Rule 10B-1, the Commission Should Substantially Revise the Levels and Calculation Methods for Reporting Threshold Amounts

The Reopening Release requests comment on several aspects of Proposed Rule 10B-1's reporting threshold amounts. As described above, the Commission should not adopt the rule, especially its public disclosure aspects. Accordingly, our responses below to the Reopening Release's requests for comment are based on our views regarding revisions that would be necessary if the Commission proceeded with regulatory reporting only under the rule.

1. *In general, the Commission requests comment on the proposed Reporting Threshold Amount for each asset class (e.g., equity security-based swaps, CDS, non-CDS debt security-based swaps, etc.)*

We refer the Commission to Part II of the 2022 IIB/ISDA/SIFMA Comment Letter, which sets out, in detail, our views with respect to the calibration of the Reporting Threshold Amounts. For example, we noted that: (i) the thresholds should apply on a net basis; (ii) certain positions should be excluded altogether (such as inter-affiliate positions and hedging-related positions); (iii) the debt SBS thresholds should be recalibrated to recognize the different trading and liquidity characteristics of different underlying debt securities and (iv) the equity SBS threshold should not include a notional-based threshold.

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[24] *See* 17 C.F.R. § 242.902(c).

[25] *See* Proposing Release, 87 Fed. Reg. at 6657 & n.42.

2. *With respect to each asset class, should the Reporting Threshold Amount in any final rule be higher or lower than the proposed Reporting Threshold Amount if:*

   a. *Consistent with the Proposed Rule, such final rule requires, at an interim threshold, the inclusion of the value of related securities owned by the holder of the security-based swap position in the calculation of the Reporting Threshold Amount?*

If the value of related securities are included, then the Reporting Threshold Amount should be higher, particularly given our general view that the proposed thresholds are too low. We also refer the Commission to Part II.F of the 2022 IIB/ISDA/SIFMA Comment Letter, which discusses the treatment of related equity positions for purposes of the equity SBS thresholds.

   b. *Such final rule does not require the inclusion of related securities owned by the holder of the security-based swap position in those calculations?*

The thresholds should not be lower merely because related securities would not be included. For the reasons noted above and in the 2022 IIB/ISDA/SIFMA Comment Letter, the thresholds as proposed are miscalibrated and setting them lower would only serve to exacerbate the problems we have noted.

   c. *Such final rule permits offsetting of security-based swap positions with identical terms (e.g., offsetting long positions with short positions, but only if the security-based swap positions reference the same product identifier)?*

It would be helpful for any final rule to recognize offsetting positions. As noted in Part II.A of the 2022 IIB/ISDA/SIFMA Comment Letter, the thresholds should more generally apply on a net basis and recognition of netting should not be limited to offsetting SBS positions with identical terms as this question suggests (for example, an SBS position can be offset by a position in the underlying security). However, the Commission should not lower the thresholds merely because it allows for netting. Allowing for netting simply recognizes that fact that the Proposed Rule is (or should be) focused on large, *directional* positions.

   d. *Consistent with the Proposed Rule, such final rule requires aggregation of security-based swap positions by any person (and any entity controlling, controlled by or under common control with such person) or group of persons, who through any contract, arrangement, understanding or relationship, after acquiring or selling directly or indirectly, any security-based swap, is directly*

or indirectly the owner or seller of a security-based swap position that exceeds the Reporting Threshold Amount?

If the final rule requires such aggregation, then the thresholds should be set higher. However, as described in Part II of the 2022 IIB/ISDA/SIFMA Comment Letter, the more fundamental point is that a market participant should not be required to aggregate positions held across independent business units or positions managed by independent account controllers. This approach would, among other things, respect internal information barriers and align with current market practice for Section 13 reporting and compliance.

e. *Such final rule does not require aggregation of security-based swap positions across entities that are both separately legally established and capitalized (unless a guarantee exists)?*

See Part II of the 2022 IIB/ISDA/SIFMA Comment Letter for our views regarding aggregation. Furthermore, given the issues noted in this letter and in the 2022 IIB/ISDA/SIFMA Comment Letter, any final rule should not set the thresholds lower merely because disaggregation is allowed.

f. *Such final rule does not require aggregation of security-based swap positions across entities that are both separately legally established and capitalized (unless a guarantee exists), unless acting as a group with a common purpose?*

See response to (e), above.

g. *Such final rule requires aggregation of security-based swap positions established by transactions effected for such person's own account and of security-based swap positions established by transactions effected for the account of others, when that person shares in the economic risk in the other accounts or otherwise controls the account?*

See response to (d), above.

h. *Such final rule does not require the Reporting Threshold Amount to include security-based swap positions entered into by a person with an entity or person controlling, controlled by, or under common control with that person?*

See response to (e), above.

i. *Such final rule requires or does not require aggregation or inclusion of transactions pursuant to any combination of the options listed in items (a) through (h) above?*

See response to (e), above.

If the Commission decides to proceed with Proposed Rule 10B-1 in any form, it should first re-propose the rule with specific revisions responsive to our comments in this letter and the 2022 IIB/ISDA/SIFMA Comment Letter. Such a re-proposal will allow market participants to provide the Commission with additional feedback, which will be necessary in light of the interrelationships among the possible revisions.

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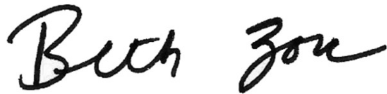
We appreciate the opportunity to provide comments in response to Proposed Rule 10B-1 and the Reopening Release. If you have any questions or would like additional information, please contact the undersigned.

Very truly yours,



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The Hon. Hester M. Peirce, SEC Commissioner
The Hon. Caroline A. Crenshaw, SEC Commissioner
The Hon. Mark T. Uyeda, SEC Commissioner
The Hon. Jaime Lizárraga, SEC Commissioner

Mr. Haoxiang Zhu, Director, SEC Division of Trading and Markets

APPENDIX

Overview of the Associations

The **Institute of International Bankers** represents internationally headquartered financial institutions from over thirty-five countries around the world doing business in the United States. The membership consists principally of international banks that operate branches, agencies, bank subsidiaries, and broker-dealer subsidiaries in the United States. The IIB works to ensure a level playing field for these institutions, which are an important source of credit for U.S. borrowers and comprise the majority of U.S. primary dealers. These institutions enhance the depth and liquidity of U.S. financial markets and contribute greatly to the U.S. economy through direct employment of U.S. citizens, as well as through other operating and capital expenditures.

Since 1985, **ISDA** has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 79 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.

SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.