

May 16, 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 Institute¹ is writing to provide a follow up recommendation to the Securities and Exchange Commission (“Commission”) regarding proposed Rule 10B-1 (“Reporting Proposal”), which would, on a T+1 basis, (i) require any person with a security-based (SB) swap position of a certain size to promptly file a Schedule 10B that discloses information related to the position; and (ii) publicly disseminate those reported positions. In our initial comments on the Reporting Proposal, we urged the Commission to not make those reported positions public.² Should the Commission determine to do so, however, we urged that it adopt a significantly longer time delay to protect regulated funds’ (“funds”) sensitive portfolio management strategies and positions.

While we did not recommend an alternative reporting period in those comments, we stated that we would do so after assessing Rule 10B-1 against other existing and proposed Commission reporting and disclosure requirements, which may require funds and their advisers to prepare and submit the same or similar information in different formats, pursuant to different reporting periods.

¹ The [Investment Company Institute](https://www.ici.org) (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\$31.3 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](https://www.ici.org/global), with offices in London, Hong Kong, and Washington.

² Letter from Sarah A. Bessin, Associate General Counsel and Nhan Nguyen, Assistant General Counsel, ICI, to Vanessa Countryman, Secretary, Securities and Exchange Commission at 15, (Mar. 21, 2022) (“ICI SB Swap Reporting Letter”), available at <https://www.sec.gov/comments/s7-32-10/s73210-20120723-272883.pdf>. We also stated that a significantly longer time delay would be necessary for a reporting person to prepare and submit a Schedule 10B filing. *Id.* at 14.

Based on our further consideration, we recommend that the Commission adopt the following reporting timeframe, particularly for funds and their advisers, to file a Schedule 10B: within 45 days after the end of a calendar quarter as of which an SB swap position exceeds an applicable reporting threshold. This timeframe would be consistent with (i) our recommended timeframe for Qualified Institutional Investors (QIIs) to file an initial Schedule 13G in lieu of the Commission's current proposal to significantly accelerate the Schedule 13G filing deadlines;³ and (ii) the existing filing timeframe for institutional investment managers under Section 13(f) of the Exchange Act.⁴ Importantly, this recommendation is also consistent with the manner and frequency with which a fund's swap positions are reported on Form N-PORT, which is required after the third month of each fund's fiscal quarter.⁵

We have emphasized that the timeframes for similar or related reporting obligations should be rationalized across the Commission's various rules and appropriately reflect the regulatory purpose of the obligations, as well as the nature of the reporting parties. Our recommended timeframe takes these considerations into account. This timeframe, similar to the Commission's other quarterly reporting requirements, strikes a better balance between the Commission's objectives in this rulemaking of increased transparency and the need to adequately protect funds' sensitive portfolio management strategies and positions against premature public disclosure. This timeframe also better reflects the operational challenges of complex reporting. While the Commission states that Rule 10B-1 is intended to help identify concentrated exposures that signal potential fraud or manipulation and enable better risk management in a timely manner, we re-emphasize that the use of SB swaps by funds and their advisers generally do not pose the same level of concern as other market participants to necessitate such accelerated reporting. As we have noted, funds and their advisers generally utilize these instruments more conservatively with important limitations and our recommended timeframe more appropriately reflects this distinction. Further, aligning the reporting timeframe under Rule 10B-1 with other SEC reporting timeframes would provide greater operational efficiencies for funds and other market participants and avoid unnecessary changes and enhancements to existing systems that are used to collect and report position data.

³ Letter from Susan Olson, General Counsel, and Sarah A. Bessin, Associate General Counsel, ICI to Vanessa Countryman, Secretary, Securities and Exchange Commission, (Apr. 7, 2022), *available at* <https://www.sec.gov/comments/s7-06-22/s70622-20122777-279139.pdf>.

⁴ 17 C.F.R. 240.13f-1(a)(1).

⁵ Public reporting of Form N-PORT filings is limited to the third month of every quarter, occurring 60 days after quarter-end. The Commission has recognized that this timeframe appropriately balances the interest in public transparency of fund holdings information against the need to protect sensitive fund portfolio management positions and strategies. *Investment Company Reporting Modernization*, Investment Company Act Release No. 33-10231 (Oct. 13, 2016), 81 Fed. Reg. 81870, 81892 (Nov. 18, 2016).

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Thank you for the opportunity to provide further 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,

/s/ Sarah A. Bessin

Sarah A. Bessin
Associate General Counsel

/s/ Nhan Nguyen

Nhan Nguyen
Assistant General Counsel

cc: The Honorable Gary Gensler
The Honorable Alison H. Lee
The Honorable Hester M. Peirce
The Honorable Caroline A. Crenshaw

Haoxiang Xu, Director
Carol M. McGee, Assistant Director, Office of Derivatives Policy
Division of Trading and Markets