SHAREGAIN

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January 7, 2021

U.S. Securities and Exchange Commission (the "**Commission**")
100 F Street NE
Washington, DC 20549-1090
Attn: Vanessa A. Countryman, Secretary
Via e-mail to *rule-comments@sec.gov*

Re: ***File No. S7-18-21; Reporting of Securities Loans***

Dear Ms. Countryman:

We appreciate the opportunity to comment on the proposed rule 17 CFR 240.10c-1 under the Securities Exchange Act of 1934[1] (the "**proposed Rule**" or "**Rule 10c-1**").

Sharegain is a Fintech group headquartered in the UK, whose global subsidiaries include US affiliates[2] ("**Sharegain**"). Our UK parent, Sharegain Ltd, operates as a financial intermediary providing securities lending agency services through a unique technological solution that has been developed by Sharegain. Sharegain Ltd is regulated by the Financial Conduct Authority[3] and is a member of the International Securities Lending Association[4].

From its inception, Sharegain has always been committed to introducing higher levels of transparency to the securities lending market. Through our fully digital solution, we also report on behalf of our clients under the Securities Financing Transactions Regulation ("**SFTR**")[5] in the EU and UK. We have played an active role in the adoption and implementation of the SFTR and are very familiar with the technology commitment needed to comply with stringent reporting obligations in a manner that ensures transmission of reliable, meaningful data. The time, know-how and human capital required to implement the SFTR requirements were substantial and required an industry-wide effort. In our view, Rule 10c-1 demands nothing short of a similarly extensive commitment.

We support the effort to address opacity in the securities lending industry, and we have set out below certain comments and suggestions that we believe would add clarity to the proposed Rule and help ensure that its transparency objectives remain achievable. In this regard, we have responded selectively to certain questions posed by the Commission in the Securities Exchange Act Release No. 93613 (the "**Proposing Release**"). Capitalized terms used and not otherwise defined below are as defined in the Proposing Release.

[1] 15 U.S.C. 78a *et seq*. (the "**Exchange Act**")
[2] Sharegain (US) Inc. and its subsidiaries, Sharegain Technologies Inc. and Sharegain Securities Inc.
[3] Sharegain Ltd is registered in England and Wales (09600298) and is authorised and regulated by the Financial Conduct Authority (730395) with registered address 2 Woodberry Grove, London, N12 02R, UK.
[4] https://www.islaemea.org/.
[5] Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (including as implementated in the UK).

1. Certain entities that are not U.S. registered broker-dealers should be allowed to report

Under Rule 10c-1, as proposed, only broker-dealers could serve as reporting agents.[6] We find this requirement to be illogical, as the proposed Rule first places the reporting obligations on lenders and lending agents, both of which the Commission has already acknowledged could expressly *not* be broker-dealers.[7] We propose that qualifying entities that are not broker-dealers, but which have the technological capability to provide such reports, should also be allowed to serve as reporting agents (each, a "**Qualifying Technology Agent**"). For example – Sharegain has the technological capability to gather data and keep records down to the granular level of the beneficial owner of securities, which has enabled our clients, financial institutions, to open securities lending to a variety of their clients with relatively small portfolios.

We agree that it is in the public interest that the Commission should have the ability to oversee the reporting agents' compliance. However, the qualification criteria and application process to become a broker-dealer go far beyond the scope of reporting services under the proposed Rule and would unfairly restrict the market. Furthermore, it does not necessarily follow that just by virtue of being a broker-dealer, an entity would have the technological capabilities to meet the reporting challenges under the proposed Rule. Therefore, where such technology capabilities exist, allowing Qualifying Technology Agents to act as reporting agents under Rule 10c-1 would also ease the burden on broker-dealers and avoid concentrating the reporting services market.

With respect to qualification criteria, our view is that the same terms and conditions recommended by the Commission for reporting through broker-dealers (regarding contract terms, the frequency of reporting and the contents of the report) should apply – as long as the Qualifying Technology Agent has the ability to collect and transmit the required reporting in a form that would allow the RNSA to consume it, assign it a unique identifier, and retransmit it back to the reporting agent. The Commission should also consider a certification process for Qualifying Technology Agents, which should include the technology criteria required by the proposed Rule that some broker-dealers may not currently meet. Alternatively, the Commission could adopt an approach that has been used for purposes of other reporting requirements mandated by the Commmission, and recognize the ability for entities that are the "functional equivalents" of broker-dealers (including entities such as Sharegain Ltd that are regulated by the Financial Conduct Authority) to serve as reporting agents.[8] Sharegain remains at the Commission's disposal to discuss these technological criteria in further detail based on our current experience under the SFTR regime.

2. Public disclosure requires further consideration to avoid unintended consequences

Unlike the more limited obligations under the SFTR, which only require reporting with respect to lending activity, Rule 10c-1 contemplates public disclosure of certain additional data, which poses numerous concerns:

[6] Proposing Release at Page 35.

[7] In this regard, the Commission stated that: "Accordingly, Section 10(c)(1) of the Exchange Act provides the Commission with broad authority to implement rules regarding securities lending transactions involving any person, including banks, insurance companies, and pension plans, so long as the rules involving the loan or borrowing of securities prescribed by the Commission are necessary or appropriate in the public interest or for the protection of investors. The Commission preliminarily believes that the proposed Rule is necessary or appropriate in the public interest or for the protection of investors." Proposing Release at Page 22.

[8] In this regard, the Commission has permitted filing beneficial ownership reports under Rule 13d-1(b) of the Exchange Act for: "A non-US institution that is the functional equivalent of any of the institutions listed in 240.13d-1(b)(1)(ii)A) through (I), so long as the non-U.S. institution is subject to a regulatory scheme that is substantially comparable to the regulatory scheme applicable to the equivalent U.S. institution."

Securities available for loan. Public disclosure under the proposed Rule mandates (among other things) reporting of total on-loan balances, securities available to loan and the utilization rate – without regard to whether the lender has self-imposed restrictions on the number of securities or percentage readily available to loan (which are often applied by lenders as part of their internal risk management goals or indeed, for regulatory reasons, to avoid exceeding a regulatory cap.) Further, disclosing the utilization rate without accounting for lender restrictions is not a helpful indicator of availability, and has the potential for reverse-engineering to determine investment strategy or program controls. In our view, public disclosure should be limited to lending activity (which is already a substantial reporting burden if we are to learn some hard lessons from the SFTR experience). At most, the disclosure should cover on-loan balances relative to securities that are readily available for loans, but exclude the utilization rate – for the reasons outlined above.

Platform details. Under the proposed Rule, if a platform is used for the borrowing of securities, then that platform may be disclosed to the public as a way of indicating to potential borrowers where securities may be located. The Commission argues that this may reduce the time spent in locating securities, as well as the overall cost of borrowing. While the Commission's stated intent is to level the playing field, directing a borrower to one source of supply or another, would seem to bring about unwarranted regulatory interference in the manner in which the securities lending business is conducted – rather than to promote market efficiency or transparency.

Disclosure of anonymized data. Under the proposed Rule, certain portions of the data initially disclosed by lenders and borrowers would be released to the public as soon as practicable, but would not reveal the identity of the parties. The Commission does not, however, provide any details as to the format of such data, whether it would be presented loan-by-loan, the manner in which rates would be presented, whether the loan had its inception as an open-ended loan or a term loan, whether the loan was the subject of a portfolio-based auction, or whether it was part of a conduit lending program. We suggest that, prior to adoption of a final Rule 10c-1, further thought be given to the format and various qualifiers that could have a significant effect on the rate applicable to such loans. Otherwise, the data would be very difficult to interpret.

Disclosure of fees. Disclosing any fees to the public under the proposed Rule without disclosing corresponding collateral information would provide only partial information to the public, which would be misleading. Collateral information is essential to understanding fees – e.g. a loan collateralized with equities would typically command a higher fee than a loan collateralized with US treasuries.

3. Reporting parameters require clear definition and standardization

As part of the implementation of the SFTR regime, reporting parameters were initially left to interpretation and lengthy market-wide deliberations were required to adopt standards. We think the lessons learned from SFTR are a valuable guide to ensure that similar obstacles do not stifle the implementation of Rule 10c-1. Indeed, the proposed Rule requires reporting of no fewer than 12 transaction data elements. These reporting parameters should be clearly defined to achieve standardization before the proposed Rule is implemented, to avoid leaving them to interpretation by market participants. In addition, we note that several reporting parameters refer to the term "loan" – this is a key element and should be clearly and carefully defined, as there are different transaction types that can be utilized to fit within the term, and different institutions may have alternative ways of booking the same instrument (e.g., different transfer codes).

4. Complexity of reporting poses significant technology and accuracy challenges

In our experience, collecting the relevant data, providing it to the RNSA in a consumable format that will enable the assignment of a unique identifier, recommunicating loans with an assigned identifier back to the reporting entity, followed by an update of the relevant data on the reporting entity's system, is by no means a trivial task – especially from a technological point of view.

This complexity is key particularly when assessing the reasonableness of the requirement to report within 15 minutes after each loan is effected – the short timeframe increases the potential for misreporting, cancellations and amendments, which will be a challenge not only in interpreting the data accurately, but also in deriving the transparency and data integrity that the reporting is intended to accommodate. We also acknowledge that some existing RNSA reporting requirements (such as FINRA's TRACE timeframes for corporate bonds or agency debt securities[9]) contemplate a 15-minute turnaround from the time of execution. However, the number of data elements mandated by Rule 10c-1 makes reporting under the proposed Rule substantially more complex, particularly since there are multiple factors to consider as part of a securities loan (such as different codes that apply to different methods of delivery) and the increased potential for misreporting could significantly compromise the data. In our view, decreasing the frequency of reporting to twice a day, or end-of-day reporting, would render compliance with the timing requirement much more reasonable.

In this regard, we recommend that the Commission avail itself of an industry advisory group that would work with the relevant RNSA in setting agreed parameters applicable to the required data transfer and the required details under the proposed Rule – such as the frequency of reporting and the use of appropriate securities identifiers. While we appreciate that the questions posed by the Commission are designed to gather such relevant information, we would argue that absent a working group, it will be difficult for the Commission to make specific recommendations as to the technical details applicable to the format and consumption of such data.

Sharegain would be pleased to assist in any industry working group that could work toward establishing a consensus as to technical formatting requirements and timing of transmission under rule 10c-1, and to ensure that the data made available to the public would be presented in a format that can be understood easily.

We appreciate the opportunity to comment on the proposed Rule. Please contact Susan Peters, Head of Operations Americas, at [redacted] or Alex Panaite Fornari, General Counsel, at [redacted], should you have any questions or comments.

Sincerely yours,

Boaz Yaari,

CEO, Sharegain Ltd
Sole Director and President, Sharegain (US) Inc., Sharegain Technologies Inc. and Sharegain Securities Inc.

[9] https://www.finra.org/filing-reporting/trade-reporting-and-compliance-engine-trace/trace-reporting-timeframes