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Via Electronic Submission: rule-comments@sec.gov

Vanessa A. Countryman
Secretary of the Commission
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

**Re: Position Reporting of Large Security-Based Swap Positions - Proposed Rule
(File Number S7-32-10) (the “Proposing Release”)**

Dear Ms. Countryman:

We appreciate this opportunity to comment on the rule recently proposed by the Securities and Exchange Commission (the “Commission”) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) which would require any person with a security-based swap (“SBS”) position that exceeds a certain threshold to promptly file with the Commission a schedule disclosing certain information related to its SBS positions and positions in securities underlying such transactions (the “Proposed Rule”).¹ We write from the perspective of our clients that are large institutional investors who transact in the SBS market.

We support the Commission’s efforts to protect investors and maintain fair, orderly and efficient markets.

Executive Summary

In Part I of this letter, we argue that the Proposed Rule is inconsistent with clear statutory requirements, and the Commission’s own rules thereunder, that are designed to protect confidentiality of market participants and their proprietary positions and trading strategies. Furthermore, the Commission already has the tools it needs to monitor for bad actors and accumulation of large, highly concentrated positions through existing SBS transaction and securities position reporting.

In Part II, we discuss the significant operational and compliance burdens the Proposed Rule would place on institutional investors. If the Commission decides to proceed with the Proposed Rule, we

¹ Proposed 17 C.F.R. § 240.10B-1.

make several recommendations designed to reduce those burdens while enabling the Commission to achieve its goals. These include extending the time period for reporting to be consistent with Schedule 13F reporting (a framework that is familiar to institutional investment managers) and taking into account operational constraints in the separately managed account context. We also urge the Commission to take time to study information made available to it under the new SBS reporting regime in order to set appropriate reporting thresholds at a level that will support the Commission's goals while avoiding undue burdens on institutional investors and flooding the market with information that is not useful.

I. Statutory Authority and Policy Goals

A. The Proposed Rule is inconsistent with clear statutory requirements, and the Commission's own rules thereunder, providing that public dissemination of SBS transactions (i) does not identify the participants in a transaction and (ii) does not disclose the business transactions and market positions of any person (with respect to non-cleared SBS).

We are concerned that the Proposed Rule exceeds the statutory authority granted to the Commission. Section 763(h) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which added new Section 10B to the Exchange Act, permits the Commission to adopt rules or regulations that require persons who effect transactions in SBS for such person's own account or the account of others to report "such information as the Commission may prescribe regarding any position or positions in any security-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans."² Section 763(h) (titled "Large Trader Reporting") does not expressly require, permit or contemplate public dissemination of such information. Under the Proposed Rule, however, reporting persons are required to make a public report that includes the identity of the reporting person as well as extensive information about their SBS and related positions, including notional amounts, direction, tenor/expiration, and the size of related positions in underlying debt or equity securities (as applicable). Section 763(h) does not afford the Commission the breadth of authority it is relying on in proposing the Proposed Rule.

Public availability of SBS transaction data is expressly contemplated in an adjacent statutory provision (as well as Commission rules adopted thereunder). Section 763(i) of the Dodd-Frank Act ("Public Reporting and Repositories for Security-based Swaps") "authorize[s] the Commission to make [SBS] transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery." In this provision, Congress directed the Commission to ensure that publicly disclosed information (i) *does not identify the*

² 15 U.S.C. §78j-2.

participants in a transaction, with respect to cleared SBS and SBS that are required to be cleared,³ and (ii) does not disclose the business transactions and market positions of any person, with respect to non-cleared SBS.⁴ We respectfully suggest that the Commission revise the Proposed Rule so that it is consistent with the limitations imposed by Section 763(i) of the Dodd-Frank Act.

Consistent with the statutory mandate, Commission regulations require extensive reporting and public dissemination of SBS transaction data, but prohibit public dissemination of the identities of the counterparties to an SBS transaction. Specifically, Regulation SBSR, which implements Section 763(i), requires reporting of SBS information to SBS data repositories (“SBSDRs”) and the public dissemination of SBS transaction, volume and pricing information by SBSDRs. Reporting under Regulation SBSR began in November 2021 and public dissemination under Regulation SBSR began in February 2022. Pursuant to this regime, market participants must report to an SBSDR within 24 hours of execution of an SBS detailed information about the terms of each SBS transaction, including the specific assets or issuers of any security on which the SBS is based; the notional amount of the transaction; the date and time of execution; the scheduled termination date; key economic terms (e.g., price, periodic payments); if applicable, an indication that the transaction does not accurately reflect the market; and the identities of the parties to the SBS. This information, except for the identities of the counterparties, is publicly disseminated by the SBSDR immediately upon receipt.

Consider as an example an institutional investor that enters into one non-cleared SBS transaction that exceeds the applicable threshold. Under the Proposed Rule, the investor would be required to file a public report that identifies the size of the transaction and the identity of the investor, among other things, on the business day following execution of the transaction. Under Regulation SBSR, the investor’s counterparty (assuming the counterparty is the reporting party) would be required to file a report with an SDR within 24 hours of execution and such transaction would be publicly disseminated, but without identifying the parties to the transaction, immediately upon receipt of the report. These reports would be filed at or around the same time, and the investor in effect would lose the statutory protections required by Congress – and the Commission’s own regulations thereunder – under Section 763(i) and Regulation SBSR if the Proposed Rule is adopted as proposed. The Commission cites to the use of the term “position” in Section 763(h) and the term “transaction” in Section 763(i) and notes that the Proposed Rule protects the confidentiality of the counterparty to an SBS transaction, but does not appear to consider in any meaningful way the confidentiality interests of market participants that Congress and the Commission sought to protect in the Dodd-Frank Act and Regulation SBSR, respectively. The protections of the Dodd-Frank Act and Regulation SBSR would be overridden by the Proposed Rule if it is adopted as proposed.

Unlike Section 763(h) (Large Trader Reporting), which does not expressly require, permit or contemplate public dissemination, Section 763(i) can be fairly read as a statement of Congressional

³ 15 U.S.C. §78m(m)(1)(E)(i).

⁴ 15 U.S.C. §78m(m)(1)(C)(iii).

intent with respect to public dissemination of SBS information. Section 763(i) seeks to promote transparency and facilitate price discovery while recognizing the legitimate interests of SBS market participants in maintaining the confidentiality of their identities, business transactions and market positions. Any ambiguity regarding the interplay of these statutory provisions must be resolved in favor of Congress's clearly stated intention to preserve confidentiality of the identities of participants to SBS transactions and in a manner that does not disclose the business transactions and market positions of any person.

From a policy perspective, such extensive disclosure of information about an investor's positions will come at a cost to the functioning of our markets that does not clearly outweigh the potential benefits. Institutional investors are important participants in the swaps market, and often transact in the ordinary course as purely passive investors and serve as an important source of liquidity and offsetting risk to the SBS dealer market. By requiring almost real-time disclosure of an investor's positions and proprietary trading information, the Proposed Rule would have the effect of discouraging these investors from participating in the market, a concern that the Commission does not appear to consider in any meaningful manner. In the Proposing Release, the Commission acknowledges that certain aspects of an SBS transaction "may be sensitive and proprietary information." We agree. However, the Commission suggests that the Proposed Rule addresses confidentiality concerns by not requiring market participants to disclose information about the identities of the counterparties to the reporting person's transactions. This feature of the Proposed Rule would protect SBS dealers with whom institutional investors transact (e.g., keeping information about large trades confidential may help to avoid speculative front-running, which could negatively impact the SBS dealer's ability to place a hedge transaction or the cost at which the hedge can be placed).⁵ This feature of the Proposed Rule, however, offers no protection of proprietary business and trading information of the institutional investors who will be required to file reports. We encourage the Commission to address this shortcoming during the comment process.

⁵ See, e.g., *Final Rule: Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information*, SEC Release No. 34-74244 at 535 ("Regulation SBSR Adopting Release") ("While the Commission has considered whether there could be a reduction in the programmatic benefits of public dissemination associated with providing too much time before a security-based swap transaction must be reported and publicly disseminated, the Commission also has considered that 24 hours might be too little time for liquidity providers to manage inventory risk. If a liquidity provider who engages in a large trade, or in a trade in an illiquid security, cannot offset the risk within 24 hours, the costs for providing liquidity could rise, resulting in less liquidity provision (i.e., less size provided at the desired price, or the same size provided at worse prices). This result might be avoided in a regulatory environment offering a longer delay between the time of execution of a security-based swap and the time that it must be reported and publicly disseminated."), available at <https://www.sec.gov/rules/final/2015/34-74244.pdf>.

B. The Proposed Rule is not appropriately tailored to achieve the Commission's stated goals.

The Commission states that there are three key goals of the Proposed Rule:

1. Providing market participants (including counterparties, issuers and issuers' stakeholders) and regulators with access to information that may indicate that a person (or group of persons) is accumulating a large SBS position, which in some cases could be indicative of potentially fraudulent or manipulative purposes or may pose larger risk to the markets or an issuer;
2. Alerting market participants and regulators to the existence of concentrated exposures to a limited number of counterparties, which should inform those market participants and regulators of the attendant risks, allow counterparties to risk manage by requiring additional collateral and lead to better pricing of the SBS with respect to transactions with persons holding large positions in those SBS; and
3. In the case of manufactured or other opportunistic strategies in the CDS market, providing market participants and regulators with advance notice that a person (or a group of persons) is building up a large CDS position which could create an incentive to vote against their interests as a debt holder, possibly with an intent to harm the company, even if such conduct is not inherently fraudulent.

With respect to the first and third goals, Regulation SBSR currently affords the Commission access to all of the information it would need to monitor market participants building up large SBS positions (including the identities of the parties to transactions and the size of transactions). While Regulation SBSR does not require reporting of related securities positions, we note that the Commission and the public have access to extensive information regarding market participants' securities positions through Section 13 reporting⁶ and Section 16⁷ reporting. Given that SBS transaction reporting under Regulation SBSR started only a few months ago, we urge the Commission to review the information that is already available to it through these reporting regimes before moving forward with an entirely new reporting regime under the Proposed Rule.

⁶ See 15 U.S.C. §78m(d) and §78m(g) and rules thereunder (requiring persons who acquire beneficial ownership of more than 5% of a class of an issuer's Exchange Act registered voting equity securities to report such beneficial ownership on Schedule 13D or 13G, as applicable); 15 U.S.C. §78m(f) and Rule 13f-1 thereunder (requiring periodic reporting of securities positions on Form 13F by large institutional investment managers); *see also* 15 U.S.C. §78m(h) and rules thereunder (requiring "large traders" to identify themselves, on a confidential basis, to the Commission).

⁷ See 15 U.S.C. §78p(a) and rules thereunder (requiring directors, officers and persons that acquire beneficial ownership of more than 10% of a class of an issuer's Exchange Act registered voting equity to report their holdings and transactions on Forms 3, 4 and 5 (as applicable)).

It is unclear to us how public reporting of SBS and related securities positions will further the Commission's stated goal of uncovering potential fraudulent or manipulative purposes. Market participants already are subject to anti-fraud provisions under the securities laws, with respect to both SBS positions and related securities positions. As the Commission notes in the Proposing Release, because SBS are included in the Exchange Act's definition of security, participants in the SBS market are currently subject to the general anti-fraud and anti-manipulation provisions of the Federal securities laws, including Sections 9(a), 10(b) and Rule 10b-5 under the Exchange Act, and Section 17(a) of the Securities Act of 1933, as amended. In addition to these anti-fraud provisions, the Dodd-Frank Act expanded the anti-manipulation provisions of Section 9 of the Exchange Act to cover SBS transactions and required the Commission to adopt rules to prevent fraud, manipulation, and deception in connection with SBS transactions. At the same time that it issued the Proposed Rule, the Commission also re-proposed Rule 9j-1, which contains prohibitions designed to prevent fraud, manipulation, and deception in connection with effecting transactions in, or inducing or attempting to induce the purchase or sale of, any SBS. Merely building a large position, whether through SBS or cash positions in securities, is not by itself indicative of intent to commit fraud or manipulation.

Under Regulation SBSR, the identities of the parties to an SBS transaction are made available to the Commission and its Staff, which the Commission noted in the Regulation SBSR adopting release will "improve regulatory oversight and surveillance of the security-based swap market" and "allow registered [SBSDRs], the Commission, and other relevant authorities to track activity by a particular market participant and facilitate the aggregation and monitoring of that market participant's security-based swap positions."⁸ To the extent the Commission identifies potential market manipulation or fraudulent activity (including so-called "opportunistic strategies," to the extent the activity is unlawful), the Commission may exercise its authority under the statutory provisions and regulations described above to take action against the market participant.

The second goal of the Proposed Rule is to alert market participants and regulators to the existence of concentrated exposures to a limited number of counterparties, which could inform those market participants and regulators of the attendant risks, allow counterparties to manage risk and lead to better pricing of the SBS with respect to transactions with persons holding large positions in those SBS.

The Proposed Rule in this respect, we would suggest, is a solution in search of a problem. In their private contractual arrangements with institutional investors, SBS dealers and other sell-side market participants typically require investors to provide extensive information about the investor's portfolio, positions (including positions held with or through other counterparties), asset size, risk profile and performance. SBS dealers typically conduct extensive due diligence at the beginning of an SBS trading relationship, including "know-your-customer" and credit research, and require ongoing reporting and additional due diligence over time. Contractual arrangements between SBS

⁸ Regulation SBSR Adopting Release at 71.

dealers and investors often include a long list of required reports to be provided to the SBS dealer about the investor's financial position, and counterparties who see a benefit to receiving disclosure of large SBS positions held by their investor counterparties can include such a requirement in their contracts. If an investor refuses to provide information, the dealer may choose not to do business with the investor. An investor's counterparties therefore do not need (nor are they likely to rely on) onerous public disclosure of confidential trading strategies and positions. The U.S. Federal Reserve also has made it clear that the obligation to obtain due diligence information from counterparties to SBS transactions to manage credit and related risks rests with the dealers.⁹

The Commission's goals of providing market participants and regulators with information about large positions being amassed in the markets and concentrated counterparty exposures should be, and are, addressed by existing disclosure and anti-fraud regulatory regimes, regulatory requirements related to counterparty risk management, and supported by private contractual arrangements that already exist in the markets.

Notwithstanding the concerns described above, we respectfully suggest the following changes if the Commission decides to move forward with the Proposed Rule.

⁹ For example, the U.S. Federal Reserve issued a letter to supervised institutions in 2021 stating that:

The Federal Reserve is concerned with practices where, both at the inception of a fund relationship and, on an ongoing basis during periodic credit reviews, firms accept incomplete and unverified information from the fund, particularly with regard to the fund's strategy, concentrations, and relationships with other market participants. These concerns are heightened where a fund client has a history of concentrated positions and losses. More generally, these practices represent insufficient due diligence and may be inconsistent with safe and sound banking practices. Similarly, when initiating a relationship and on an ongoing basis, firms should obtain critical information regarding size, leverage, largest or most concentrated positions, and number of prime brokers with sufficient detail or frequency to determine the fund's ability to service its debt. If a client refuses to provide this information, firms should consider whether it is consistent with safe and sound practices for them to begin or maintain a relationship with the fund or whether they can use strong compensating measures, such as significantly more stringent contractual terms, to mitigate the risk.

Board of Governors of the Federal Reserve System, Division of Supervision and Regulation, *SR 21-19: The Federal Reserve Reminds Firms of Safe and Sound Practices for Counterparty Credit Risk Management in Light of the Archegos Capital Management Default* (Dec. 10, 2021), available at <https://www.federalreserve.gov/supervisionreg/srletters/SR2119.htm>. The Bank of England and U.K. Financial Conduct Authority issued similar guidance. See Bank of England and Financial Conduct Authority, *Dear CEO: Supervisory Review of Global Equity Finance Businesses* (Dec. 10, 2021), available at <https://www.fca.org.uk/publication/correspondence/dear-ceo-supervisory-review-global-equity-finance-businesses.pdf>.

II. Discussion Regarding Burdens on Institutional Investors and Suggested Revisions to the Proposed Rule

A. The proposed timing for submission of reports is unworkable as a practical matter and will impose significant operational and compliance burdens on institutional investors and should be extended to be consistent with the filing deadline for Form 13F.

The Commission's proposal to require reporting within one business day after the reporting party crosses a threshold simply is not workable as an operational matter for the vast majority of institutional investors, for the reasons set forth below.

Institutional investors typically transact with registered SBS dealers and rely on the SBS dealer to provide trade confirmations. Under the Commission's trade acknowledgement and verification rules, an SBS dealer is required to provide a trade acknowledgement disclosing all the terms of a non-cleared SBS transaction "promptly, but in any event by the end of the first business day following the day of execution."¹⁰ The SBS dealer is required to "establish, maintain and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the terms of a trade acknowledgement...".¹¹

Accordingly, if an investor enters into an SBS transaction with a registered SBS dealer and the transaction crosses a reporting threshold under the Proposed Rule on day T, the investor will be required to report the transaction by the end of day T+1. As a practical matter, the investor will be required to begin preparing the report on day T so the report can be formatted and finalized for filing on day T+1. Since the trade acknowledgement is supposed to be provided to the investor by the end of day T+1, the investor likely will not receive a trade acknowledgement setting forth the terms of the transaction before the report is required to be filed. Furthermore, as the Commission notes in the trade acknowledgement and verification rule, the parties need time to review and verify the terms set forth in the trade acknowledgement. In our experience, this process can take days, even weeks, to complete, particularly when there is a dispute between the parties as to a term of the transaction. This mismatch in the timing requirements will increase the likelihood that reports would have to be amended if the confirmation received contains different terms than what was initially reported, which will increase the likelihood that the information reported will be incorrect and thereby of limited use to the Commission or the market.

Even after the trade acknowledgment is finalized, the investor also will need to compile information about its positions in underlying securities, including determining which narrow-based indices to which the investor has exposure include the relevant underlying securities. The investor will also need to determine the SBS and securities positions of members of the investor's "group." There

¹⁰ 17 C.F.R. 240.15Fi-2(b).

¹¹ 17 C.F.R. 240.15Fi-2(d)(1).

will be more steps required to determine if a filing is required, and if so, to make an accurate filing, than just agreeing on the terms of the SBS. To ensure investors are reporting accurately, the Commission must allow additional time for investors to complete the trade acknowledgement and verification process, and to gather required information, before they are required to submit reports on Schedule 10B.

Additionally, the cost and operational burden that will be placed on institutional investors should not be overlooked. Most buy-side investors simply lack the operational infrastructure required to prepare and file reports within the timeframes proposed by the Commission in the Proposed Rule. The Commission acknowledged these operational realities when it adopted the “reporting hierarchy” in Regulation SBSR. Pursuant to the reporting hierarchy, the Commission assigned reporting responsibility to the registered SBS dealer in the case of a transaction involving a registered SBS dealer and a counterparty that is not a registered SBS dealer, noting that SBS dealers “will have greater technological capability than non-registered persons to report [SBS] as required by Regulation SBSR” and will have “devoted substantial infrastructure and administrative resources to its [SBS] business, and thus would be more likely to have the capability to carry out the reporting function than a non-registered counterparty.” We agree, and would suggest there is no need to diverge from this established reporting hierarchy. The Commission acknowledges in the Proposing Release that it does not have adequate data regarding the number of equity SBS market participants that will be required to file reports, making it impossible for the Commission to accurately analyze the impact the Proposed Rule will have on the SBS market.¹² For this reason it is imperative that the Commission take time to study the data that has recently become available through Regulation SBSR to appropriately assess the impact that the Proposed Rule will have on the institutional investor community before imposing a new reporting regime on an entire subset of the industry.

If the Commission determines to require public reporting of SBS, there is no investor protection reason or market need to support reporting requirements that are more onerous than the requirements that apply to physical holdings of equity securities. Cash-settled security-based swaps provide no voting rights, dispositive rights or control over the underlying issuer; if there is any ability to influence the issuer, it is indirect (through the investor’s counterparty, who may hold underlying shares of the issuer to hedge its position under the SBS). It does not make sense for an SBS to be subject to more stringent reporting requirements than would apply if the investor held underlying shares directly.

For the reasons noted above and below, if the Commission decides to move forward with the Proposed Rule, the reporting deadline must be amended to be consistent with other similar reporting requirements that have been adopted by the Commission. Reporting under Section 13F provides a

¹² See Proposing Release at 105 (“Because reporting transaction data regarding other types of [SBS] has only recently become mandatory, the Commission does not yet have a precise estimate as to the number of persons we would expect to file reports with respect to [SBS] Positions consisting of [SBS] based on equity securities and other debt securities (non-CDS).”).

useful model that would be workable for most large institutional investors and is consistent with existing timing requirements (*i.e.*, reports are due within 45 days after the last day of the calendar year in which the investor crosses a reporting threshold and within 45 days after the last day of each of the first three calendar quarters of the subsequent calendar year).

B. The Commission should take into account operational challenges faced by institutional investors in the case of externally managed accounts.

Many institutional investors enter into SBS transactions through accounts that are managed by an external discretionary investment manager. Typically the investment manager has authority to cause the investor to enter into SBS transactions without consulting with the investor prior to each transaction, and the manager provides periodic reporting (often monthly) to the investor, including details of SBS transactions entered into by the manager on behalf of the investor. The SBS transactions would either be effected under the manager's derivatives documentation, or the investor's. If trading under the manager's documentation, the investor may not have information about the existence of an SBS transaction until it receives the monthly statement from the manager. Further compounding these challenges is the fact that institutional investors often have accounts with multiple managers, with multiple managers effecting SBS transactions on behalf of the investor. Since transactions through managed accounts are entered into in the name of the investor/ultimate beneficial owner, the investor would be required to aggregate transactions entered into by all of its external managers, along with any transactions entered into by the investor directly, in order to determine if a reporting threshold has been crossed. Reporting such transactions on a near real-time basis simply is not feasible as proposed.

C. The Commission should study the data that is available to it pursuant to Regulation SBSR and recalibrate the reporting thresholds for SBS to more accurately identify transactions that have the potential to impact the market.

In the interest of mitigating adverse impacts on market liquidity and protecting investors' confidential business transactions and market positions, it is critical that the Commission reconsider the proposed dollar-based thresholds that would trigger reporting. As the Commission acknowledges in the Proposing Release, there are alternative ways to set thresholds that will more accurately approximate when the market for an underlying security could be impacted by a large SBS position, such as an ADTV limit or a limit based on a percentage of an underlying issuer's debt that is outstanding. The proposed hard dollar thresholds are not calibrated to the risks or potential impact of any given SBS position, given that the extent of securities outstanding for different issuers can vary substantially. For example, for an issuer with a market capitalization of \$77 billion (the mean market capitalization of the S&P[®] 500 Index),¹³ requiring reporting of an SBS with a

¹³ As of February 28, 2022. See <https://www.spglobal.com/spdji/en/indices/equity/sp-500/#overview>. The minimum market capitalization to be included in the S&P 500[®] Index is \$14.6 billion. Accordingly, an equity SBS with a gross notional amount of \$300 million with respect to an issuer of that size would require reporting of an SBS that provides economic exposure to 2.1% of the issuer's securities.

gross notional amount of \$300 million would require reporting of an SBS that provides economic exposure to only 0.39% of the issuer's securities (assuming one class of securities). This seems unreasonably low, especially when disclosure of physical holdings of equity securities under Schedules 13D and 13G is only triggered at 5%. We appreciate the Commission's goal of establishing thresholds that are easy to calculate, but adopting thresholds that are more closely tied to the purposes of the Proposed Rule would provide more useful information to the Commission and the market, minimizing the "noise" of immaterial SBS transaction reporting and minimizing compliance burdens on a segment of the industry that often is ill-equipped to report the details of complicated SBS transactions. The dollar-based threshold for SBS on equity securities should be removed altogether.

With respect to debt SBS, the Commission proposes to use dollar-based thresholds which are designed to detect large positions that may incentivize an investor to engage in opportunistic strategies and/or act against the investor's own interest as a bondholder and to capture significant positions that may have the ability to impact the market. We agree that a dollar-based threshold likely would be the most practical approach in the case of debt SBS, but in light of the limited data available to the Commission regarding the debt security and SBS markets, we urge the Commission to study the data regarding debt SBS transactions that it receives pursuant to Regulation SBSR and allow the public time to review and comment on the Commission's analysis in light of the data. This will enable the Commission to develop an approach that meets the Commission's goals without imposing undue burdens on market participants and flooding the market with information that is not useful.

If dollar-based notional amount thresholds are included, we agree it makes sense for the Commission to determine such reporting thresholds based on market data, to ensure that the reporting requirements are not overly broad. The Commission explains in the Proposing Release that the thresholds in the Proposed Rule were determined in part based on data included in Forms N-PORT, which are filed by registered investment companies. We are not aware of any evidence that the SBS positions of registered investment companies are representative of SBS positions of the entire market as a whole. In contrast, since November 2021, the Commission has received reporting of SBS positions of all market participants pursuant to Regulation SBSR. We encourage the Commission to study this data to develop a more tailored approach that meets the Commission's goals, and allow the public time to review and comment on the Commission's analysis in light of the data. As the Commission acknowledges, over-reporting would blunt the important policy goals the Proposed Rule are intended to further.

Thank you for your consideration of our comments.

Very truly yours,

A handwritten signature in brown ink that reads "Leigh Fraser". The signature is written in a cursive, flowing style.

Leigh R. Fraser

A handwritten signature in black ink that reads "Molly Moore". The signature is written in a cursive, flowing style.

Molly Moore