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March 21, 2022

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

Re: *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 (File No. S7-32-10)*

Dear Ms. Countryman:

The Investment Company Institute[1] is writing to respond to the Securities and Exchange Commission's ("Commission") rule proposals related to security-based (SB) swaps. Our comments focus on proposed Rule 10B-1, which would require any person with an SB swap position of a certain size based on specified calculations to promptly file a Schedule 10B that discloses information related to the position ("Reporting Proposal").[2]

ICI has generally supported the Commission's efforts to enhance transparency in the derivatives markets, including SB swaps, which may promote investor protection and enhance the Commission's ability to conduct oversight over these markets. However, we oppose the Reporting Proposal in its current form, as it would establish a new SB swap reporting framework that not only duplicates existing disclosure requirements that already apply to regulated funds ("funds"), but also would create unintended consequences for funds and their shareholders, as well as have negative implications for market liquidity.

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[1] The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US$31.6 trillion in the United States, serving more than 100 million US shareholders, and US$10.0 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington.

[2] *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*, Securities Exchange Act Release No. 34-93784 (Dec. 15, 2021), 87 Fed. Reg. 6652 (Feb. 4, 2022) ("Reporting Proposal").

Based on the limited and discerning manner in which funds use SB swaps,[3] the rule as proposed would likely impose risks and burdens that greatly outweigh any potential benefits. We believe that the Commission has not adequately justified those risks and burdens with respect to funds and their portfolio management activities. We also believe that the Commission has underestimated the scope of funds likely to be impacted by the rule as proposed. Therefore, we urge the Commission to reconsider the Rule Proposal and re-assess these risks and burdens more carefully, including whether the proposed thresholds levels and calculation methodologies are appropriately set to achieve the rule's objectives.

If the Commission nonetheless proceeds with the Rule Proposal despite our considerable concerns, we urge the Commission to revise Rule 10B-1 in several key respects. Specifically, the Commission should:

- Not publicly disseminate the information reported on Schedule 10B and lengthen the time for a reporting person to prepare and submit a filing. We strongly oppose a T+1 timeframe,[4] but we do not recommend a specific length for a reporting period at this time. We are continuing to assess the implications of the Commission's many other recent reporting and disclosure proposals for Rule 10B-1 and existing reporting obligations, prior to providing a recommendation.

- Rely on relevant information that it already receives and utilizes for oversight—including SB swap transaction data under Regulation SBSR and granular details on SB swap holdings and other holdings that funds report (*e.g.*, Form N-PORT)—and limit the scope of what must be reported under Rule 10B-1 to only information that it currently does not obtain under these existing reporting requirements.

- Streamline the calculation methodologies by (i) adopting a component-based approach to reporting SB swap positions based on a narrow-based security index; and (ii) establishing a single "SB swap equivalent position" threshold for SB swaps based on equity securities, rather than the proposed bifurcated approach.

- Provide an adequate compliance period to allow funds to implement the systems and processes necessary to comply with Rule 10B-1. Any compliance period must holistically consider the collective impact of the many other reporting rules the SEC recently has proposed, which will also impact funds.

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[3] We note that funds typically do not use SB swaps such as credit default swaps (CDS) for purposes that involve manufactured credit events or other opportunistic strategies as described by the Commission. *See* Reporting Proposal at 6654-55.

[4] Rule 10B-1(a)(2) requires a reporting person to file Schedule 10B "promptly, but no later than the end of the first business day following the day of execution of the SB swap that results in the SB swap position exceeding the applicable threshold." We refer to this timing requirement as "T+1."

Further, we request that the Commission (i) clarify whether the rule requires aggregation of positions across funds in a complex; and (ii) revise the rule text to replace the references to "owner or seller."

I. Background

Regulated funds, which include US-registered investment companies, including mutual funds, ETFs, and other funds that are regulated under the Investment Company Act of 1940, as well as non-US regulated funds, rely on derivatives such as SB swaps to manage their portfolios in accordance with the investment objectives set forth in their respective prospectuses. For example, funds may use SB swaps to hedge different types of portfolio risk,[5] including interest rate risk and duration, as well as to manage cash positions generally. SB swaps may also help to enhance liquidity for funds by allowing them to equitize cash that cannot be immediately invested in direct equity holdings or otherwise gain or reduce exposure when access to other instruments is otherwise difficult, costly, or practically impossible. Thus, SB swaps help to enhance funds' ability to manage portfolios efficiently and reduce costs for the benefit of fund shareholders.[6]

As the Commission itself acknowledges in the Reporting Proposal, funds and their advisers generally utilize SB swaps in a more conservative manner than certain other market participants, such that they are "likely to be less leveraged . . . [than] other entities that participate in the [SB swaps] market."[7] This reflects the Commission's understanding that funds' investment activities, including those involving SB swaps, are specifically governed by a rigorous oversight framework that includes requirements on valuation and pricing, limits on leverage, and prohibitions and restrictions on transactions with affiliates. The Commission specifically highlights that a fund's use of derivatives is also subject to Rule 18f-4 under the Investment Company Act of 1940, which requires funds that use derivatives such as SB swaps to adopt a

[5] Some fund managers use SB swaps to mitigate certain forms of portfolio risk (*e.g.*, to hedge exposure to a market, sector, security, or other target exposure or, for fixed income funds, to adjust portfolio duration).

[6] For example, a fund may invest in SB swaps to counterbalance circumstances where holding cash or other highly liquid assets could act as a drag on fund performance and introduce tracking error. In such a case, SB swaps can provide efficient and cost-effective investment exposures designed to help a fund meet its investment objectives by allowing the fund to hold those highly liquid assets while minimizing such drag or error, thus allowing managers to use them to carry out the fund's liquidity management activities.

[7] Reporting Proposal at 6697 n.259 (recognizing that Form N-PORT filers "may not be representative of the 'average' trading entity in the security-based swap market and in particular, the 'average' trading entity in the total return, or equity swap market.").

derivatives risk management program administered by a derivatives risk manager.[8] A fund's board, which typically includes a majority of independent directors, oversees the fund's risk management program and evaluates the fund's different investment strategies and swap holdings. In addition, fund managers carefully evaluate potential counterparties and may limit a fund's exposure to a particular counterparty, beyond applicable regulatory limits.

Funds are also already subject to extensive periodic disclosure and reporting requirements related to their use of derivatives. Notably, a fund is required to report and disclose its holdings, including swap positions, on Form N-PORT, which is filed with the SEC and made publicly available.[9] With respect to swaps and SB swaps, funds must specifically include in the monthly schedule of portfolio holdings each swap instrument held,[10] swap type (*e.g.*, whether it is a total return swap or credit default swap), counterparty, notional amount, and payoff profile (*i.e.*, whether the investment is long or short), as well as terms and conditions that describe the swap's underlying reference instrument,[11] obligation or index.[12] Form N-PORT also requires a fund to disclose portfolio-level risk metrics that demonstrate the exposure that a fund's portfolio holdings have to changes in interest rates or credit spreads.[13] As the Commission has noted, this

[8] *Id.* (noting that Rule 18f-4 "limit[s] the ability of registered investment companies and business development companies to engage in derivatives transactions."). Funds will also be required in August 2022 to comply with leverage risk limits based on value at risk and conduct stress testing to assess a fund's potential losses in response to market changes or changes in market risk factors that would significantly and adversely affect the fund. 17 CFR 270.18f-4(c)(1)-(2). Rule 18f-4 further requires funds to maintain documentation of policies and procedures that are designed to manage a fund's derivatives risk and any internal reporting or escalation of material risks under the program, among other types of information. 17 CFR 270.18f-4(c)(6)(i).

[9] Funds are required to prepare Form N-PORT monthly within 30 days after the end of each month. Reports on Form N-PORT for each month in a fiscal quarter must be filed with the Commission no later than 60 days after the end of the fiscal quarter. Except for certain non-public information reported on Form N-PORT, the information reported on the form for the third month of each fund's fiscal quarter is made publicly available upon filing.

[10] Funds are also required to report corresponding position-level data regarding their open swap positions in their audited financial statements. 17 CFR 210.12-13C.

[11] This includes the name of issuer, title of issue, and relevant securities identifier and similar information on an underlying derivative, index, or custom basket, depending on the size of the notional amount as a percent of the fund's net asset value. *See* Form N-PORT Items C.11.c.i-iii and related Items C.11.d-g.

[12] This includes a description and terms of payments necessary for a user of financial information to understand the terms of payments to be paid and received including, as applicable, description of the reference instrument, obligation, or index (including the information required by sub-Item C.11.c.iii), financing rate, floating coupon rate, fixed coupon rate, and payment frequency. *See* Form N-PORT Item C.11.f.i.

[13] *See* Form N-PORT Item B.3.

information is helpful to understand the various risks of a fund, including whether the fund's exposure to price movements is leveraged through the use of derivatives.[14]

II. Applicability and Impact of Rule 10B-1 on Funds

We seek clarity on certain aspects of Rule 10B-1 so that market participants understand how the rule would apply to funds. Specifically, we request that the Commission confirm our interpretation that SB swap positions held by funds in a complex would not need to be aggregated for reporting purposes. We also question the Commission's initial estimated impact on funds and the basis for the proposed threshold levels. We address each of these issues in greater detail below and provide recommendations.

1. The Commission Should Clarify that Aggregation Does Not Apply to Funds

We request that the Commission clarify the extent to which Rule 10B-1 may require aggregation of SB swap positions across different entities, which could impact the applicability of the rule to funds. As proposed, the rule would require "[a]ny person (*and any entity controlling, controlled by or under common control with such person*), or *group* of persons" who becomes the owner of an SB swap position that exceeds the reporting thresholds to file a Schedule 10B (emphasis added).[15] Therefore, a potential reporting person needs to understand whether its SB swap positions must be aggregated with the SB swap positions of other entities to determine whether the reporting obligation ultimately applies. The Reporting Proposal, however, does not provide additional guidance on how this provision would apply in practice.

Specifically, the Commission must confirm that Rule 10B-1 does not mandate aggregation of separate SB swap positions respectively held by individual funds or other clients (*e.g.*, separately managed accounts) managed by a common investment adviser. We note that the proposed rule text and the Reporting Proposal itself supports this view.[16] In the cost-benefit analysis presented in connection with the proposal, the Commission explains that Rule 10B-1 would "require

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[14] *Investment Company Reporting Modernization*, Investment Company Act Release No. 33-10231 (Oct. 13, 2016), 81 Fed. Reg. 81870, 81874 (Nov. 18, 2016) ("Form N-PORT Final Rule").

[15] Proposed Rule 10B-1(a)(1).

[16] We note that as proposed, the scope of a person required to report under Rule 10B-1 differs from the Section 13 reporting requirements, such as Rule 13f-1 for "institutional investment managers" and Rule 13h-1 for "large traders," both of which require the aggregation of positions held by accounts or entities over which the applicable reporting entity exercises "investment discretion." *See* 17 C.F.R. 240.13f-1(a)(1) (Section 13(f) reporting for institutional investment managers) and 17 C.F.R. 240.13h-1 (Section 13(h) reporting for large traders). "Investment discretion" for these purposes is defined in section 3(a)(35) of the Securities Exchange Act of 1934 ("Exchange Act") as having the authority or influence to determine what securities or other property shall be purchased or sold by or for an account. 15 U.S.C. 78c(a)(35). *See also* 17 C.F.R. 240.13d-3 (specifying that for purposes of beneficial ownership reporting under Section 13(d) and 13(g), a beneficial owner includes persons who have "voting power" and/or "investment power.").

reporting by the party with the swap exposure. . .[and] not the investment adviser who trades on behalf of [a client],"[17] which confirms that the Commission contemplates reporting at the fund level, rather than aggregated reporting at the adviser level. This explanation is also consistent with the focus of the cost-benefit analysis on the proportion of Form N-PORT filers that would be impacted by the proposal (*i.e.*, individual funds) that would be required to report positions under the proposed thresholds.[18] Therefore, we believe—and request the Commission to confirm—that a fund would only be required to file a Schedule 10B if its own individual SB swap positions meet or exceed the applicable threshold.

To the extent that Rule 10B-1 requires aggregation of positions under certain circumstances,[19] we emphasize that any such aggregation should not apply across individual funds and other client accounts managed by the same adviser. Aggregating different fund and other client positions would be inconsistent with the separate nature of each fund and the varying purposes that an adviser will have when utilizing SB swaps on behalf of each individual fund and other clients. Importantly, it is the adviser's clients—and not the adviser itself—that bear the economic risk exposures of an SB swap; disclosing aggregate client positions would create an exaggerated and misleading impression of concentrated risk that would be attributed to a single counterparty, undermining Rule 10B-1's stated purposes.[20] Further, market participants, based on such

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[17] Reporting Proposal at 6694.

[18] In its cost-benefit analysis, the Commission analyzes SB swap holdings information reported at a fund level in Form N-PORT filings. *See id.* at 6671, 6685 n.227 (extrapolating the number of funds that would be required to report).

[19] We also question the Commission's basis for applying Rule 10B-1 broadly to "any entity controlling, controlled by or under common control with such person" or "group of persons," given that the statutory language of Section 10B of the Exchange Act, unlike other relevant sections of the Act, does not explicitly provide the Commission with the authority to promulgate rules that apply beyond "any person" that engages in transactions in SB swaps. For example, for purposes of identifying large traders, Section 13(h)(3) of the Exchange Act specifies that the Commission "may prescribe rules or regulations governing the manner in which transactions and accounts shall be aggregated for the purpose of this subsection, including aggregation on the basis of common ownership or control." 15 U.S.C. 78m(h)(3). *See also* 7 U.S.C. 6a(a)(1) (specifying that the Commodity Futures Trading Commission (CFTC) must aggregate futures positions held by a person and "any persons directly or indirectly controlled by [that] person" or "two or more persons acting pursuant to an expressed or implied agreement or understanding.").

[20] In the specific case of SB swaps based on equity securities, aggregation also would not be appropriate due to the required use of delta in the proposed calculation methodologies. As proposed, calculating a position for this type of swap would require (i) adding the delta-adjusted notional amount of any options, security futures, or any other derivative instruments based on the same class of equity securities; or (ii) when determining the "number of shares attributable" to an SB swap equivalent position, applying the delta of the applicable derivative instrument. *See* Proposed Rule 10B-1(b)(4). We have previously noted that deltas of different funds likely are not comparable, given that they are one of the most subjective measures to compute and are highly dependent on a wide range of reasonable assumptions and inputs made by a fund. *See, e.g.*, Letter from David W. Blass, General Counsel, ICI to

misleading data, may increase swap pricing unnecessarily or impose higher margin requirements, thereby reducing the efficiencies gained from using SB swaps to manage a fund's risk and achieve its investment objectives.

2. The Commission Should Further Analyze Rule 10B-1's Impact on Funds and Further Consider the Threshold Levels

We are concerned that the broad methodologies for calculating an SB swap position could inappropriately increase the scope of individual funds that would be subject to reporting under Rule 10B-1. To assess the impact on funds of the proposed methodologies more accurately, we recommend that the Commission apply those methodologies to existing data to determine the number of funds that would have positions exceeding the thresholds.[21]

In the Reporting Proposal, the Commission reviewed holdings data from Form N-PORT filings to obtain this estimate.[22] Based on that review, the Commission believes that only a limited number of funds would likely be required to report under Rule 10B-1. We question the basis for the Commission's estimate. The rule as proposed would require market participants to calculate positions on a gross basis and further consolidate SB swap positions with equity security positions in certain instances. This requirement would likely yield position sizes that are significantly larger than those reported under Form N-PORT.[23] The Reporting Proposal does not address whether the Commission took related equity security positions into account in its review of Form N-PORT filings.

Given the likelihood that the broad calculation methodologies under Rule 10B-1 would subject more funds than estimated to mandatory reporting under the proposed thresholds, the

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Brent J. Fields, Secretary, Commission, on Investment Company Reporting Modernization and Amendments to Form ADV and Investment Advisers Act Rules at 41 (Aug. 11, 2015), *available at* https://www.sec.gov/comments/s7-08-15/s70815-315.pdf. The Commission states in the Reporting Proposal that it intends to provide flexibility in how delta is computed. Reporting Proposal at 6671 n.136. Therefore, aggregating SB swap positions across different funds could be confusing or misleading to investors with respect to the risk exposure of a position.

[21] While the regulatory text of Rule 10B-1 specifies that positions exceeding the threshold are subject to reporting, we also request clarification on whether the rule would require reporting a position if it "meets" the proposed threshold level. *See, e.g.*, Reporting Proposal at 6671 (stating that a person would be required to file a Schedule 10B if an SB swap position on equity securities "meets or exceeds" a threshold).

[22] The Commission reviewed Form N-PORT data for holdings in SB swaps based on equity securities or debt securities (non-CDS). Based on Form N-PORT filings as of November 15, 2021, the Commission observed that 21,211 total return swaps were reported across 652 funds. *Id.* at 6696-97.

[23] Under Form N-PORT, funds report the value of each of its SB swap holdings, such as a total return swap that references the equity security of an issuer, separately from the value of its portfolio holdings in an equity security with the same reference issuer. *See* Form N-PORT Item C.4, C.11. Further, funds separately report each position with a different payoff profile (long or short) as separate holdings. *See* Form N-PORT Item C.3.

Commission also should further explain how it determined that those thresholds were appropriately calibrated for each SB swap category.[24] While the Commission has provided varying explanations in the Reporting Proposal regarding how it determined certain proposed thresholds,[25] it did not offer a provide a specific justification for the proposed gross notional threshold at for SB swap positions based on debt securities that are not CDS.

To ensure that the proposed thresholds are appropriately calibrated to achieve the Commission's policy objectives, the Commission must provide more robust economic analysis that relies on the multiple different sources of SB swap and equity security transaction and position data to which it already has access to conduct market surveillance and oversight. For each SB swap category, the Commission should explain how it concluded that an SB swap position exceeding a specified threshold would pose a significant level of credit and market risk or other risk, such that disclosure would be appropriate to address those risks. The Commission intends to examine transaction data reported pursuant to Regulation SBSR in determining the final thresholds for SB swaps based on equity securities.[26] Rather than using this data to simply adopt final thresholds, we strongly urge the Commission to instead use this data prior to adoption of a final rule (in tandem with other available transaction information as needed) to test the proposed thresholds, make any necessary adjustments, and publish that analysis with additional opportunity for public comment.[27]

III. Public Dissemination of Schedule 10B Data

The Commission's proposal to publicly disseminate SB swap positions and other sensitive information that would be reported in Schedule 10B would harm funds and their shareholders.

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[24] As we discuss further below, we are concerned about the implications for funds of the rule's significant cost and operational burdens, and the risks of additional public reporting. *See infra* Section IV.

[25] For SB swaps that are CDS, the Commission explains that reporting positions above the applicable thresholds would accurately identify whether an incentive exists to create or delay a manufactured or other opportunistic credit event, or whether a position otherwise poses a large enough concentration risk to have other market impacts. Reporting Proposal at 6670. With respect to the $150 million net long threshold for CDS, the Commission states that this threshold would identify parties with a significant naked CDS long exposure or a CDS exposure that significantly exceeds its position in deliverable bonds, which would help to accurately identify situations where a CDS counterparty may be incentivized to act against its own interest as a debt holder. *Id.* With respect to the $150 million short threshold for CDS, the Commission states that a $150 million threshold would capture situations where a CDS seller has a large enough position to be incentivized to act to avoid or delay a credit event. *Id.* With respect to SB swaps based on equity securities, the Commission suggests that the notional thresholds—determined partly based on Form N-PORT data—and share thresholds would help to identify large concentrations of risk that could impact an issuer and/or the equities markets. *Id.* at 6671.

[26] *Id* at 6671.

[27] As discussed further below with respect to SB swaps based on equity securities, we suggest that the Commission eliminate the notional amount threshold in favor of a single, percentage-based threshold. *See infra* Section IV.4.

As we discuss further below, we strongly recommend that the Commission not publicly disseminate the information filed on Schedule 10B. Should the Commission adopt a public reporting requirement, however, we urge it to provide a longer time delay to protect funds' sensitive portfolio management strategies and positions. We also urge the Commission to adopt several other measures to safeguard this information.

1. The Commission Should Not Publicly Disseminate Schedule 10B

We strongly recommend that the Commission not publicly disseminate information on SB swap positions which, under the Reporting Proposal, would occur immediately upon the filing of a Schedule 10B within a T+1 time period. We question the statutory basis upon which the Commission would provide for such public reporting. While the Dodd-Frank Act establishes requirements related to public reporting of swaps activity, it identifies the circumstances in which the Commission can mandate such disclosure. Specifically, the Act authorizes the Commission to adopt rules for regulatory reporting and public dissemination of SB swap transaction data, which are currently being implemented under Regulation SBSR.[28] The Act does not, however, provide the Commission with the authority to enable public dissemination with respect to large SB swap holdings in tandem with underlying positions and related positions.[29]

While funds today publicly disclose their swap positions for the third month of each fund's fiscal quarter on Form N-PORT, 60 days after the end of the quarter,[30] we are concerned about the risks of disclosing funds' sensitive SB swap position information under Rule 10B-1 with a significantly shorter delay. Notably, Rule 10B-1 would require market participants to disclose highly sensitive large SB swap positions in granular detail that identifies the entity holding the position and other details within a T+1 time period. We have consistently emphasized, and the Commission has acknowledged, that disclosing sensitive trading information with a short time

[28] Section 13(m) of the Exchange Act, as adopted under Section 763 of the Dodd-Frank Act, authorizes the Commission to adopt rules to make swap transaction and pricing data publicly available. 15 U.S.C. 78m. The Dodd-Frank Act also established a similar approach with respect to the CFTC's rulemaking authority for public reporting of swaps transactions. Section 2(a)(13) of the Commodity Exchange Act (CEA), as adopted under Section 727 of the Dodd-Frank Act, authorizes the CFTC to adopt rules to make swap transaction and pricing data publicly available. 7 U.S.C. 2(a)(13).

[29] Section 10B(d) of the Exchange Act, as adopted under Section 763 of the Dodd-Frank Act, authorizes the Commission to adopt large trader reporting requirements for SB swaps, but does not explicitly authorize or otherwise require public reporting of large positions. 15 U.S.C. 78j-2(d). The Dodd-Frank Act also established a similar approach with respect to the CFTC's rulemaking authority for swaps large trader reporting. Section 4t of the CEA, as adopted under Section 737 of the Dodd-Frank Act, authorizes the CFTC to adopt large trader reporting requirements for certain swaps, but does not explicitly authorize public reporting. 7 U.S.C. 6t. The CFTC's large trader reporting requirements adopted pursuant to this authority require only non-public reporting to the CFTC. 17 C.F.R. Part 20.

[30] *See supra* note 9.

delay can harm funds and their shareholders.[31] Such disclosures increase the likelihood of revealing a fund's proprietary investment strategies and risk management techniques to other market participants.[32] Consequently, funds and their shareholders face greater risks of front-running, reverse engineering, and predatory trading, all of which would adversely impact their ability to utilize SB swaps.

To avoid these risks, fund managers may have no choice other than to curtail or limit their use of SB swaps and rely on other instruments for portfolio management that are more costly and less efficient. This would impede their ability to meet clients' investment objectives, decrease efficiencies in portfolio management, and diminish overall SB swap market liquidity.[33] Thus, the harms to market participants of public reporting on a T+1 basis would likely undermine or outweigh any benefits to funds' ability to price swaps and carry out counterparty risk management.

2. The Commission Must Provide a Longer Time Delay if it Publicly Disseminates Schedule 10B

If the Commission nonetheless believes that it is necessary to publicly disseminate Schedule 10B, then we urge that the Commission, at a minimum, provide a significantly longer time delay for such dissemination. A longer time delay would serve to better protect funds' sensitive trading information and, as we explain further below, is also necessary to address our significant operational concerns raised by requiring Schedule 10B to be filed on a T+1 basis as proposed.

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[31] The Commission has recognized empirical studies that show that the portfolio holdings information that funds disclose to the Commission and shareholders contains information that traders can use to front-run and copycat the positions of reporting funds. The Commission further has recognized that more frequent portfolio disclosure could potentially harm fund shareholders by expanding the opportunities for professional traders to exploit this information by engaging in predatory trading practices. *Investment Company Reporting Modernization*, Investment Company Act Release No. 33-9776 (May 20, 2015), 80 Fed. Reg. 33590, 33613 (June 12, 2015).

[32] The Commission has acknowledged concerns that more frequent portfolio disclosure may facilitate the ability of outside investors to "free ride" on a fund's investment research by allowing those investors to reverse engineer and "copycat" the fund's investment strategies and obtain for free the benefits of fund research and investment strategies that are paid for by fund shareholders. Both front-running and copycatting can reduce the returns of shareholders who invest in actively managed funds. *Id.*

[33] For example, dealer counterparties are willing to provide liquidity for SB swaps to funds if they can offset the risks of the resulting positions at a reasonable cost. If a dealer does not have adequate time to lay off those risks, then market participants seeking to profit from this knowledge may take the opportunity to place trades in anticipation of the dealer's hedging activity while driving up the price or otherwise attempting to extract a higher premium from the dealer to offset those positions. As a result, those offsetting transactions may become more difficult and costlier, potentially increasing the costs of market making. This risk may cause dealers to raise the costs of providing liquidity for SB swaps to compensate for the difficulty in hedging their positions in the market. This higher cost, in turn, will be passed on to funds and their shareholders.

However, as we also explain below,[34] we do not offer a specific recommendation for an alternative time delay at this time, as we continue to assess the Reporting Proposal against the Commission's other public disclosure requirements and recent reporting proposals.

It is clear that T+1 reporting would be significantly faster than reporting timeframes for funds under the Commission's existing rules and most of its proposed rules. For example, public reporting of Form N-PORT filings is limited to the third month of every quarter, occurring 60 days after quarter-end, which we believe properly balances the depth of detail that must be disclosed about a fund's holdings with the time delay afforded for such disclosure.[35] Similarly, large equity security positions reported on Form 13F are disclosed on a quarterly basis, occurring 45 days after quarter-end.[36] In contrast, Rule 10B-1 would reveal detailed and highly sensitive information about a large SB swap position—which may include both a fund's large SB swap holding and underlying equity security and debt security holdings—within one business day following execution of an SB swap that causes a reporting person to exceed the proposed rule's thresholds, which is an extraordinarily short period of time. The proposed approach, in our view, could potentially undermine the substantial protections that these reporting frameworks provide against the risks of information leakage.

3. The Commission Should Consider Additional Information Safeguards

In addition to a longer time delay for public reporting, we strongly recommend that the Commission consider other information safeguards. While Rule 10B-1 would maintain the anonymity of a reporting person's counterparty and not disclose certain related details about an SB swap position, we believe that there are other meaningful measures the Commission could adopt to protect sensitive position information without reducing the benefits of public reporting. For example, disseminating anonymized and aggregated SB swap position information on a periodic basis, similar to the CFTC's dissemination of data in its Weekly Swaps Report, would provide meaningful transparency to other market participants for swaps pricing and risk management purposes, while protecting sensitive market data.[37] Additionally, position cap sizes,

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[34] *See infra* Section IV.2.

[35] The SEC noted in its adoption of Form N-PORT that the information included would be delayed in terms of public reporting and that the return information will be aggregated, which the Commission stated should mitigate the possibility that such information could be used by predatory traders to the detriment of the fund. *See* Form N-PORT Final Rule at 81892. Detailed information about a fund's portfolio holdings is also made publicly available on Form N-CSR, which is filed on a semi-annual basis, 60 days after period end. *See* Form N-CSR.

[36] 17 C.F.R. 240.13f-1(a)(1).

[37] *See* CFTC, *Weekly Swaps Report*, https://www.cftc.gov/MarketReports/SwapsReports/index.htm. The CFTC publishes swap data aggregated across swap data repositories that is in addition to the anonymized data that is publicly disseminated on real-time basis. According to the CFTC, the weekly report is intended to help market participants "gain a more thorough understanding of developments in the swaps market."

for example, would mask the total exact size of a reported SB swap position to certain notional ranges and protect that information without significantly undercutting the intended transparency benefits to SB swaps pricing and risk management sought through Rule 10B-1.[38]

As an additional information safeguard, we recommend that the Commission not publicly disseminate a reporting person's ownership of instruments "related" to an SB swap position that must be included in a Schedule 10B filing. As proposed, Item 6 and Item 7 of Schedule 10B would require a reporting person to disclose ownership of other securities that relate to the SBS position, including other types of SB swaps with the same reference entity,[39] while Item 8 would require even broader disclosure of ownership of "any other instrument" related to the reportable SB swap position.[40] While such information may be useful to the Commission, it is unclear why it is appropriate to publicly disseminate this information for the benefit of market participants, given that public disclosure would heighten the risks of harmful information leakage of trading and portfolio management strategies. In our view, there are no countervailing policy benefits to creating such risks because this information would be of less value to other market participants for swaps pricing and risk management purposes.

IV. Operational Considerations

Rule 10B-1 as proposed would raise a considerable number of operational complexities for funds.[41] Specifically, the rule would require reporting persons to perform multiple, complex position calculations for each SB swap holding across three different categories. To determine

[38] We note that the CFTC currently utilizes cap sizes with respect to its block trade reporting requirements to protect the anonymity of counterparties' swap positions and transactions. 17 C.F.R. 43.4(e). The Commission could also consider different time delays to account for the relative liquidity of different types of SB swaps in a manner analogous to the CFTC's approach to real-time reporting of swap block trades and large notional off-facility swaps. *See* 17 C.F.R. 43.5.

[39] Item 6 of Schedule 10B requires a reporting person to disclose, for an SB swap position based on debt securities (including credit default swaps), ownership of (i) all debt securities underlying an SB swap included in the SB swap position and related identifiers; and (ii) all SB swaps based on equity securities issued by the same reference entity, including identifiers, if applicable. Item 7 of Schedule 10B requires a reporting person to disclose, for an SB swap position based on equity securities, ownership of (i) all equity securities underlying an SB swap included in the SB swap position, including identifiers; and (ii) all SB swaps based on debt securities issued by the same reference entity (including credit default swaps), including identifiers, if applicable.

[40] Item 8 of Schedule 10B requires a reporting person to disclose "[o]wnership of any other instrument relating to the Security-Based Swap Position and/or any underlying security or loan or group or index of securities or loans, or any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of a security-based swap included in the Security-Based Swap Position, if not disclose pursuant to Items 6 or 7."

[41] We emphasize that these operational complexities would be significantly amplified if the Commission requires aggregation of separate SB swap positions held by individual funds or other clients that are managed by a common investment adviser.

the size of an SB swap position, a market participant would need to calculate the value or size of an SB swap holding and then incorporate the value or size of other related securities holdings, including SB swaps referencing a narrow-based index, equity securities, debt securities, and other types of derivatives. While funds have systems that track and report each of the fund's portfolio holdings, funds would need to significantly enhance these systems to perform the required calculations and collect other related data the Commission proposes be reported in a Schedule 10B filing.[42]

Notwithstanding the Commission's belief that the reporting requirement will apply only to a limited number of funds, we emphasize that a broader scope of funds would bear the impacts of Rule 10B-1 without a clear or compelling benefit to the Commission or the public. Specifically, any fund that utilizes SB swaps will need to continuously monitor and calculate its SB swap positions, *on a daily basis*, in conjunction with other portfolio holdings.[43] Establishing the means to do this across many different portfolio holdings will be an extremely challenging and resource-intensive endeavor and, thus, impose large operational and cost impacts on funds that the Commission has failed to adequately consider.

Given these significant burdens and the fact that funds already report their SB swap holdings in granular detail, we strongly recommend that the Commission limit the scope of what must be reported under in Schedule 10B to only information that it currently does not have under existing reporting requirements. We note that the Commission already has access to a significant amount of transaction and position information for both SB swaps and equity securities that it uses to conduct market surveillance and oversight, including data on funds' portfolio holdings from Form N-PORT (including equity, fixed income, and derivatives positions), the consolidated audit trail (CAT),[44] security-based swap data repositories (SB SDRs), as well as Section 13 disclosures. Given that one of the primary objectives of Rule 10B-1 is to enhance regulatory oversight over a large build-up of SB swap positions—which mirrors the stated purpose behind

[42] Based on these additional complexities in determining a SB swap position as defined, we strongly disagree with the Commission's assessment that a T+1 requirement would likely not require the reporting party to invest in new IT infrastructure and automation. *See* Reporting Proposal at 6690.

[43] The Commission estimates that there will be approximately 850 respondents that will have to develop a technological infrastructure to monitor their positions, of which 50 would be respondents with positions that *may not ever* trigger a reporting requirement. Reporting Proposal at 6678. Given that the number of funds that current use or may consider using SB swaps in the future significantly exceeds this number, we believe that the number of entities that will incur monitoring costs and burdens will exceed this estimate.

[44] With respect to equity securities, the CAT provides a comprehensive database that allows the Commission to track information accurately and efficiently about all orders in NMS securities, from order entry through execution. The CAT, according to the Commission, is intended to improve market surveillance and investigations, improve analysis and reconstruction of market events, and improve market analysis. *Consolidated Audit Trail*, Securities Exchange Act Release No. 34-67457 (July 18, 2012), 77 FR 45722, 45730 (Aug. 1, 2012) at 45730.

SB swap transaction reporting to SB SDRs[45]—the Commission should use the data from these existing sources to calculate and monitor SB swap positions itself when possible. This would be a more effective means of achieving the Commission's regulatory objectives and would avoid imposing unnecessary and duplicative reporting burdens on funds and other market participants.

We describe additional ideas below to lessen the operational burdens of the rule on funds, including a request to lengthen the proposed T+1 reporting period and two recommendations to streamline the calculation methodologies.

1. The Commission Must Lengthen the T+1 Reporting Period

In addition to the considerable information leakage risks that T+1 reporting of SB swap positions would raise for funds and their shareholders, as we discuss above, the Commission's proposed reporting timeframe is not long enough for funds to complete the necessary steps to prepare and file a Schedule 10B filing. Therefore, we urge the Commission to lengthen the reporting period. Basing the filing timeframe for Schedule 10B on the current T+1 timeframe for receiving a trade acknowledgement from a dealer counterparty would not afford a reporting person the ability to accurately determine whether an SB swap exceeds the relevant reporting threshold.

The complex calculation methodologies that the SEC has proposed—of which there are several— necessitate a longer period to complete and submit a Schedule 10B. A market participant, for each SB swap holding, would be required to perform multiple sub-calculations and account for additional equity, debt, and derivatives holdings. For a fund, this would require coordinated monitoring efforts across hundreds of different portfolio positions. Further, a reporting market participant would be required to identify and include all "related" positions in the same filing. In situations where a fund may need to submit separate Schedule 10B filings at the same time, the burdens of completing these steps for each filing would be immense.[46] Providing additional time for funds to calculate SB swap positions and submit a Schedule 10B filing is critical. For example, additional time would lessen the likelihood of inaccurate or incomplete reporting and disclosure, as well as the unnecessary market impacts such disclosures could have. Further, a longer time delay would also make Rule 10B-1 more consistent with other

[45] With respect to SB swaps, counterparties are required to report a transaction's details to a SB SDR, which is a centralized recordkeeping facility. This information, according to the Commission, is intended to help monitor the build-up and concentration of risk exposures in the SB swap market, as well as prevent market manipulation, fraud and other market abuses. SEC, *Security-Based Swap Data Repositories* (Dec. 19, 2017), https://www.sec.gov/divisions/marketreg/security-based-swap-data-repositories.htm.

[46] Given that more funds may be subject to the reporting thresholds than the SEC has estimated, we believe that the Commission likely has not appropriately determined the full scope of filing burdens on market participants. *See supra* note 23.

Commission position reporting frameworks, which provide significantly more time for market participants to report.[47]

2. ICI is Not Providing a Recommendation on a Longer Reporting Period at this Time

We continue to assess and discuss with our members the most appropriate reporting period for preparing and submitting Schedule 10B and do not offer a recommendation at this time.[48] The Commission has issued multiple concurrent reporting and disclosure proposals with overlapping public comment deadlines.[49] Some of the recent proposals, in conjunction with the Commission's existing reporting obligations, would subject market participants to overlapping and duplicative requirements by requiring them to process and submit the same or similar information in different formats and different reporting periods. Given that many of these proposals and requirements impact funds and their advisers, we believe that it will better serve funds and their investors, as well as support the Commission's objectives, to consider the implications of these existing and potential reporting obligations broadly and holistically as we develop a recommendation for an appropriate reporting period.

In determining an appropriate time period for reporting SB swap positions, the Commission ought to consider the timeframes provided for similar or related reporting obligations to ensure that all of these timeframes are rationalized across the Commission's rules and appropriately reflect the regulatory purpose of the obligations, as well as the nature of the reporting parties. As we have highlighted above, funds and their advisers typically rely on SB swaps for portfolio

[47] As we have noted, for example, funds are required to prepare monthly Form N-PORT filings within 30 days of month end, but they are not required to file with the SEC until 60 days after the end of the applicable fiscal quarter. Similarly, fund managers have 45 days after quarter-end to prepare and file their updated holdings on Form 13F. Further, market participants have 10 calendar days to prepare a Schedule 13D filing and Qualified Institutional Investors have 45 days after the end of the applicable year to submit a Schedule 13G filing. Neither filing requires a market participant to perform such complex calculations. Contrary to the Commission's view, we believe that completing a Schedule 10B filing would be a significantly more complicated and burdensome endeavor than filing a Schedule 13D or 13G filing, which simply requires the filer to disclose whether it has surpassed a single equity security position threshold. *See* Reporting Proposal at 6679.

[48] *See infra* Section IV.5, which further discusses our concerns about the implications of these overlapping proposals for implementation, including urging the Commission to take meaningful steps to mitigate the cumulative effects of its rulemakings by more closely considering its existing reporting obligations and determining whether some of these reporting obligations may be duplicative or unnecessary.

[49] These include, but are not limited to, the Commission's open proposal to amend Sections 13(d) and 13(g) beneficial ownership reporting requirements, *Modernization of Beneficial Ownership Reporting*, Securities Act Release No. 33-11030 (Feb. 10, 2022), 87 Fed. Reg. 13846 (March 10, 2022) ("Beneficial Ownership Proposal"); the short position and short activity reporting proposal, *Short Position and Short Activity Reporting by Institutional Investment Managers*, Exchange Act Release No. 34-94313 (Feb. 25, 2022), 87 Fed. Reg. 14950 (Mar. 16, 2022) ("Short Position Disclosure Proposal"); reporting of equity security holdings via Form 13F; and disclosing portfolio holdings via Form N-PORT.

management purposes and for the benefit of fund shareholders. The Commission itself recognizes that funds and their advisers generally use these instruments in a more conservative manner than certain other market participants.[50] Therefore, the Commission should continue to reflect its understanding in any adopted final reporting timeframe.[51]

3. The Commission Should Adopt a Component-Based Approach to Reporting SB Swap Positions on a Narrow-Based Security Index

Rule 10B-1 specifies that the reporting requirements would apply to an SB swap position on a narrow-based security index in two different ways. First, a person holding an SB swap position on a narrow-based security index would need to report that position if it exceeds a relevant reporting threshold. Second, if a person holds an SB swap position on a single security or loan as well as a separate SB swap position on a narrow-based security index that includes the same single security or loan as a component, then the person would need to report an SB swap position on that single security or loan that aggregates (i) the SB swap position on the single security or loan itself and (ii) an additional SB swap position on that single security or loan based on its weighting in the index.[52]

We recommend that the Commission apply the reporting threshold levels to individual components of a narrow-based security index, as measured by their proportional weight to the index, and not apply those levels to a position in the overall index. In our view, this approach would not materially diminish the Commission's or the public's visibility into the size of an SB swap position—a reporting person would still be required to aggregate a component SB swap position with a position with the same underlying security or loan. In our view, this approach would achieve greater reporting simplicity and eliminate potential duplicative reporting burdens. Information about a large SB swap position in a narrow-based index comprised of weighted positions across multiple reference entities would provide less meaningful insight about a large, concentrated risk exposure that could affect a specific issuer or other market participants. A component-based approach would better align with the Commission's goals by enabling more accurate and precise identification of concentrated SB swap exposures that would affect

[50] *See supra* note 7 and accompanying text.

[51] For example, the Commission has clearly recognized the distinction between funds and advisers as passive investors in the context of reporting as Qualified Institutional Investors (QIIs) on Schedule 13G, providing QIIs with a significantly longer time period to report their positions (currently 45 days after the end of the calendar year in which beneficial ownership exceeds five percent).

[52] If a person does not hold a separate SB swap position on single securities or loans that are components of a narrow-based security index, we request clarification that a person would have not have to separately report an SB swap position on each of those components (based on the components' proportional weight to the index) that exceeds an applicable threshold, in addition to reporting an SB swap position on the narrow-based security index.

individual issuers, their shareholders, and other market participants.[53] More importantly, it would limit public reporting only to weighted SB swap positions in constituents that are of significant size to avoid revealing a fund's positions or views related to other separate constituents in the index that, based on their own respective individual weighted size as part of the index, are not of significant size.

4. The Commission Should Adopt a Single Threshold for SB Swap Positions Based on an Equity Security

Rule 10B-1 would establish a bifurcated approach to determining if an SB swap position based on equity securities must be reported. A person would be required to report the lesser of two thresholds: (i) a position that exceeds $300 million on a gross notional basis, which would also need to include the value of all of the underlying equity securities owned by the person as well as the delta-adjusted notional amount of any options, securities or other derivatives instruments based on the same class of equity securities if the SB swap position alone exceeds a $150 million gross notional amount;[54] or (ii) an "SB swap equivalent position" that represents more than 5 percent of a class of equity securities, which would also need to incorporate all of the underlying equity securities owned by the person once an SB swap equivalent position alone represents more than 2.5 percent of a class of equity securities. The latter proposed threshold is intended to ensure reporting of SB swap positions that involve equity securities issued by companies with a smaller market capitalization. Further, the proposed sub-thresholds (*i.e.*, $150 million and 2.5 percent) are intended to provide greater transparency of positions involving both an SB swap and the underlying equity security.

We believe that the Commission can achieve its objectives without the unnecessary complexity that this approach entails. Therefore, we recommend that the Commission, instead, adopt a single

[53] We recognize that our recommendation could require a reporting person to submit separate Schedule 10B filings for each constituent of the narrow-based index that exceeds the thresholds on a weighted basis. In our view, however, the benefits of this approach outweigh that possibility.

[54] We request that the Commission clarify whether the $150 million SB swap position threshold refers to: (i) the sum of the notional value of the SB swaps held and the value of that holder's underlying equity security position, along with the delta-adjusted amounts of other relevant instruments; or (ii) the notional value of the SB swap held alone. In the former case, for example, a person holding a $25 million position on an SB swap and a $285 million position on the underlying equity security could be deemed to exceed the $150 million gross notional threshold and be required to file a Schedule 10B because the *total position* would exceed the $300 million gross notional threshold. *See* Proposed Rule 10B-1(b)(1)(iii)(A) (specifying that "if the gross notional amount of the *security-based swap position* exceeds $150 million, the calculation of the *security-based swap position* shall also include the value of all of the underlying equity securities owned. . .as well as the delta-adjusted notional amount of [other relevant instruments].") (emphasis added). We believe, however, that the Commission's intent in this scenario is that the person would not be required to file a Schedule 10B, given that the notional value of the SB swap alone does not exceed the $150 million gross notional threshold. *See* Proposed Rule 10B-1(b)(3) (referring to only "security-based swaps" in the proposed definition of "security-based swap position").

reporting threshold level based on an "SB swap equivalent position" and not based on a specific gross notional amount. A single percentage-based threshold level would, consistent with the Commission's objectives, provide a simplified and targeted approach to identifying concentrated SB swap positions that have potential market impact, while reducing unnecessary reporting burdens on market participants. Based on the Commission's own analysis, a $300 million gross notional amount threshold would apply to only a third of relevant underlying entities based on market capitalization.[55] Further, we observe that a $300 million notional threshold would be relatively small when applied to large cap issuers—for example, it constitutes less than one percent of the median market capitalization of constituent companies in the S&P 500 index.[56] Accordingly, a position of that size should pose less concern to issuers that trade with higher levels of liquidity, such that a market participant seeking to unwind a hedge position in the underlying equity security would be less likely to experience significant price volatility. Further, a single threshold would continue to capture relatively large positions among smaller entities, which the Commission notes comprise a significant portion of the US firms referenced by total return swaps in its analysis.[57]

V. Clarifying Recommendation on "Owner or Seller"

We recommend that the Commission replace the term "owner or seller" in the regulatory text of Rule 10B-1with "counterparty" to an SB swap or "holder" of an SB swap position and apply those terms to all specified SB swap categories. As proposed, the rule states that any person (or group of persons), who after acquiring or selling directly or indirectly, any SB swap, "is directly or indirectly the *owner or seller*" of an SB swap position exceeding a reporting threshold must promptly file schedule 10B (emphasis added). Replacing this term would reflect the nature of SB swap transactions more accurately and achieve greater consistency with long-standing industry terminology. Doing so also would align the Rule 10B-1 with other Commission rules governing SB swaps, which generally do not refer to an SB swap counterparty as an "owner."[58]

Importantly, amending the term "owner" would also avoid unintended consequences, such as creating a misleading impression that the counterparty to an SB swap position presumptively has a beneficial ownership position. An SB swap is a "contract, agreement, or transaction" between

[55] Reporting Proposal at 6698 (noting that the $300 million threshold corresponds to a 5 percent threshold of an underlying entity with a $6 billion market capitalization).

[56] As of January 31, 2022, the median market cap for S&P 500 constituents was approximately $32.19 billion. *See* https://www.spglobal.com/spdji/en/indices/equity/sp-500/#data.

[57] Reporting Proposal at 6696.

[58] Regulation SBSR, for example, uses terms such as "counterparty," "direct counterparty," "indirect counterparty," and the "side" of a SB swap. 17 C.F.R. 240.900. We also note that the Commission utilizes other terms in the Reporting Proposal itself when referring to SB swap counterparties, including the term "counterparty." *See, e.g.*, Reporting Proposal at 6656.

counterparties that agree to exchange payments with each other based, for instance, on the value of a security or loan, without conveying any ownership interest in the underlying asset. Indeed, the Commission has distinguished this from beneficial ownership by stipulating that a person is generally deemed not to acquire beneficial ownership of an equity security based on the purchase or sale of an SB swap absent certain characteristics.[59]

VI. Implementation Period for Rule 10B-1

We urge the SEC, in any final rule, to establish compliance dates that will provide funds and other market participants with sufficient time to implement Rule 10B-1. Given the technical and operational complexities that the rule would impose, a significant amount of time and effort will be necessary to develop and test the infrastructure and protocols for monitoring and calculating SB swap positions. Importantly, the compliance dates should also account for additional time that would be necessary to process and adopt any initial technical guidance or interpretations that the Commission or its staff may need to issue related to the threshold calculation and reporting of SB swap positions.

In addition to this proposal, *the Commission has issued 20 other significant rule proposals within the last six months alone*. The vast majority of these proposals, if adopted, would affect funds and investment advisers.[60] Implementation of these rules would require a tremendous amount of work and devotion of resources by funds, investment advisers, and other market participants, including the need to develop new systems, conduct in-depth planning and testing of changes to existing systems, operations, and documentation, as well as adopt and revise compliance policies and procedures. Therefore, it is essential that the Commission provide a sufficiently long time for

[59] *Beneficial Ownership Reporting Requirement and Security-Based Swaps*, Exchange Act Release No. 34-64628 (June 8, 2011), 76 Fed. Reg. 34579 (June 14, 2011) ("SB Swap Beneficial Ownership Rule"); *see* Beneficial Ownership Proposal (proposing new Rule 13d-3(e) to provide for an additional instance in which a holder of a cash-settled derivative security shall be deemed a beneficial owner of the reference security, but explicitly excluding SB swaps from the new rule's purview). Rule 13d-3 specifies that such beneficial ownership exists if the SB swap (i) confers voting and/or investment power (referring to the power to dispose, or to direct the disposition of, such a security); or (ii) grants a right to acquire an equity security. 17 C.F.R. 240.13d-3(a). Beneficial ownership may also exist where the SB swap is used with the purpose or effect of evading the beneficial ownership reporting requirements under Rule 13d. SB Swap Beneficial Ownership Rule at 34582.

[60] *See, e.g., Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers*, Securities Exchange Act Release No. 34-93169 (Sept. 29, 2021), 86 Fed. Reg. 57478 (Oct. 15, 2021); *Reporting of Securities Loans*, Securities Exchange Act Release No. 34-93613 (Nov. 18, 2021), 86 Fed. Reg. 69802 (Dec. 8, 2021); *Reopening of Comment Period for Reporting of Securities Loans*, Securities Exchange Act Release No. 34-94315 (March 2, 2022); *Share Repurchase Disclosure Modernization*, Securities Exchange Act Release No. 34-93783 (Dec. 15, 2021), 86 Fed. Reg. 57478 (Feb. 15, 2022) (applicable to closed-end investment companies); *Shortening the Securities Transaction Settlement Cycle*, Securities Exchange Act Release No. 34-94196 (Feb. 9, 2022); Reporting Proposal; Beneficial Ownership Proposal; Short Position Disclosure Proposal.

funds, investment advisers, and other market participants to address the numerous considerations and implementation issues that these proposals raise both individually and on a collective basis.

The Commission must also consider holistically the cumulative implications of implementing these proposals. Doing do is especially important as the Commission seeks to impose new reporting obligations and change reporting form amendments, many of which closely relate to one another. If adopted as proposed, these rules would require different reporting timeframes, which amplifies the already significant operational challenges. Funds, investment advisers, and other industry participants will need time to implement each of these requirements and cannot properly implement all of them at once, in light of operational and resource limitations.

Accordingly, we urge the Commission to propose a holistic, staged multi-year implementation schedule with respect to *all* of the reporting rules it adopts, taking into account the combined implementation efforts that will be required across all of these rulemakings, how the rulemakings inter-relate, and the related impacts and burdens on funds, advisers, and other market participants. The Commission should provide public notice and an opportunity for comment on a proposed staged implementation schedule. In the meantime, the Commission should take meaningful steps to mitigate the cumulative effects of its rulemakings by more closely considering its existing reporting obligations and determining whether some of these reporting obligations may be duplicative or unnecessary.

* * *

Thank you for the opportunity to provide comments on the Reporting Proposal. If you have any questions, please contact Sarah Bessin at sarah.bessin@ici.org or Nhan Nguyen at nhan.nguyen@ici.org.

Regards,

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