HEALTHY MARKETS ASSOCIATION
A MEMBER ORGANIZATION

March 2, 2022

Via Electronic Mail

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

Re: Reporting of Securities Loans, File No. S7–18–21[1]

Dear Ms. Countryman:

The Healthy Markets Association[2] writes to offer comments on the Commission's proposal to promote transparency and market efficiencies in the securities lending markets ("Proposal").

The Proposal begins by declaring that "[t]he securities lending market is opaque."[3] We agree. The lack of comprehensive, consistent, reliable, comparable, and timely information regarding securities loan details impedes the abilities of: (1) market participants to make the most informed and efficient decisions regarding their securities lending activities, and (2) regulators to promote fair, orderly, and efficient markets, as well as protect investors.[4]

Nearly a dozen years ago, Congress directed the Commission to provide greater transparency to the securities lending markets. The Commission has thus far failed to fulfill Congress's direction. The Proposal would finally fulfill that obligation.

The Commission should revise and adopt the Proposal without delay.

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[1] *Reporting of Securities Loans*, SEC, 86 Fed. Reg. 69802 (Dec. 8, 2021), *available at* https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-25739.pdf ("Proposal"). We thank the Commission for reopening the comment period on the proposal on February 25, 2022. *Reopening of Comment Period for Reporting of Securities Loans*, SEC, Exch. Act Rel. No. 34-94315, Feb. 25, 2022, *available at* https://www.sec.gov/rules/proposed/2022/34-94315.pdf.
[2]Healthy Markets Association ("HMA") is a not-for-profit member organization of public pension funds, investment advisers, broker-dealers, exchanges, and market data firms focused on reducing conflicts of interest and improving the transparency, efficiency, and fairness of the capital markets. As a result, HMA members would be directly impacted by the Proposal. To learn more about HMA or our members, please see our website at http://healthymarkets.org/about.
[3] Proposal, at 69803.
[4] See generally, Proposal, at 69803-69804.

Background on Securities Lending

Securities lending plays an essential role in promoting efficient capital markets, including through enabling market participants to take short positions and hedge other exposures. It also provides a mechanism for generating returns for the beneficial owners of securities that are lent (*e.g.*, pension funds, investment companies, endowments, and sovereign wealth funds).[5] Brokers also often lend securities that they own directly, as well as securities from customers who have agreed to participate in a securities lending program or customers that bought the securities using a margin loan from the broker.[6] Brokers are often on the other side of securities lending as well. They may borrow securities for their own operations or re-lend them to others, including other brokers and hedge funds.

While lenders of securities have long depended upon their custodians to play key roles in facilitating their securities lending programs, in recent years, third-party, non-custodial lending agents have also taken root. Further, some institutional investors have even begun to directly engage in their own securities lending, including dedicating their own staff and resources.

There are several factors that may influence the economics of securities lending transactions.[7] For example, the economics of securities lending transactions are impacted by the characteristics of the securities themselves. More liquid, widely held securities generally have lower rates, and vice versa. Volatility of a security is also important.

Securities lending transactions are impacted by the collateral quality and level. A securities loan that is backed by 105% of the securities loan value in cash has a different risk profile than one that is backed by securities.

Securities lending transactions are impacted by the characteristics of the borrowers and lenders themselves. A borrower's creditworthiness matters. But so, too, does the size and stability of the lender's position. A lender with a large, generally static portfolio is generally preferred (as it is viewed as making a recall less likely). Similarly, the lender's other risk exposures to the borrower or to market and liquidity risks may impact its lending decisions.

Securities lending transactions are impacted by the maturity of the loans themselves. Securities loans are often made without a fixed maturity date, but include an open recall option, which generally permits the beneficial owner of the securities to recall the loan at any time. This feature permits the lender to essentially maximize its ability to lend securities, while limiting the extent to which the lending may restrict its portfolio

[5] Proposal, at 69804.
[6] Proposal, at 69805.
[7] *See generally*, Letter from Jennifer Han, Managed Funds Association, to Vanessa Countryman, SEC, Jan. 7, 2022, *available at* https://www.sec.gov/comments/s7-18-21/s71821-20111683-265021.pdf.

management. Put simply, a beneficial owner can typically loan securities, recall them, and dispose or relend them as it sees fit.

Of course, a recall option puts borrowers at greater risk of having their borrowed securities recalled at suboptimal times. Being forced to buy securities and close out a short position with little preparation can be disastrous for a borrower. As a result, while less common, securities loans with fixed terms may often be more valuable to borrowers.

Securities lending transactions are often impacted by other parameters, such as whether and to what extent borrowers may receive portions of returns earned from the reinvestment of cash collateral underpinning the loans. Similarly, borrowers and lenders often negotiate over the rights and benefits of ownership while the securities are on loan. By default, the rights of ownership of a security generally transfer to the borrower while the securities are on loan. This means that a borrower is generally entitled to receive "any dividends, interest payments, and, in the case of equity security loans, holds the voting rights associated with the shares."[8] To avoid that result, beneficial owners often insist that borrowers agree to return dividends and interest payments in the form of special payments.[9]

In contrast to retaining the financial equivalent of dividends and interest payments, lenders typically part ways with their ability to vote. As a result, the securities lending market is increasingly becoming a tool for gaining influence in the voting of equity securities. For example, some market participants may borrow shares exclusively to vote them. Similarly, they may borrow equity securities to specifically not vote. Even more elaborately, some market participants may engage in derivatives transactions that they know will be hedged by their counterparties acquiring equity securities (through a loan or acquisition), which may take the shares out of the market for a particular proxy vote or votes.

While there has been heightened scrutiny on voting rights in recent years, and some asset owners have requested additional information regarding how their investment advisers' lending has impacted their voting, we have not yet seen many beneficial owners insist upon retaining voting rights. To the contrary, even as one large asset manager announced that it was empowering some of its beneficial owners to direct its proxy voting decisions, it explicitly noted that the new policy would not apply to securities that have been lent.[10]

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[8] Proposal, at 69806.
[9] *See, e.g.*, Proposal, at 69806.
[10] *Working to expand proxy voting choice for our clients*, BlackRock, *available at* https://www.blackrock.com/corporate/about-us/investment-stewardship/proxy-voting-choice (last viewed Feb. 24, 2022); *see also*, Joshua Mitts, *The Price of Your Vote: Proxy Choice and Securities Lending*, CLS Blue Sky Blog, Oct. 11, 2022, *available at* https://clsbluesky.law.columbia.edu/2021/10/11/the-price-of-your-vote-proxy-choice-and-securities-lending/#_edn1.

The Commission recently proposed requiring "disclosure of the number of shares that were voted (or, if not known, the number of shares that were instructed to be cast) and the number of shares that were loaned and not recalled."[11] We expect the intersection between securities lending and proxy voting to become a greater issue with asset owners and other market participants who may wish to assert greater control over their ownership interests in the months and years ahead.

Ultimately, if the Commission is seeking to collect all essential information about securities loans, it will need to collect a significant number of data elements beyond just the security identifier, amount, and rate.

Some entities, such as registered investment companies, are required to make some (very minimal) disclosures regarding their securities lending activities.[12] Similarly, FINRA periodically collects some cash equity security short position information from its member firms. However, the data provided to the public is sufficiently delayed, summarized, and aggregated to render it of very limited utility for market participants (including investors and issuers) and regulators.[13]

While there is no comprehensive collection of securities lending information by regulators, private parties currently collect from and distribute to market participants some basic securities lending information, including "CUSIP identifiers for securities on loan, quantity, borrowing cost, utilization of available supply, owner domicile, and type of collateral held."[14] The information compiled by these data vendors is collected voluntarily, and the terms may not be consistent across data vendors.[15] Importantly, these private third-party services exist precisely because market participants believe this information is extremely valuable to them.

Despite the importance of securities lending information to the markets, the Commission has declined to provide these markets with the transparency needed to maximize efficiencies and reduce risks. In fact, the Commission essentially ignored an explicit direction from Congress nearly a dozen years ago to require more market transparency.[16] Section 984(b) of the Dodd-Frank Act, which was enacted in 2010, directed the Commission to "promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors with respect to loan or borrowing securities."[17] The Commission never followed through on that Congressional directive.

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[11] *Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers*, SEC, 86 Fed. Reg. 57478, (Oct. 15, 2021), *available at* https://www.govinfo.gov/content/pkg/FR-2021-10-15/pdf/2021-21549.pdf.

[12] *See, e.g.*, Form N–CEN, Item C.6; see also, Form N–PORT, Items B.4 and C.12.

[13] See Letter from Hope Jarkowski, NYSE, to Vanessa Countryman, SEC, at 2, Jan. 6, 2022, *available at* https://www.sec.gov/comments/s7-18-21/s71821-20111285-264912.pdf.

[14] Proposal, at 69807.

[15] See Proposal, at 69812.

[16] Dodd-Frank Wall Street and Consumer Protection Act, Pub. L. 111-203, 984(b), 124 Stat. 1376 (2010).

[17] Id.

More recently, however, following some very notable market events, and widespread speculation regarding the integrity of the capital markets and securities lending practices more broadly, the Commission is rightly considering finally doing what is long overdue: imposing a mandatory regime for reporting and distributing to the public comprehensive, consistent, reliable, comparable, and timely securities lending information.

Proposal Overview

In reliance on Section 10(c)(1) of the Exchange Act,[18] the Proposal would create a new Rule 10c-1, which would require any person who loans a security on behalf of itself or another person to disclose material terms of their securities lending transactions to a regulated national securities agency ("RNSA").[19]

In particular, Rule 10c-1(a) would require Lenders (including pension funds, insurance companies, and banks, who might not otherwise be subject to Commission reporting or RNSA rules) to provide prescribed details related to securities loans to an RNSA.[20] The Proposal would require Lenders to report the securities lending details, but would not require reporting by borrowers, in part because the Lenders have all of the relevant information and in part to avoid the risks of double-counting and erroneous reporting.[21]

The Proposal would require specific loan-level data to be reported to an RNSA within 15 minutes after each loan is effected or modified.[22] The RNSA would then assign each transaction a unique transaction identifier, and make the following information public as soon as practicable:

1. Legal name and Legal Entity Identifier (if one exists) for the issuer of the loaned securities;
2. The ticker symbol, ISIN, CUSIP, or FIGI of the security, if assigned, or other identifier;
3. The date of when the loan was effected;
4. The time of when the loan was effected;
5. Name of the platform or venue, if applicable;
6. The amount of the loan;
7. For a loan not collateralized by cash, the securities lending fee or rate, or any other fee or charges;
8. The type of collateral used to secure the loan of securities;
9. For a loan collateralized by cash, the rebate rate or any other fee or charges;
10. The percentage of collateral to value of loaned securities required to secure such loan;
11. The termination date of the loan, if applicable; and

[18] Proposal, at 69807 (citing 15 U.S.C. 78j(c)).
[19] Proposal, at 69803.
[20] Proposal, at 69807.
[21] Proposal, at 69807.
[22] Proposal, at 69812.

12. Whether the borrower is a broker or dealer, a customer (if the person lending securities is a broker or dealer), a clearing agency, a bank, a custodian, or other person.[23]

If a loan is modified, lenders would again have 15 minutes to report to the RNSA:

1. The date and time of the modification;
2. A description of the modification; and
3. The unique transaction identifier assigned to the original loan.[24]

Further, while lenders would have to submit the following information to the RNSA within 15 minutes of the loan being effected, the RNSA would not disseminate it:

1. The legal name of each party to the transaction, CRD or IARD Number, if the party has a CRD or IARD Number, market participant identification ("MPID"), if the party has an MPID, and the LEI of each party to the transaction, if the party has an active LEI, and whether such person is the lender, the borrower, or an intermediary between the lender and the borrower (if known);
2. If the person lending securities is a broker or dealer and the borrower is its customer, whether the security is loaned from a broker's or dealer's securities inventory to a customer of such broker or dealer; and
3. If known, whether the loan is being used to close out a fail to deliver either (a) pursuant to Rule 204 of Regulation SHO or (b) outside of Regulation SHO.[25]

Lenders would also be required to file additional data related to the total amount of each security available to loan and total amount of each security on loan by the end of each business day.[26]

Lenders could rely on reporting agents, but those agents would have to be registered with the RNSA. While all of the information would be made available to regulators, selected information would be provided to market participants and the public on an aggregated and delayed basis.

[23] Proposal, at 69851-69852.
[24] Proposal, at 69852.
[25] Proposal, at 69852.
[26] Proposal, at 69812.

Considerations for the Proposal

FINRA Should Oversee the Collection and Dissemination of Information Disclosed Pursuant to the Rule

We agree with other market participants that an RNSA (i.e., FINRA) is an appropriate party to collect and distribute the information required by the Proposal.[27] FINRA collects extensive, sensitive market information already, and has systems and processes to successfully develop and operate the reporting and dissemination mechanisms contemplated by the Proposal. Further, FINRA already has extensive reporting relationships with brokers, which will be essential to collecting the information from the Proposal.

That said, as discussed in greater detail below, it will be essential for the Commission to ensure that the RNSA's rules and fees related to the development and operations of the reporting and dissemination systems contemplated by the Proposal are subject to meaningful scrutiny.

All Relevant Lenders Or Their Agents Should Make Reports

The Proposal would obligate all securities lenders to report securities loan details to an RNSA, including those who may not have current relationships or reporting obligations with the RNSA, such as pension funds and insurance companies. Further, the Proposal would require disclosure of securities loan information by lenders in both the "wholesale" lending markets and the "retail" markets.

This broad scoping of securities lenders and markets is essential for the Rule to work as intended. The Commission should not narrowly restrict the scope of the reporting obligation to just those in the "wholesale" markets[28] or those who are already registered with the Commission for some other purpose.[29]

Further, broadly scoping the Rule to cover the most relevant securities loan information (including both securities "on loan" and "available to lend") is essential to building a comprehensive view of the markets.

We recognize that the Proposal would create new burdens, costs, and logistical challenges on entities outside of the Commission's registration frameworks, including state pension funds (some of which may be HMA members). However, by permitting

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[27] *See, e.g.*, Letter from Kevin Kennedy, Nasdaq, to Vanessa Countryman, SEC, at 3, Jan. 11, 2022, *available at* https://www.sec.gov/comments/s7-18-21/s71821-20111856-265115.pdf ("Nasdaq Letter").

[28] But see, Letter from John Thornton, Hal Scott, and R. Glenn Hubbard, Committee on Capital Markets Regulation, to Vanessa Countryman, SEC, at 2, Jan. 6, 2022, *available at* https://www.sec.gov/comments/s7-18-21/s71821-20111283-264909.pdf ("CCMR Letter").

[29] See, Proposal, at 69808.

reporting to be handled by reporting agents, the Proposal appears to have mitigated many potential costs and burdens on these parties.

Nevertheless, the Proposal would limit “reporting agents” to firms that are registered with the RNSA only. We urge the Commission to reconsider this limitation, as other market participants (e.g., data vendors) may be capable of adequately filling the need. Having separate reporting agents who are not brokers may enable lenders to more freely shop amongst multiple, competing lending agents.

Put simply, by opening up the reporting agent role to non-broker entities, the Proposal could promote more competition amongst intermediaries – including lending agents – in the securities lending marketplace. Transparency is important, but lenders also need to be able to act based on that information. Providing a reporting mechanism that is less dependent upon the existing market infrastructure could help investors more easily separately shop for intermediary services (and potential lending terms).

The Proposal Strikes an Imperfect Balance For What Information Gets Collected and Disseminated

As described above, there are many significant factors that influence the economics of specific securities lending transactions, including the characteristics of the securities, the counterparties, and the terms of the loans themselves. Understanding securities lending both individually and in the aggregate requires the collection, dissemination, and analysis of significant loan-level information.

However, we recognize that disseminating all securities loan information could expose individual market participants to significant risks.

We further appreciate that some market participants (particularly lending agents) might prefer to not have loan-level details provided to the market place in time for other market participants to make use of that information in their own securities lending or borrowing activities. Transparency may hurt their margins and negotiating powers. However, reducing this information asymmetry is correctly one of the principal objectives for the Proposal. The Commission should not materially undermine its own objective by unduly restricting the dissemination of information or overly masking important details, such as aggregating loans in a manner that obscures important pricing and term variations.

Specifically, lenders should be required to disclose to the RNSA the identities of borrowers of securities loans. This information is essential for effective market oversight, and failure to collect this information would materially weaken the efficacy of the Rule. The Commission should also keep in mind the importance of the interplay between this rule and separate individual short-seller disclosures. That said, identities of individual borrowers should generally not be publicly disclosed (unless such borrowers trigger separate Commission Rules for reporting holdings, which are separately mandated and formatted).[30]

Lastly, we note that the Proposal would permit alternatives to be used to identify the securities being lent. In particular, the Proposal would require the reporting entity to provide the ticker ISIN, CUSIP, Financial Instrument Global Identifier (FIGI), or another identifier. We agree with commenters that suggest unique, publicly available methods to identify financial instruments beyond the CUSIP – and its associated restrictions and monopolistic licensing fees – should be used.[31]

Essential Information Should Be Disseminated in a Timely Manner

If market participants are to make the best use of the information, they will need it in a timely manner. All of the information that is scheduled to be reported to the RNSA that will be made public should be made public as soon as practicable. To unnecessarily delay the dissemination of this important market information will perpetuate the information asymmetries that the Rule is designed to reduce at precisely the times when that information is likely to be most valuable. This should not be measured in hours or days, but rather minutes, and perhaps eventually, less.

Reporting Should Include Effected, But Not-Yet-Settled Loans and Securities Available to Loan

We appreciate the Proposal's distinction between reporting securities loans that have been "booked and settled" versus those that have been "effected."[32] There's a significant difference between an "effected" loan and a "settled" loan, as counterparties in today's marketplace may negotiate terms based on changing market conditions,[33] or lending agents may change allocations amongst their different lender customers.[34]

Importantly, the difference between effected and settled loans, by itself, is valuable information. Despite what the Commission may hear from other commenters, the Commission and FINRA rules have long required reporting of securities orders, modifications, and trades, not just settled transactions, because all of that information is relevant to understanding the markets.

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[30] This information should be used for anonymized analysis by the Commission and academic community.
[31] *See, e.g.*, Letter from Gregory Babyak, Bloomberg, to Vanessa Countryman, SEC, Jan. 31, 2022, *available at* https://www.sec.gov/comments/s7-18-21/s71821-20113384-265750.pdf.
[32] Proposal, at 69817.
[33] See Letter from Howard Meyerson, Financial Information Forum, to Vanessa Countryman, SEC, at 3, Jan. 19, 2022, *available at* https://www.sec.gov/comments/s7-18-21/s71821-20112205-265296.pdf ("FIF Letter").
[34] FIF Letter, at 3.

We would be concerned if the Commission were to require reporting only information after securities loans are "booked and settled," because many of the benefits of the Proposal to market participants would be lost.

That said, we recognize that end-of-day reporting of only booked and settled securities lending transactions could dramatically reduce the risks of reporting information of loan terms – or even whole loans – that were never settled. The reporting regime should allow regulators and market participants to easily distinguish between unsettled and settled securities loans.

The Commission Must Better Oversee How Rules and Fees Are Set

The Proposal would allow the RNSA to impose fees from each person who directly provides the required information.[35] Notably, this means that some non-members of the RNSA could be required to pay fees.[36]

We do not question whether the Commission has authority to make this determination, which is similar to the Commission's existing rules regarding reporting for corporate actions. However, we wish to emphasize the importance of the RNSA's compliance with the Exchange Act, and the Commission's responsibility to ensure that any fees are imposed pursuant to filings that are subject to Commission review, and approved only if determined to be consistent with the Exchange Act and Commission Rules. We note that while several exchanges appear to have largely ignored it,[37] the Commission staff released valuable guidance regarding the types of information that the RNSA could provide to assist the staff and Commission in making those determinations.[38] We urge the Commission and staff to reinvigorate that SRO Fee Filing Guidance.

By way of background, HMA has joined market participants in raising concerns with the Commission's oversight of self-regulatory organizations. We have filed several objections to filings made by self-regulatory organizations' efforts to impose data and trading fees, and have petitioned the Commission to revise its process for reviewing SRO filings.[39] In fact, HMA recently filed an amicus brief in a lawsuit brought by a

[35] Proposal, at 69820.

[36] Proposal, at 69820.

[37] *See, e.g., Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility to Adopt Electronic Market Maker Trading Permit Fees*, SEC, Exch. Act Rel. No. 34-94264, Feb. 16, 2022, *available at* https://www.sec.gov/rules/sro/box/2022/34-94264.pdf.

[38] *Staff Guidance on SRO Rule Filings Relating to Fees*, SEC, May 21, 2019, *available at* https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees#:~:text=In%20the%20preparation%20of%20a,a%20clear%20and%20comprehensible%20manner.

[39] *See, e.g.,* Letter from Tyler Gellasch, HMA, to Hon. Gary Gensler, SEC, Oct. 29, 2021, *available at* https://www.sec.gov/comments/sr-cboeedga-2021-017/srcboeedga2021017-9360012-261666.pdf.

market participant against the Commission regarding the Commission's approval of a FINRA filing to establish a new data service.

We have concerns that the Rule could provide the RNSA with significant power regarding not just enforcing compliance with the reporting obligations, but also potential modifications and related fees. We also worry about the potential creation of potential derivative data products, which may be created based in whole or in part upon the information reported to the RNSA.

The Commission should provide clear parameters regarding all elements of the information collected, including related fees and subsequent uses by the RNSA. Further, the Commission (or staff by delegated authority) should ensure that any fees, costs, and charges related to the reporting obligations imposed by the Rule would be: (1) reasonable, (2) equitably allocated, (3) not unduly burdensome on competition, (4) not discriminatory, and (5) in the public interest.

Exchange Access to Information Should be Limited to Essential Regulatory Purposes Only and Tightly Overseen

In our communications with the Commission regarding the Consolidated Audit Trail, we have repeatedly highlighted our concerns that some for-profit securities exchanges may seek to misuse the data collected for their own business or competitive purposes.[40] We are similarly concerned that information provided pursuant to Rule 10c-1 could be potentially misused by exchanges to curry favor with issuers or other market participants.

While we do not flatly reject calls by exchanges for access to this information,[41] any such access must be narrowly tailored to achieve a clear, specific regulatory purpose, and subject to significant oversight by the Commission. We urge the Commission to establish clear, specific parameters for access by any exchanges to non-public, reported information.

Put simply, the for-profit exchanges' incentives and conflicts of interest pose significant challenges for them to provide consistent, high-quality surveillance and enforcement over the securities lending markets.

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[40] *See, e.g.,* Letter from Tyler Gellasch, HMA, to Manisha Kimmel, SEC, Feb. 14, 2019, *available at* https://healthymarkets.wpengine.com/wp-content/uploads/2019/03/CAT-Letter-2-14-19-2-1.pdf.
[41] *See, e.g.*, Nasdaq Letter, at 3-4.

The Commission Should Not Further Delay Implementation

The Proposal was released nearly a dozen years after Congress directed the SEC to create more transparency in the securities lending markets. Markets and regulators have waited long enough.

We urge the Commission to reject calls to unnecessarily delay the consideration or implementation of the Proposal. We note that the Financial Information Forum, for example, has sought to analogize the Proposal with the Commission's more than a decade-long quest to implement the Consolidated Audit Trail.[42] While the CAT has been mired in years of frustrating delays, those were not generally the result of technological or material implementation challenges. Rather, the delays stemmed largely from the Commission's ill-advised decisions to put the exchanges in control of the process, where they have seemingly made every possible wrong turn – from whom they initially selected as their third-party to build and operate the CAT to the security features to the CAT's funding mechanism.

The Commission should not delay its Rulemaking process to wait for FINRA to issue preliminary specifications. There is already a time built into the administrative process for the Commission and the RNSA to consider industry input on the specifications and timeline for implementation, which is when the RNSA proposes its rule to implement the Proposal. Further, if elements of the Commission's Rule would need to be adjusted in the future, the Commission and FINRA have repeatedly proven capable of doing so.

Recognition of Potential Market Impacts

The Commission should not shy away from the potential impacts of the Proposal on securities lending transactions. It is plausible that the markets could become both more efficient and smaller. Some commenters have objected to the Proposal based on the assumption that the rule would reduce the size of the overall securities lending market.[43] Others have urged the Commission to simply ban securities lending.

The Commission should not be concerned with speculating on the appropriate size of the securities lending market, nor should it blindly seek to promote a "larger" or "smaller" market. The Commission should instead be focused on its mission: promoting fair, orderly and efficient markets and protecting investors. Transparency will be a powerful tool to achieving those ends.

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[42] FIF Letter.

[43] *See, e.g.*, CCMR Letter, at 2 (stating that "the Proposed Rule is likely to reduce overall short selling activity and thereby harm U.S. capital markets, in particular by signaling to the market that a short selling position is being established in a specific security, which would make it more costly to continue to build short positions and thus inhibit market participants from doing so.").

Transparency may lead some investment advisers to withdraw from the markets, for example, because the disclosures may lead their asset owner customers to raise concerns. It could also lead to the opposite effect, as asset owners may learn how securities lending may directly benefit their ultimate investment returns. More comprehensive, consistent, reliable, comparable, and timely disclosures regarding securities loan details may lead to borrowers and lenders more efficiently pricing their activities – and reducing the margins and asymmetries currently enjoyed by market intermediaries. Further, timely disclosure of borrowing may highlight risks accruing to particular market participants or sectors.

If market participants and regulators respond to information disclosed pursuant to the new Rule, then that should not just be expected, but encouraged. That is how our markets are supposed to work.

Conclusion

We urge the Commission to revise and adopt the Proposal to ensure that market participants, regulators, and the public have comprehensive, consistent, reliable, comparable, and timely information that they need to make informed decisions and assessments of the securities lending markets.

Thank you for your consideration. Please feel free to contact me by email at [redacted] or telephone at [redacted] for any follow up.

Sincerely,

Tyler Gellasch
Executive Director

Cc: Hon. Gary Gensler, Chair
Hester Peirce, Commissioner
Hon. Allison Herren Lee, Commissioner
Hon. Caroline Crenshaw, Commissioner
Haoxiang Zhu, Director, Division of Trading and Markets