March 28, 2016

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Use of Derivatives by Registered Investment Companies and Business Development Companies (File No. S7-24-15)

Dear Mr. Fields:

NGAM Distribution, L.P. ("NGAM") appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission") release on the use of derivatives by investment companies and business development companies (the "Release").

NGAM is the U.S. distribution arm of Natixis Global Asset Management ($870.3 billion assets under management (AUM))[1], which is a multi-affiliate organization with more than 20 specialized investment firms in the Americas, Europe and Asia. Natixis Global Asset Management ranks among the world's largest asset managers.[2] Through its Durable Portfolio Construction® philosophy, the company is dedicated to providing innovative ideas on asset allocation and risk management that can help institutions, advisors and individuals address a range of modern market challenges. Rule 18f-4, as proposed in the Release, would have a significant impact on our business and clients, as some of the asset allocation and risk management ideas referred to above are delivered through mutual funds that make extensive use of derivatives, and so we feel compelled to comment specifically on certain aspects of the Commission's proposed rule.

In general, NGAM supports the Commission's efforts to propose a more comprehensive approach to funds' use of derivatives in order to address the investor protection purposes and concerns underlying section 18 of the Investment Company Act of 1940, as amended

[1] Net asset value as of December 31, 2015. AUM may include assets for which non-regulatory AUM services are provided. Non-regulatory AUM includes assets which do not fall within the SEC's definition of 'regulatory AUM' in Form ADV, Part 1.
[2] Cerulli Quantitative Update: Global Markets 2015 ranked Natixis Global Asset Management, S.A. as the 17th largest asset manager in the world based on assets under management ($890.0 billion) as of December 31, 2014.

(the "1940 Act"). However, NGAM respectfully requests that the Commission consider less drastic rulemaking in light of the pending Investment Company Reporting Modernization Proposal[3] and Liquidity Risk Management Program Proposal.[4] NGAM also believes that the Commission can implement less drastic rulemaking that still serves its mission to protect investors but that gives due weight to another of its stated missions, i.e., to facilitate capital formation.

As noted in the Release, the Commission considered the application of section 18's restrictions on senior securities to select transactions (i.e., reverse repurchase agreements, firm commitment agreements and standby commitment agreements, but not derivative transactions) in Investment Company Act Release 10666 ("10666")[5], issued in 1979, and subsequently the staff has issued more than 30 no-action letters to funds concerning the maintenance of segregated accounts or otherwise "covering" their obligations in connection with various transactions that potentially implicate section 18. In neither 10666 nor the no-action letters did the Commission or its staff, respectively, impose specific percentage limitations on investment exposures through derivatives. Moreover, the asset-coverage guidance that the staff has provided through the no-action letters and comments to registration statement amendment filings expressly permits funds to use "any" liquid asset to cover forward obligations created under derivatives transactions and, in some cases, set aside as cover only the market-value of a derivative contract, resulting in the known possibility that the aggregate notional investment exposures of a fund's derivatives contracts could well-exceed a fund's assets. In the Release, the Commission notes that, in 10666, it emphasized that the prohibitions and restrictions under the senior security provisions of section 18 should "function as a practical limit on the amount of leverage which the investment company may undertake and on the potential increase in the speculative character of its outstanding common stock" and that funds should not "operate without adequate assets or reserves." However, by the Commission's own admission, 10666 did not specifically address derivatives and the Release marks the first time that the Commission has expressly stated that where a fund enters into a derivatives transaction and has a future payment obligation it creates an evidence of indebtedness that is a senior security for purposes of section 18.[6]

---

[3] Investment Company Reporting Modernization, Investment Company Act Release No. 31610 (May 20, 2015) [80 FR 33590 (June 12, 2015)] ("Investment Company Reporting Modernization Proposal").

[4] Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release, Investment Company Act Release No. 31835 (Sept. 22, 2015) [80 FR 62274 (Oct. 15, 2015)] ("Liquidity Risk Management Program Proposal").

[5] Investment Company Act Release No. 10666 (April 18, 1979).

[6] On pages 15–30 of the Release, the Commission suggests that it has been its view all along that a derivatives transaction in which a fund has a future obligation involves an evidence of indebtedness that is a senior security. Since the issuance of 10666, the Commission has had many opportunities to make an express statement to that effect but has not done so. Conceding that many of the derivatives practices employed today were not utilized or contemplated in 1979, the expansion in the type and use of derivatives by funds did not happen overnight and could not have taken the Commission by surprise. In fact, the consideration by its staff of more than 30 no-action requests (as referenced on page 19 of the Release) must have provided the Commission with a good sense of the types of derivatives practices utilized by funds over this time period.

Based on the guidance that the Commission and its staff has provided to date as well as the absence of any specific prohibitions on leverage by the Commission, a range of industry practices has developed and many investment firms (as well as investors that provide capital to them) have built businesses and investment products on which investors have come to rely. Now, after more than 30 years since the issuance of Release 10666 and a visible and transparent dramatic expansion in derivatives transactions and products, the Commission seeks to replace the staff guidance and impose new restrictions that, had they been communicated publicly at an earlier time, may have caused some investment firms and funds, as well as their investors, to make different business and investment decisions.

In an April 4, 2011 speech to the Council of Institutional Investors Spring Meeting titled "Facilitating Real Capital Formation," former Commissioner Louis A. Aguilar stated that:

> [f]acilitating true capital formation means making sure that investors have the information needed to make informed decisions. The goal is for issuers to provide potential investors with appropriate and sufficient information so that investors can assess the risks and potential rewards of investing their capital.

In the absence of express statements from the Commission that any derivatives transaction in which a fund has a future payment obligation involves an evidence of indebtedness that is a senior security for purposes of section 18, investment firms and their investors lacked important information they needed to determine whether and how to develop businesses and products that make extensive use of derivatives. Although the Commission has the right and obligation to change its views and rules over time to fulfill its investor protection concerns, it should not do so without giving equal weight to its mission to promote capital formation.

As Commissioner Michael S. Piwowar stated in his Dissenting Statement at Open Meeting on Use of Derivatives by Registered Investment Companies and Business Development Companies:

> [T]he Commission must not forget that the current situation is one mostly of its own making. Funds have been engaging in derivatives transactions and pursuing related investment objectives and strategies for decades based on the guidance provided by their regulator, and, while the proposed rule [the Commission is] considering today is referred to as an "exemptive rule," it actually would restrict funds' current practices. The Commission, therefore, has an obligation to ensure that all proposed changes to the existing framework are based on clearly identified justifications for actions. Moreover, any changes must also rely on the best available information about their likely economic consequences on funds and investors.

NGAM agrees with Commission Piwowar and respectfully requests that the Commission consider less drastic rulemaking that serves its investor protection mission but also respects the investment firms and their investors that have relied on Commission and staff disclosures to build businesses and develop products that, but for a few exceptions as noted in the Release,[7] have provided investors with products and services that can help diversify and make more durable a client's portfolio.

More specifically,

- NGAM supports Commissioner Piwowar's suggestion that the Commission should first adopt the Investment Company Reporting Modernization Proposal before proposing a new leverage limit on funds. As Commissioner Piwowar argues, "adoption of that proposal . . . would provide the Commission with much needed data that can be analyzed, in accordance with [the Commission's] current guidance on economic analysis in rulemakings, to determine whether there is any need to further limit funds' use of derivatives. If the data supported further limits, it could then be used to determine what such limits should be in a thoughtful, empirically driven manner."

- NGAM also supports Commissioner Piwowar's suggestion that the Commission should first adopt the Liquidity Risk Management Program Proposal before proposing a leverage limit for funds. As Commission Piwowar argues, "[i]f adopted, these requirements could reduce the risks associated with a fund's use of derivatives by ensuring that funds account for their derivatives exposures in formulating and implementing their liquidity risk management programs."

- In the interim, NGAM proposes alternatives to mitigate the risk of harm to retail investors who may not fully appreciate the risk of purchasing shares of funds that use derivatives extensively. First, the Commission could immediately require that any fund with more than 150% notional exposure in derivatives must have a significantly higher investment minimum, e.g., $10,000 or above. A higher investment minimum would serve as a practical barrier to entry for most retail investors and indicate that the fund is a "more complex" fund. Because retail investors (and their financial advisors) are already invested in these funds and have been able to observe how they perform in different market cycles, NGAM proposes that any new investment minimum requirements be applied prospectively only. Second, the Commission could immediately require that any fund with more than 150% notional exposure in derivatives must state on the cover of its prospectus and in marketing materials, in bold and/or prominent letters, that the fund is not meant

---

[7] On pages 44 – 48 of the Release, the Commission cites several examples of public and private funds that experienced significant losses from the use of derivatives and which are relevant to its consideration of whether funds' current practices are consistent with the investor protection purposes and concerns underlying section 18 of the 1940 Act. Although derivatives may have exacerbated losses in these instances, there appear to be other unique factors that made these funds risky, even without derivatives (e.g., concentrations in commercial mortgage-backed securities in the case of the OppenheimerFunds matter and in distressed debt in the case of the UBS Willow Management L.L.C. matter). These examples, while unfortunate, do not prove that a fund that is managed with strong risk-management processes and more diversified in its investment exposures would necessarily suffer the same fate if they used derivatives. There are countless examples of funds in the industry today that use derivatives responsibly and in a manner that is in the best interest of investors.

to be a complete investment program. Such a disclosure requirement would accord with NGAM's own view that a durable portfolio can include funds that use derivatives extensively but also can and should include other, more "traditional" investments. Third, the Commission could require, consistent with its proposal, that any fund with more than 50% notional exposure in derivatives adopt a formal, board-approved derivatives risk management program to be administered by a designated derivatives risk manager. Many advisers that utilize derivatives extensively today already have established derivatives risk-management programs.

NGAM appreciates the opportunity to provide these comments to the Commission and to reiterate its support of the Commission's efforts to propose a more comprehensive approach to funds' use of derivatives in order to address investor protection concerns. If you have any questions or require any additional information, please do not hesitate to contact me at [redacted].

Respectfully submitted,

Russell Kane
Senior Vice President and Deputy General Counsel
NGAM Distribution, L.P.

cc: David Giunta, President and Chief Executive Officer
Coleen Downs Dinneen, Esq., Executive Vice President and General Counsel
Board of Trustees of Natixis Funds and Loomis Sayles Funds
John Loder, Esq., Ropes & Gray
John A. MacKinnon, Esq., Sidley Austin LLP