



**Kevin Kennedy**  
Senior Vice President  
North American Markets

January 11, 2022

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

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

Dear Ms. Countryman:

Nasdaq, Inc. (“Nasdaq”)<sup>1</sup> appreciates the opportunity to comment on a recent proposal by the Securities and Exchange Commission (“Commission”) that appears designed to increase the transparency and efficiency of the securities lending market (“Proposal”) which will, in turn, enhance the entire ecosystem for trading of U.S. equities in the national market system.<sup>2</sup>

Nasdaq does not lend securities; rather, we operate public exchanges that help facilitate capital formation, protect and serve investors and listed companies, and help power the U.S. economy. As such, Nasdaq views any proposal affecting the U.S. equities market through a lens favoring transparency, which is critical to provide investors with the information necessary to make informed investing choices. Well-informed investors are a bedrock of efficient public markets that helps achieve the goals of price discovery, fairness, and investor protection.

The need for and benefits of transparency extend to securities lending. Providing investors with enhanced securities lending data, in a timely manner, removes the imbalance that

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<sup>1</sup> Nasdaq (Nasdaq: NDAQ) is a Fortune 500 global technology company serving the capital markets and other industries. Our diverse offering of data, analytics, software and services enables clients to optimize and execute their business vision with confidence. Nasdaq owns and operates the Nasdaq Stock Market LLC, Nasdaq PHLX LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq MRX, LLC markets, each of which is registered as a national securities exchange. To learn more about the company, technology solutions and career opportunities, visit us on [LinkedIn](#), on Twitter [@Nasdaq](#), or at [www.nasdaq.com](http://www.nasdaq.com).

<sup>2</sup> See Securities Exchange Act Release No. 93613 (November 18, 2021), 86 FR 69802 (December 8, 2021) (File No. S7-18-21) (Reporting of Securities Loans).

is created when such information is lacking or asymmetrical in comparison to other market participants and ensures investors have the necessary information to rely upon when investing.<sup>3</sup>

Therefore, Nasdaq supports the Commission’s Proposal to require persons that loan a security on behalf of itself or another person to report the material terms of those lending transactions, with limited suggestions regarding the optimal scope and application of the Proposal.

*Broad Reporting of Transactions by Broker-Dealers is Prudent*

In defining the loans of securities that would be governed by the Proposal, the Commission proposes the comprehensive inclusion of loans of all securities, as defined by Section 3(a)(10) of the Exchange Act.<sup>4</sup> Nasdaq supports the Commission’s proposed breadth of reporting of securities lending transactions, which is an important step toward even-handed regulation of the securities lending market. Further, the inclusion of all market participants who lend provides investors with comprehensive information from which to formulate investing strategies.

Nasdaq supports requiring reporting lending agents to be registered as broker dealers as this would allow the RNSA to oversee the activity of reporting agents and enable it to fulfill an essential regulatory function that promotes just and equitable principles of trade. Notwithstanding the need to regulate the reporting of securities transactions, in order to avoid disrupting lending in the market, Nasdaq believes it would be necessary to provide market participants engaged in securities lending with ample time to either register as a broker dealer, if they elect to register, or to enter into a written agreement with a registered broker dealer to provide the requisite information to the RNSA. The securities lending function is an integral component of trading within the market that should not be abruptly disrupted. As such, the Proposal should be modified to provide an implementation period allowing entities to register or enter into necessary agreements. Nasdaq believes a two-year implementation period would provide adequate time for market participants to comply with the Proposal and would take into account the various obstacles to register and report, as well as commercial negotiations necessary to enter into agreements to ensure compliance with any new provisions.

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<sup>3</sup> Nasdaq believes a similar discussion of transparency is warranted regarding disclosure of short-selling given the “meme stock” events in the first quarter of 2021. See, e.g., Petition for Rulemaking to Require Disclosure of Short Positions in Parity with Required Disclosure of Long Positions submitted by Edward Knight (December 7, 2015), available at <https://www.sec.gov/rules/petitions/2015/petn4-691.pdf> (advocating for parity in disclosure requirements for investors with both long and short positions).

<sup>4</sup> 15 U.S.C. 78c(a)(10). Section 3(a)(10) of the Exchange Act defines the term “security.”

### *Data Elements Should Be Made Publicly Available*

Nasdaq believes the data reported should be made available to investors within a reasonable timeframe to utilize the information effectively to make informed investment decisions. To that end, it is unclear whether the fifteen minute timeframe for reporting certain data is optimal and is supported by sufficient research or other justification. When compared to the speed at which markets operate, the fifteen minute delay may be excessive and, on the other hand, there may be little benefit to investors in receiving such information after a fifteen minute delay as opposed to a longer period, such as the end of the day. Of note, the Proposal already provides for some information to be reported to the RNSA by the end of the business day.<sup>5</sup> Nasdaq agrees with the Commission that these data elements to be reported at the end of the business day, in particular, are more burdensome to obtain and therefore Nasdaq supports a longer period to report those data elements. In this way, the Proposal should balance the burden that is being placed on lenders to report with the benefits that such reporting has for market participants. To the extent that information that is being made public by the RNSA is stale, due to the timeframe needed for an RNSA to disseminate the information to the public, the Commission should consider revising those timeframes to ensure that while lenders have the appropriate time to report transactions, that such information provides valuable data to the end user.

Nasdaq supports the Commission's Proposal to require an RNSA to make certain data elements publicly available, thereby increasing the transparency of the securities lending market and reducing competitive advantages that may exist in the marketplace. The Proposal would make certain data available in the aggregate and also avoid making public any data that would identify market participants or could reveal information about the internal operations of a market participant, except to the extent such data is provided to regulators. As proposed, the availability of the data balances the need for transparency with the avoidance of revealing non-public competitive information.

### *Reporting by an RNSA*

Nasdaq supports the reporting of securities lending transactions to the Financial Industry Regulatory Authority, Inc. ("FINRA"). Today, FINRA collects information for reporting and it has systems in place to accommodate the capture and reporting of the proposed securities lending transactions. Also, today, many broker dealers are members of FINRA and have connectivity to FINRA's environment. Finally, as mentioned in the Commission's Proposal, FINRA surveils for securities lending and short selling today.<sup>6</sup>

As proposed, regulators would have access to securities lending information that is not publicly available. This information would enhance the ability of regulators to surveil the

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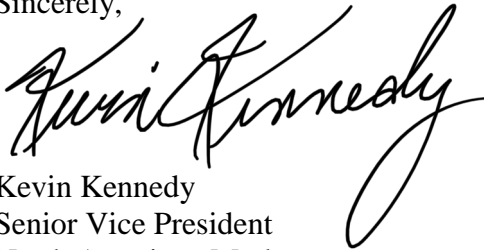
<sup>5</sup> Proposed paragraph (e) of Rule 10c-1 contains additional data elements related to the total amount of each security available to loan and total amount of each security on loan that lenders must provide to the RNSA by the end of each business day.

<sup>6</sup> See FINRA Rules 4314 (Securities Loans and Borrowings), 4320 (Short Sale Delivery Requirements), and 4330 (Customer Protection – Permissible Use of Customers' Securities).

marketplace and enforce its rules in the areas of lending as well as short selling. The ability of regulators such as the Commission, FINRA, self-regulatory organizations (such as Nasdaq's six national securities exchanges), and other Federal financial regulators to oversee transactions will enable these organizations to regulate markets in such a way as to ensure they are fair, orderly, and efficient. Nasdaq advocates for the Commission to designate by order that the non-public information be made available to self-regulatory organizations, among other regulators. Self-regulatory organizations, similar to FINRA, have rules which regulate borrowing and short selling.<sup>7</sup> Nasdaq agrees with the Commission that the information that would be made available to the RNA may provide regulators with a more complete and timely picture of trading, including interest in short selling and price discovery for securities lending.

Nasdaq appreciates the opportunity to respond to the Commission's Proposal. While Nasdaq supports the Commission's Proposal, as noted herein, Nasdaq is not engaged as a lender of securities and would encourage other market participants who believe the Proposal may harm the liquidity in the market, or otherwise cause market structure to be inefficient, to share those views. For example, Nasdaq considers liquidity providers essential to both the equities and options markets, and would be interested in understanding if liquidity providers would be constrained or otherwise impeded in obtaining a locate on hard to borrow securities as a result of the Proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Kennedy". The signature is fluid and cursive, with a large loop at the end of the last name.

Kevin Kennedy  
Senior Vice President  
North American Markets

cc: Haoxiang Zhu, Director, Division of Trading and Markets  
David Saltiel, Deputy Director, Division of Trading and Markets

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<sup>7</sup> See e.g. The Nasdaq Stock Market LLC General 9, Section 15 (Borrowing From or Lending to Customers), Equity 9, Section 9 (Short-Interest Reporting), Options 9, Section 18 (Limit on Outstanding Uncovered Short Positions), and Options 10, Section 14 (Restrictions on Pledge and Lending of Public Customers' Securities).