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**VIA ELECTRONIC DELIVERY**

May 1, 2020

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

Re: Use of Derivatives by Registered Investment Companies and Business Development Companies; Required Due Diligence by Broker-Dealers and Registered Investment Advisers Regarding Retail Customers' Transactions in Certain Leveraged/Inverse Investment Vehicles, File No. S7-24-15

Dear Ms. Countryman:
Calamos Investments LLC ("Calamos") is pleased to have the opportunity to comment on the U.S. Securities and Exchange Commission's (the "Commission") proposed Rule 18f-4 (the "Proposed Rule") under the Investment Company Act of 1940, as amended (the "1940 Act") related to the use of derivatives by registered investment companies and business development companies. We believe that Calamos can provide particularly useful insight into certain implications of the Proposed Rule to the closed-end fund industry.

Serving the needs of institutional and individual investors since 1977 through its operating subsidiaries, Calamos is a global investment firm committed to excellence in investment management and client services. With over $24 billion in assets under management, Calamos has particular experience managing derivatives risk with respect to certain of its strategies. Calamos' subsidiary, Calamos Advisors LLC, is the investment adviser to seven closed-end investment companies with over $6.7 billion of assets under management.

Calamos generally supports the Investment Company Institute's (the "ICI") comments on the Proposed Rule that the ICI filed with the Commission on April 20, 2020. However, there are a number of points raised in the ICI response that we believe deserve amplification, and we have some additional points outside of the ICI letter that we wish to raise for the Commission's consideration.

We agree with the ICI's recommendations and conclusions contained in Section II.B.2.d) of the ICI's comment letter related to revising the proposed rule to address the unique ability of a closed-end fund to engage in preferred stock leverage. As the ICI correctly notes, the 1940 Act permits a closed-end fund (unlike an open-end) to utilize senior securities that are stock, in addition to senior securities that are debt. We believe that this statutory structure reflects a Congressional intent to permit the incurrence of leverage by a closed-end fund in excess of the 300% asset coverage to which open-end funds are limited. We share the concern of the ICI and other commentators that the draft rule, as presently constituted, would limit the ability of closed-end funds to fully take advantage of this structural benefit. We agree with the ICI that one way to address this weakness in the proposed rule would be to permit closed-end funds to utilize a preferred stock leverage factor to allow a closed-end fund to invest in derivatives in an amount that allows the closed-end fund to fully actualize their permitted statutory leverage. (We also acknowledge the ICI's observation in footnote 81 of their comment letter that an acceptable alternative approach would be "to permit them to use leverage in their benchmark in an amount that offsets the leveraging effect of their preferred shares.")

We also agree with the ICI regarding the applicability of the rule to instruments and investment techniques that are used by fixed income funds such as when-issued securities, firm and standby commitments, dollar rolls, and bond forwards as set forth in Section II. A.1-2 of the ICI's comment letter. In particular, we agree that these instruments and strategies do not pose the same policy risks as complex derivative instruments might. The Commission's proposed binary approach to derivatives usage – either full compliance with the derivatives risk management and VaR based program or reliance on the limited derivatives exception – imposes needless complexity on funds that otherwise might not be able to rely on the limited usage exemption, but for whom the full risk-based regime would largely be over-engineered when viewed in light of the risks for which the program is seeking to resolve. As a result, we endorse the ICI's recommendation of excluding some transactions from the derivatives transaction definition entirely and applying a modified version of asset coverage consistent with Release 10666[1] (and related existing guidance) modified as necessary to ensure that the covering assets are either highly liquid or moderately liquid investments. We believe that this approach would provide a more highly tailored approach, which would acknowledge that more flexibility is better than a "two sizes fit all" approach.

We also agree with the ICI's observation that funds should be allowed to rely on <u>both</u> the 10% exposure exclusion contained in proposed rule 18f-4(c)(3)(i) and the foreign currency hedging exclusion contained in proposed rule 18f-4(c)(3)(ii). We recognize that the Commission considered permitting a fund to qualify as a limited derivatives user if its derivatives exposure did not exceed 10% of net assets, excluding any currency hedges, but chose not to take such a combined approach. The reasoning was 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 the Commission believed should be managed through a derivatives management program and subject to the proposed VaR-based limit on fund leverage risk.

We urge the Commission to reconsider this approach. We note that the rule as currently proposed could lead to the incongruous result of forcing a fund with large foreign currency risk that wishes to use a truly de minimis amount of derivatives to choose to significantly limit the use of its hedging or to comply with an otherwise needlessly burdensome derivatives program. It is not clear how forcing this choice on a fund would benefit investors, particularly given, as the ICI notes, that combining the two exceptions does not appear to "raise additional risks that could not be managed under the policies and procedures for limited derivatives users."

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[1] <u>Securities Trading Practices of Registered Investment Companies</u>, SEC Rel. No. IC-10666 (Apr. 18, 1979).

We also strongly support the ICI's comment related to expanding the scope of hedging transactions that should be included in the concept of limited derivatives user. Using derivatives to hedge existing instruments or transactions held or utilized by the fund (such as writing covered calls, purchasing single security credit default swaps that cover all or a portion of debt securities held by the fund, or using purchased options to offset written options as part of an options strategy) does not appear to present the same level of risk, complexity and excess leverage concerns that the rule is intended to address. We believe it would be appropriate for the Commission to acknowledge this fact as part of any final rule making.

Finally, we believe that the proposed rule, particularly its exclusion for limited derivatives users, fails to address or acknowledge the interplay between the existing statutory provisions of Section 18 that apply to a closed-end fund's use of structural leverage and derivative usage outside of the proposed rule. To illustrate this concern, assume a fund relies on the 10% exclusion contained in rule 18f-4(c) (3) (i) and experiences a decline in its net assets that is not matched by a proportionate decline in the derivatives exposure of the fund. This situation would likely not create an issue for an open-end fund.

The provisions of Section 18(f) prohibit only the *issuance* of senior securities, it does not prohibit having a class of senior securities outstanding that was "issued" consistent with the rule. And Sections 18(a) and 18(c) are inapplicable to open-end funds. As a result, such an open-end fund would have no issues under Section 18 provided it did not engage in further derivative "issuance" until it was once again able to rely on the 10% limit. Place a closed-end fund in the same position, however, and there could be a different story.

Even though the closed-end fund would not appear to have any issues under section 18(c), because like Section 18(f) it applies only to the *issuance* of senior securities in multiple classes, the provisions of Section 18(a)(1) and (a)(2) could pose issues for closed-end funds.[2] Each of these sections limits the ability of a closed-end fund to pay a cash dividend or distribution to its common shareholders (and in some instances preferred stock holders) if the statutory asset coverage requirements are not met at the time of declaration. It is possible that a closed-end fund with existing structural leverage that finds itself falling outside of the exclusion of proposed rule

[2] Proposed Rule 18f-4 provides exemptive relief from the provisions of Section 18(c). But other than including a conclusory statement that "Section 18(c) also limits a registered closed-end fund's ability to enter into derivatives transactions absent such relief," the Proposing Release does not explain how Section 18(c) is implicated, particularly in light of the second clause of that section, which appears on its face expressly to exclude privately negotiated debt from 18(c)'s prohibition. Although the release is silent on this point, it appears that the Commission is tacitly reaffirming its position in *In Re* Israel Dev. Corp., 40 S.E.C. 582 (Mar. 16, 1961). If that is the case, we urge the Commission reconsider that position, as it appears to be inconsistent with current Supreme Court precedent on statutory interpretation. *See*, *e.g.*, Hardt v. Reliance Standard Life Ins. Co., 560 U.S. 242, 251 (2010) ("we begin by analyzing the statutory language, 'assum[ing] that the ordinary meaning of that language accurately expresses the legislative purpose.' We must enforce plain and unambiguous statutory language according to its terms.")(internal citations omitted); SAS Inst., Inc. v. Iancu, 138 S. Ct. 1348, 1355 (2018) ("Where a statute's language carries a plain meaning, the duty of an administrative agency is to follow its commands as written, not to supplant those commands with others it may prefer.").

18f-4(c)(3)(i) could find itself in situation in which it would be prohibited from paying a cash dividend or distribution.

Given that the provisions of section Sections 18(a)(1) and (2) are designed to protect the right of senior securities holders against overreaching by common stockholders, it would appear that treating derivatives as senior securities for purposes of the asset coverage tests – which does not present such concerns – is misplaced in this scenario. We suggest that the Commission provide further exemptions to ensure that closed-end funds would be able to continue to declare and pay such dividends or distributions.

Calamos Investments appreciates the opportunity to comment on this rulemaking. We would welcome the opportunity to further discuss our views with you. Please feel free to contact the undersigned at or if you should like to do so.

Very truly yours,

/s/ J. Christopher Jackson

J. Christopher Jackson
Sr. Vice President & General Counsel

cc: The Honorable Jay Clayton
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison Herren Lee

Dalia Blass
Director, Division of Investment Management