ISDA Safe, Efficient Markets

April 24, 2020

Submitted Electronically

Ms. Vanessa Countryman
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: Re-Proposal (S7-24-15)

Dear Ms. Countryman,

The International Swaps and Derivatives Association, Inc. ("ISDA")[1] appreciates the opportunity to submit these comments with respect to the notice of proposed rulemaking published by the Securities and Exchange Commission ("SEC" or the "Commission") regarding re-proposed rules governing the use of derivatives by registered investment companies and business development companies (the "Proposal").[2]

As the trade association for the global derivatives market, ISDA pays close attention to regulatory developments that would affect the ability of market participants to use derivatives to, among other things, execute risk management, investment and funding strategies, stabilize funding costs and enhance customer returns. ISDA submitted a comment letter dated March 28, 2016[3] addressing the Commission's 2015 proposal on the use of derivatives by funds (the "2015

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1 Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has more than 900 member institutions from 73 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 @ISDA.

2 Use of Derivatives by Registered Investment Companies and Business Development Companies, 85 FR 4446 (Jan. 24, 2020), *available at* *https://www.federalregister.gov/documents/2020/01/24/2020-00040/use-of-derivatives-by-registered-investment-companies-and-business-development-companies-required*.

3 ISDA, Comment Letter to Mr. Brent J. Fields Re: Use of Derivatives by Registered Investment Companies and Business Development Companies (March 28, 2016), *available* at *https://www.sec.gov/comments/s7-24-15/s72415-160.pdf* (the "ISDA 2016 Comment Letter").

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Proposal").[4] We believe that a number of the points raised in the previous comment letter remain applicable to the Proposal.

ISDA's members have significant concerns with the Proposal, including that the Proposal imposes arbitrary and inflexible limits on the extent to which funds may enter into derivatives transactions, which could disincentivize the responsible use of derivatives by funds. However, we believe that the Proposal represents a material improvement from the 2015 Proposal, and that the Proposal could serve as a workable framework for the regulation of the use of derivatives by funds if the following changes are made:

- The Commission should eliminate or at the very least significantly restructure certain overly prescriptive and restrictive aspects of the proposed VaR-based limits on fund leverage risk, including the upper limits of the relative and absolute VaR-based leverage risk tests, the proposed freeze on derivatives transactions during and after a fund's exceedance of the applicable VaR-based leverage risk limit, and the proposed mandatory daily back testing.

- The Commission should grant additional flexibility to limited users of derivatives, including by adding a remediation period in the event that a fund ceases to comply with its applicable exception, and by adding further exceptions for funds whose derivatives usage do not implicate the policy concerns of Section 18 of the Investment Company Act.

- The Commission should abandon the proposed sales practices rules applicable to leveraged/inverse exchange-traded funds ("ETFs"). The proposed sales practices rules are in effect largely duplicative of existing regulatory requirements applicable to these products, adding significant regulatory burdens on a product that has been in the market for almost 14 years, with no corresponding incremental regulatory or policy benefit. In the event that the Commission adopts some version of the proposed sales practices rules, ISDA believes that it should ensure that the final rules do not effectively limit the availability of leveraged/inverse investment products to large categories of investors.

- The Commission should omit certain burdensome reporting requirements from the Proposal.

I. The Commission should modify certain overly prescriptive/restrictive aspects of the proposed VaR-based limits on fund leverage risk.

ISDA recognizes that a VaR-based limit on fund leverage risk, while subject to limitations, may be viewed by many as an appropriate and widely accepted mechanism for protecting investors from excessive leverage in funds. However, we remain concerned that overly rigid VaR-based tests could discourage the appropriate use of derivatives by funds, potentially when such use might be beneficial to fund investors, without advancing the Commission's goal of investor

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4 "Use of Derivatives by Registered Investment Companies and Business Development Companies, Securities Act Release No. IC-31933 (Dec. 11, 2015), *available at https://www.sec.gov/rules/proposed/2015/ic-31933.pdf*.

protection. We therefore suggest the following reasonable adjustments to certain highly prescriptive aspects of the proposed VaR-based tests.

A. **The limits of the proposed relative and absolute VaR-based tests should be eliminated or, if retained, significantly adjusted, perhaps to 200% and 15%, respectively.**

The Commission has requested comment on whether the upper limits of the proposed relative and absolute VaR-based tests are appropriate.[5] ISDA prefers that they be eliminated from the final rule and that funds have the ability to determine appropriate limits tailored to their own particular circumstances. In the event the Commission determines to retain upper limits, ISDA recommends that both be revised significantly, and specifically that the leverage limit for the proposed relative VaR-based test be adjusted to at least 200% of the VaR of a fund's designated reference index rather than 150%, and that the leverage limit for the absolute VaR-based test be adjusted to at least 20%, rather than 15%, of the value of a fund's net assets, for several reasons.

The Commission describes the proposed absolute VaR-based test as being "broadly consistent with the European Union regulatory framework that applies to UCITS funds."[6] As the Commission notes in the proposing release, investment advisers that manage (or have affiliates that manage) UCITS funds may derive efficiencies from being subject to relatively comparable requirements across jurisdictions.[7] The absolute VaR-based leverage test for UCITS funds allows for a VaR of up to 200% of a fund's designated reference index, and for an absolute VaR of up to 20% of a fund's net assets.[8] However, the Proposal is much more restrictive, and provides for an absolute VaR-based limit of 15% of a fund's net assets, and a relative VAR-based limit of 150% of a fund's designated reference index.

Further, while it is possible that the majority of funds could comply with the proposed VaR-based tests under relatively stable market conditions,[9] ISDA believes that it might be difficult for some funds to comply with the proposed VaR tests under volatile or more distressed market conditions, such as during the recent market sell-off and volatility in response to the coronavirus outbreak, when it may be most important for a fund to have the ability to utilize derivatives to a significant extent to pursue its investment objective (for example, to permit a fund from being

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5 Proposal at 4475, 4476.

6 Proposal at 4475. The Proposal also notes that the relative VaR test applicable to UCITS funds allows for a relative VaR up to 200% of the VaR of the relevant index, and asks whether the final rule should include the same requirement. *Id.*

7 *Id.*

8 Proposal at 4471, 4475; *see also* European Securities and Markets Authority (formerly Committee of European Securities Regulators), *Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS*, CESR/10-788 (July 28, 2010) ("CESR Global Guidelines"), at 26-27.

9 The Proposal notes that DERA staff analyzed funds' use of derivatives based on Form N-Port filings as of September 2019. The analysis indicated that 80% of funds that file Form N-Port have adjusted notional amounts below 15% of NAV. Proposal, at 4485.

forced to make significant sales in the cash market at the worst possible time). Other types of funds (e.g. volatility targeting funds) will likely find the proposed limits constraining during periods of low volatility following periods of high volatility. Further, the Proposal would require a fund's VaR model to be based on three years of historical market data, and periods of especially high or low volatility within the preceding three years could lead to very high or very low VaR estimates.

ISDA believes it is imperative that the final rule grant funds sufficient flexibility to continue to operate under volatile, distressed or unpredictable market conditions by providing for a relative VaR-based leverage limit of at least 200% and an absolute VaR-based leverage limit of at least 20%, so that managers of U.S. funds (and shareholders of such funds) are not disadvantaged as compared to those managing (or investing in) UCITS funds, and in recognition of the fact that the VaR limits are intended to provide an outer bound on individual funds incurring leverage risk, and not to prevent a fund from effectuating a strategy including the responsible use of derivatives.

B. **The proposed remediation period of three business days for exceedances of a fund's applicable VaR-based leverage limit should be extended to at least seven business days, and the proposed freeze on entry into derivatives transactions should end once a fund has returned to compliance with its applicable VaR-based leverage limit.**

ISDA appreciates the Commission's inclusion of a remediation period in the Proposal, consistent with the recommendation in ISDA's comment letter on the 2015 Proposal,[10] and requests that the final rule include a remediation period of at least seven business days rather than the three business days contemplated by the Proposal. The Commission indicates that the length of the remediation period is designed to disincentivize funds from purposefully exceeding the applicable VaR-based leverage limit.[11] As a practical matter, we question whether funds would deliberately exceed such limit and do not believe that it is appropriate for rulemaking to be premised on an assumption that heavily regulated funds, overseen by boards that have a majority of independent directors, would seek to do so. The proposed rule requires that a fund subject to VaR-based limits have a Derivatives Risk Management Program ("DRMP") administered by a Derivatives Risk Manager ("DRM") approved by the fund's board of directors.[12] In ISDA's view, there is no reason for the rule to have provisions that unreasonably punish funds that unexpectedly exceed a limit out of concern that a few funds may try to "game the system," and the checks in the Proposal would seem to assume that such actions would otherwise be common. ISDA believes that it is highly unlikely that funds would voluntarily risk incurring the severe consequences of failure to return to compliance by the end of the remediation period. Additionally, funds could unpredictably find themselves out of compliance with the applicable VaR-based leverage limit due to market movements, fund redemptions, or idiosyncratic market or other events. A remediation period of at least seven business days would afford funds the

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10 ISDA 2016 Comment Letter, at 5.

11 *See* Proposal, at 4479.

12 *See generally* Proposal, at 4457-4469.

flexibility needed to react to such unplanned occurrences while deterring funds from remaining out of compliance for an inappropriate length of time.

Under the Proposal, if a fund is out of compliance with the applicable VaR-based leverage limit after the remediation period ends, it would be subject to a freeze on derivatives transactions except those designed to reduce the fund's VaR.[13] The proposed freeze could materially restrict a fund's ability to meet its investment objectives, especially if it relies on derivatives to obtain certain types of exposure. As such, ISDA requests that the final rule permit such a fund's entry into any derivatives transactions that (i) do not have the effect of increasing a fund's VaR by more than a de minimis amount or (ii) are consistent with the fund's overall strategy for the use of derivatives and do not seek to incur additional leverage.

Additionally, the proposed freeze on new derivatives transactions would remain in effect until a fund has been in compliance with the applicable VaR test for three consecutive business days and satisfied the board reporting and program analysis requirements.[14] The Proposal notes that if the freeze was lifted after a single day of compliance, "this could potentially lead to some funds having persistently high levels of leverage risk beyond that permitted by the applicable VaR test."[15] We do not believe that freezing a fund's ability to effectuate its investment strategy by entering into derivatives transactions even once it is back in compliance with the applicable VaR-based limit bolsters investor protection in any meaningful way. As discussed above, it is exceedingly unlikely that a fund that has implemented compliance policies reasonably designed to ensure that it operates within specified limits would ever intentionally exceed such limits, or willingly risk incurring the burdensome and potentially costly and embarrassing consequences of exceeding the applicable VaR-based limit beyond the remediation period, including mandatory board reporting and program updates. Additionally, a fund would likely not be able to predict the length of time needed to return to compliance with the applicable VaR test and satisfy the reporting and program update conditions, and as such would have minimal incentive to engage in opportunistic "gaming" to consistently maintain a VaR above the permissible limit. As such, in our view the final rule should allow a fund to enter into new derivatives transactions once it has returned to compliance with the applicable VaR test and has satisfied the applicable reporting and program update requirements.

C. **The Commission should alter certain additional highly prescriptive elements of the proposed VaR-based models and testing requirements.**

A fund's DRMP would be required to provide for stress testing to evaluate potential losses on at least a weekly basis, as well as back testing of the fund's VaR calculation model each business day.[16] These requirements could impose a significant compliance burden upon funds, and may not be necessary for a robust analysis of a fund's compliance with the applicable VaR test. ISDA

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[13] Proposal, at 4479.

[14] *Id.*

[15] Proposal, at 4479-4480.

[16] Proposal, at 4478.

proposes, as a less burdensome alternative, that a fund's DRMP be required to provide for stress testing and back testing to the extent that the fund's DRM deems reasonably necessary to achieve the aims of the DRMP.

ISDA suggests that the final rule allow funds to select a confidence level ranging from 95% to 99%, in place of the proposed confidence level of 99%.[17] This would be consistent with the comments to the 2015 Proposal received by the Commission, which generally supported a confidence level of 95% to 99%, and with the current practice of market participants, who typically utilize confidence levels of 95% to 99%.[18]

II. The final rule should grant additional flexibility to limited derivatives users.

A. The Commission should permit funds to rely simultaneously upon both of the exceptions for limited derivatives users.

Proposed rule 18(f)-4(c)(3) would allow a fund to rely on either the exception for a fund whose "derivatives exposure" does not exceed 10% of its net assets, or the exception for currency derivatives used to hedge currency risks associated with foreign-currency-denominated instruments. The Proposal notes that the Commission had considered permitting a fund to simultaneously rely upon both exceptions, but rejected this approach "to preclude a fund that is operating as a limited derivatives user from engaging in a broad range of derivatives transactions that may raise risks that we believe should be managed" through a DRMP and a VaR-based leverage limit.[19] The Commission takes the position in the Proposal that "using currency derivatives solely to hedge currency risk does not raise the policy concerns underlying section 18," and that "currency hedges are not intended to leverage [a] fund's portfolio, and conversely could mitigate potential losses." [20] It follows that the use of currency derivatives solely to hedge foreign currency risk does not introduce risks that the Commission believes should be managed through a DRMP and VaR-based leverage limit, and as such, there is no compelling reason that a fund relying on the first exception should not be permitted to simultaneously utilize currency derivatives for hedging purposes. For this reason, the final rule should allow a fund to rely simultaneously upon both exceptions.

B. The first proposed exception for limited derivatives users should allow for "derivatives exposure" up to 20% of a fund's net assets, and should include additional adjustments to "derivatives exposure."

The Commission notes that there would be little marginal benefit to raising the "derivatives exposure" limit of the first exception to 15% or 20% of a fund's net assets, citing a Division of Economic and Risk Analysis White Paper published in 2015 which estimates that 78% of funds

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[17] Proposal, at 4476.

[18] *See* Proposal, at 4477.

[19] Proposal, at 4488.

[20] *Id.*

that file reports on Form N-PORT either do not engage in derivatives transactions or would qualify for the limited user exception, 80% of funds have adjusted notional amounts below 15% of NAV, and that setting an exposure threshold as high as 25% would result in nearly the same percentage of funds qualifying for the exception.[21] We do not believe that this prescriptive requirement should be based upon data from 2015, and note that the data does not indicate that any harms would result from an increase of the exposure threshold above 10% of a fund's net assets. In the absence of any data demonstrating such harms, we view an exposure threshold of 10% as an unreasonably low and arbitrary limit. Additionally, it is possible that a substantially lower percentage of funds would be able to consistently maintain a "derivatives exposure" of less than 10% under distressed or volatile market conditions. In ISDA's view, the Commission should allow a fund relying on the proposed first exception to have "derivatives exposure" up to 20% or 25% of its net assets.

The Proposal would allow for certain adjustments to "derivatives exposure", including that funds may convert the notional amount of interest rate derivatives to 10-year bond equivalents and delta adjust the notional amount of options contracts.[22] ISDA requests that the final rule allow for additional adjustments as reasonably determined by a fund to better reflect the exposure that a derivatives transaction creates to the underlying reference assets. Specifically, the final rule should at least permit adjustments based on the volatility of underlying reference assets and for hedging, netting and off-setting transactions.

C. The exceptions for limited derivatives users should include remediation periods.

The proposed rule does not provide for a remediation period in the event that a fund's derivatives exposure exceeds 10% of its net assets, or in the event that a fund's use of currency derivatives for hedging purposes exceeds the value of the instruments denominated in the foreign currency by more than a negligible amount. In keeping with the Proposal's treatment of the VaR-based leverage limits, we request that the final rule include a remediation period of seven business days before a fund would become subject to the consequences of failure to comply with the limited derivatives user exception, which include establishment of a DRMP and compliance with a VaR-based leverage limit. Given the burdensome nature of these consequences and the difficulty of predicting and timing a return to compliance, we believe that funds, which may be presumed to operate in good faith and in accordance with their compliance policies and procedures reasonably designed to, among other things, result in their compliance with the restrictions applicable to limited derivatives users, are highly unlikely to deliberately exceed the limits of the applicable exceptions with the intent to return to compliance within seven business days, or to engage in any similar forms of opportunistic "gaming."

D. The final rule should include additional exceptions for limited derivatives users.

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[21] *See* Proposal, at 4485.

[22] Proposal, at 4484.

ISDA proposes that the final rule include additional exceptions for types of derivatives usage that do not raise the policy concerns underlying section 18 of the ICA. Specifically, ISDA respectfully suggests that the final rule should include exceptions for:

- Use of interest rate derivatives that funds utilize for hedging purposes;
- Use of credit default swaps for hedging purposes;
- A fund that does not enter into complex derivatives transactions (defined in the 2015 Proposal to mean derivatives transactions for which the amount payable by either party upon settlement is dependent on the value of the underlying reference asset at multiple points in time during the term of the transactions, or is a non-linear function of the value of the underlying reference asset, other than due to optionality arising from a single strike price); and
- A fund whose principal investment strategies disclosed in its prospectus do not involve the use of derivatives.

III. The Commission should abandon the proposed sales practices rules or, in the event that the Commission adopts the proposed sales practices rules, clarify the requirements to be imposed upon broker-dealers and investment advisers and ensure that the sales practices rules do not directly restrict the ability of investors to access leveraged/inverse investment products.

A. The Commission should abandon the proposed sales practices rules.

As an initial matter, ISDA urges the Commission not to adopt the proposed sales practices rules for the following reasons.

The proposed sales practices rules would require investment advisers and broker-dealers, who are already heavily regulated, to perform extensive due diligence prior to approving a customer's account to engage in transactions in securities issued by leveraged/inverse investment vehicles, or placing orders for the accounts of retail advisory clients to buy or sell such securities.[23] This singles out a single relatively mature, if "niche", product for extraordinary treatment without any compelling justification. This substantial compliance burden could lead investment advisers and broker-dealers to exclude leverage/inverse products from their platforms, depriving investors of a product that has been freely available for almost 14 years without any such restrictions, which we do not understand to be the Commission's desired result.

The proposed sales practices rules would require an investment adviser or broker-dealer to form a "reasonable basis for believing that the customer has such knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks of buying and selling leveraged/inverse investment vehicles," which determination must be "based on all of the relevant facts and circumstances,"[24] prior to pre-approving the customer for transactions in leveraged/inverse products. The Proposal provides insufficient clarity to

[23] Proposal, at 4493.

[24] Proposal, at 4494.

investment advisers and broker-dealers as to the nature of this "reasonable basis," the scope of the "relevant facts and circumstances," and how such facts and circumstances ought to be weighed. This lack of clarity, and the prospect of violating the proposed sales practices rules, could further disincentivize investment advisers and broker dealers from including leveraged/inverse products on their platforms, which could deprive investors of the opportunity to obtain exposure to these products, thereby unreasonably limiting investor choice.

Further, the proposed sales practices rules would mark a drastic departure from the Commission's historical approach to protecting investors from investment products through adequate disclosure. The proposed sales practices rules would apply even in circumstances where investors seek to trade in leveraged/inverse products without the advice of an adviser or broker-dealer.[25] As Commissioners Peirce and Roisman noted in their joint statement on the Proposal, with the exception of a similar FINRA requirement governing standardized options trading, there is minimal precedent for directly restricting the access of investors to specific investment products.[26] The Commission proposes to set up an extremely burdensome specialized regime for a niche product that has been in existence for almost 14 years and which the broker-dealer community has adapted to with the help of FINRA guidance. Even if the Commission's intent is not to initiate a sweeping shift towards the direct restriction of access to financial products, the proposed sales practices rules could inform future rulemakings and augur a movement away from the Commission's longstanding disclosure-based approach to the regulation of investment products towards a more prescriptive approach, which ISDA believes is deeply troubling and would be inconsistent with the Commission's regulatory mandate.

We additionally note that the proposed sales practices rules appear redundant in light of Regulation Best Interest, which will require broker-dealers to make recommendations that are in the best interests of a customer based upon the customer's investment profile and the potential risks, rewards and costs associated with the recommendation, and the Commission's recent guidance that an investment adviser's advice must be based upon a reasonable understanding of the client's objections, which requires an investment adviser to make a "reasonable inquiry" into the client's financial situation, goals, investment experience, and financial sophistication.[27] The adoption of an additional and partially overlapping regulatory regime could cause significant confusion to and impose substantial costs upon broker-dealers and investment advisers. Further, while Regulation Best Interest and the Commission's recent guidance to investment advisers are consistent with the Commission's traditional principles-based approach to the regulation of

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[25] *See id.* ("Under the proposed sales practices rules, no firm may accept an order from or place an order for a retail investor to buy or sell shares of a leveraged/inverse investment vehicle, or approve such a retail investor's account to engage in those transactions, unless the firm has complied with certain conditions.").

[26] *See* Public Statement, Commissioner Hester M. Peirce and Commissioner Elad L. Roisman, Statement on the Re-Proposal to Regulate Funds' Use of Derivatives as Well as Certain Sales Practices (Nov. 26, 2019) ("Peirce-Roisman Statement").

[27] *Id. See also* Exchange Act Rule 15l-1(a)(ii)(B); Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA-5248 (June 5, 2019), at 11-12.

investment products and professionals, the proposed sales practices rules are highly prescriptive and could operate to directly restrict the access of investors to leveraged/inverse products.[28]

B. In the event that the Commission chooses to adopt some version of the proposed sales practices rules, the Commission should not adopt certain highly prescriptive aspects of the rules.

In the event that the Commission adopts the proposed sales practices rules, ISDA suggests that the final rule reflect the following clarifications.

First, the final rule should explicitly differentiate between circumstances in which an investor trades in leveraged/inverse products on their own initiative rather than at the recommendation of their broker-dealer or investment adviser. Specifically, the proposed sales practices rules should not apply in the event that a broker-dealer or investment adviser recommends leveraged/inverse products to investors, as broker-dealers will be required under Regulation Best Interest to make recommendations that are in the best interest of a customer, and an investment adviser must base its advice to a client on a reasonable understanding of the client's financial situation, level of financial sophistication and investment experience, and financial goals. Similarly, the proposed sales practices rules should not apply to investment advisers that have discretion over the accounts of their clients.

Additionally, the Proposal provides minimal guidance as to how investment advisers or broker-dealers are to make a "reasonable" determination that an investor is suited for leveraged/inverse products. As such, in the event that the Commission adopts the proposed sales practices rules, we recommend that the adopting release include additional guidance as to how investment advisers or broker-dealers are to make such a determination, or that the final rule include a bright-line rule as to what constitutes a reasonable determination and what must be included within the scope of the investment adviser or broker-dealer's diligence inquiry.

Finally, the proposed sales practices rules should not apply to transactions in leveraged/inverse products that are directed by a retail investor without any recommendation or advice from a broker-dealer or investment adviser. As discussed above, it would be nearly unprecedented for the Commission to place a direct barrier between an investor and an investment product.

IV. The Commission should omit certain burdensome reporting requirements from the final rule.

The proposal would amend form N-PORT to require a fund that is subject to the VaR-based risk limit to report its highest daily VaR and median daily VaR during the reporting period, and the number of instances during the reporting period in which the fund was out of compliance with the applicable VaR-based risk limit. The proposal would additionally amend Form N-LIQUID (which would be re-titled Form N-RN) to require a fund to provide certain information regarding its VaR (and, if applicable, the VaR of its designated reference index) during any period in which the fund is out of compliance with its VaR limit for three or more business days, and would

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[28] *See* Peirce-Roisman Statement.

amend form N-CEN to require a fund to identify whether it relied on proposed rule 18f-4 during the reporting period.[29] We note that these proposed requirements could introduce a substantial additional reporting burden for funds, particularly in the context of volatile market conditions. As such, we suggest that these requirements be omitted from the final rule so as not to result in funds being discouraged from the appropriate use of derivatives. Given the board reporting required by the Proposal, imposing additional public reporting requirements seems unnecessary. ISDA is additionally concerned about the possibility of investor confusion or alarm relating to the public reporting of situations that are likely to be brought swiftly into compliance, and notes that funds are public companies that are required by applicable Federal securities laws to update their public offering documents in the event of material adverse developments. As such, imposing additional mechanical public filing requirements is not necessary for the protection of investors.

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ISDA appreciates the opportunity to provide these comments. If we may provide further information, please do not hesitate to contact me or ISDA staff.

Sincerely,

Steven Kennedy
Global Head of Public Policy

cc: Securities and Exchange Commission
Asaf Barouk, Attorney-Advisor;
Joel Cavanaugh, John Lee and Sirimal Mukerjee, Senior Counsels;
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29 Proposal, at 4499-4502.