American Bankers Association
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Via Electronic Delivery

January 7, 2022

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

Re: SEC Proposed Rule, Reporting of Securities Loans, Release No. 34–93613; File No. S7–18–21, 86 Federal Register 69802 (Dec. 8, 2021)

Dear Ms. Countryman:

The American Bankers Association[1] (ABA) appreciates the opportunity to comment on the Securities and Exchange Commission's (Commission or SEC) proposed new disclosure regime for the reporting of securities loans. ABA represents banks of all sizes and business models, many of which provide services to institutional investors engaging in securities lending activities, including as agent lenders. The proposed rule would significantly affect these institutions and impose considerable expense on them to establish and maintain compliant reporting systems.

While we understand the statutory and policy impetus for further transparency, we strongly urge the SEC to take a measured approach to the proposed rule that allows for full public consideration and commentary, in order to define a disclosure regime that meets the SEC's objectives, while avoiding unnecessary burdens on market participants and minimizing unintended consequences. The short comment period afforded by the SEC, unfortunately, does not provide sufficient time for thoughtful examination of the various issues involved, nor to address the numerous important questions posed in the release or to provide relevant data and information on the economic effects of the proposal as requested. Nonetheless, we offer the

[1] The American Bankers Association is the voice of the nation's $18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard more than $14 trillion in deposits, and extend more than $10 trillion in loans. ABA members collectively maintain over $4 trillion in collective investment funds on behalf of their fiduciary clients.

following high-level comments in an effort to promote the development of sound regulation with the least disruption for banking entities, their clients, and the markets.

Background on Proposal

Pursuant to rulemaking authority in section 984 of the Dodd-Frank Act, the SEC proposes to require persons "that loan a security on behalf of itself or another person" to disclose the terms of such transactions to a registered national securities association (RNSA), namely FINRA. The disclosed terms include information about the security (issue, CUSIP, ticker), terms of the transaction (time and date, amount loaned, fees, rebates, etc.), information about collateral, and borrower type. Reporting persons must provide the proposed information to FINRA within 15 minutes of the transaction, or of any subsequent modification to the transaction, either directly or through a reporting agent. FINRA would then make certain portions of the information available to the public, while keeping other parts, such as the legal names of the parties, confidential. Furthermore, lending agents would also be required to provide information to FINRA about the securities available to loan and securities on loan by the end of each business day.

Costs to Establish and Maintain the FINRA Database

Under the proposal, the person that loans securities, either directly or via a lending agent, would be obligated to report transaction information to FINRA. No reporting obligation is proposed for the borrower. While we agree that single-sided reporting would help alleviate the potential problem of double counting transactions, this approach would impose significant costs on lenders, even while the enhanced transparency would seem primarily to benefit borrowers.[2] As the release notes, the beneficial owner lenders are often public and private pension plans, collective investment funds, endowments, foundations and other institutional investors looking to improve returns and reduce administrative costs, whether for fiduciary or other reasons.[3] Borrowers, on the other hand, are often hedge funds engaged in short selling and other

[2] 86 FR 69832: "However, it is the Commission's understanding that some large institutional investors who would like the data, such as hedge funds, cannot access it, even for a fee, because they do not provide lending data to the commercial vendors and distributing the data to them may discourage other market participants from contributing their data to the data vendors."
[3] *Citing* Office of Financial Research, *A Pilot Survey of Agent Securities Lending Activity*, Working Paper No. 16–08 (2016).

investment strategies that require them to access particular securities.[4] As such, the costs of the new reporting obligation will seemingly be borne mostly by buy-side asset owners, such as pensions plans and mutual funds, primarily for the benefit of sophisticated investors, such as hedge funds.

Imposing significant costs on the lending agents and their beneficial owner clients may dissuade many from making their securities available to lend, given that securities lending is a low-margin business.[5] We, therefore, urge the SEC to ensure that the costs incurred by FINRA to establish and maintain the reporting database be shared among all those that benefit from securities lending activity, not solely on lending agents and beneficial owner clients, in order to avoid the "chilling effect on persons being willing to loan securities, which could negatively impact the securities market generally."[6]

Scope of Reporting Should be Targeted and Incrementally Phased In

The SEC should approach any new reporting regime incrementally, limiting the scope of covered transactions in a reasonable but still meaningful way. Such a targeted approach would allow for reporting persons and the market to absorb the costs of the new regime and build in time for ongoing assessment of effectiveness and refinement of reporting. A reasonable phase in of compliance would also give financial institutions the ability to manage the cost of other important ongoing structural changes, in particular moving from a T+2 to a T+1 settlement cycle over the next few years. Lastly, any final rule, even a targeted one, should provide sufficient time for financial institutions to build, test, and validate new reporting systems before phased-in compliance is required.

In order to facilitate reporting in a targeted yet meaningful way, we recommend that the SEC focus the rule in two ways:

1. Scope of Covered Transaction: The SEC should define covered securities lending transactions to those where the lender is seeking to earn compensation from the transaction. Limiting the scope in such a way would help focus reporting on primary transactions of interest, where the borrower is seeking to "gain access to the security

[4] *See*, 86 FR 69805 and 69831.
[5] 86 FR 69811.
[6] 86 FR 69810.

itself," and distinguish it from repurchase and other agreements, which are "typically used for short-term financing."[7]

2. Scope of Covered Security: The SEC should limit covered securities lending transactions, at least during the initial stages of reporting, to National Market System equity securities and not include fixed income securities, such as government securities.

Additional Recommendations for Reasonable Burden Reduction

In addition to taking an incremental approach to any new reporting, we urge the SEC to amend the proposed regulation in three ways to reduce unnecessary burden on bank lending agents:

1. 15-Minute Reporting: The SEC should allow more time for the reporting of transactions to FINRA. Under the proposal, the reporting person must provide information on the transaction and any modification within 15 minutes after the loan is effected, an approach that is inconsistent with the largely "end-of-day" market for securities lending transactions. The lending agent should have until the following business day to make the required report. The 15-minute reporting timeline is burdensome, would likely lead to reporting errors, and does not align with current market structure or with other similar reporting elsewhere.[8]
2. Unique Transaction Identifier: The SEC should grant lending agents the ability to assign their own unique transaction identifier, as opposed to being required to accept and incorporate into their systems a FINRA-generated identifier. Such flexibility will reduce the complexity and potential for errors from having information reporting go both to and from the lender, the reporting agent if applicable, and FINRA.
3. Lending Agent Securities Available for Loan: The SEC should not require lending agents to report on securities available to loan. The cost to establish and maintain this reporting would be largely borne by lending agents and their clients, while likely providing inaccurate information that over-reports the true amount available. At the very least, the

[7] 86 FR 69844, footnote 246.

[8] *See*, European Securities and Markets Authority, Securities Financing Transactions Regulation, https://www.esma.europa.eu/policy-activities/post-trading/sftr-reporting.

SEC should modify the reporting of securities available to loan so that it is limited to non-public reporting.

Conclusion

ABA appreciates this opportunity to provide comments on the proposed new disclosure regime for securities lending transactions. We urge the SEC to tailor carefully its approach to avoid imposing costs for the FINRA database primarily on lending agents and their clients, often pension plans and other buy-side entities, to take an incremental and targeted approach to compliance, and to make reasonable amendments to reduce reporting burdens. We hope the SEC will weigh the potentially significant costs of the new reporting obligations with what is a broad proposal in order to target the reporting and minimize disruption to the markets.

Sincerely,

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