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Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

Submitted electronically via rule-comments@sec.gov

April 1, 2022

Dear Ms. Countryman:

### **Reopening of Comment Period for Reporting of Securities Loans (File No. 57-18-21)**

The Alternative Investment Management Association (AIMA)<sup>1</sup> appreciates the opportunity to provide a supplemental response to the U.S. Securities and Exchange Commission's (Commission) proposed rule to require the reporting of securities loans to a registered national securities association ("RNSA") (the "Proposal").<sup>2</sup> We welcome the reopened comment period<sup>3</sup> to solicit responses on the potential effects of proposed Exchange Act Rule 13f-2 ("Proposed Rule 13f-2"), which would require institutional investment managers to report certain short sale positions to the Commission, on the Proposal.<sup>4</sup>

AIMA's members include institutional investment managers and other market participants, many of whom are borrowers of securities, and would be impacted by the Proposal. As borrowers in the so-called retail segment of the securities lending market, AIMA's members may not be subject to the

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<sup>1</sup> AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 2,000 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 200 members that manage \$400 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, [www.aima.org](http://www.aima.org).

<sup>2</sup> SEC, Proposing Release, Reporting of Securities Loans, [86 Fed. Reg. 69802](https://www.federalregister.gov/documents/2021/12/08/2021-24681-reporting-of-securities-loans) (Dec. 8, 2021) (the "Proposing Release").

<sup>3</sup> SEC, Proposed Rule, Reopening of Comment Period, Reopening of Comment Period for Reporting of Securities Loans, [87 Fed. Reg. 11659](https://www.federalregister.gov/documents/2022/03/02/2022-04659-reopening-of-comment-period-for-reporting-of-securities-loans) (Mar. 2, 2022).

<sup>4</sup> SEC, Proposing Release, Short Position and Short Activity Reporting by Institutional Investment Managers, [87 Fed. Reg. 14950](https://www.federalregister.gov/documents/2022/03/16/2022-04950-short-position-and-short-activity-reporting-by-institutional-investment-managers) (Mar. 16, 2022).



Proposal's extensive reporting requirements, but the breadth of the Proposal in its current form would be very impactful on both the broader financial ecosystem and our members' investments and risk management strategies. In our original response to the Proposal,<sup>5</sup> we suggested that, prior to considering a final rule, the Commission should:

- limit the scope of the Proposal to the "wholesale" segment of the securities lending market;
- revise its loan definition to exclude all customer short positions because short positions are not loans and should be addressed through a separate rulemaking;<sup>6</sup>
- eliminate its proposed 15-minute, loan-by-loan reporting framework and instead publish aggregate, wholesale market loan data on a T+1 basis; and
- incorporate a phased approach regarding the implementation of any final rule and seek a solution for the "day-one problem".

It is with these suggestions in mind that we address the impact of Proposed Rule 13f-2 and its impact on the Proposal. In short, and explained further below, the rationale used to justify aggregating and anonymizing short positions reported on proposed Form SHO undermines the Commission's preliminary determination to disclose both wholesale and retail securities lending transaction data.

The Commission fails to consider the multiple, adverse effects the Proposal's disclosure regime could have on markets and market participants.

The current scope of the Proposal appears to contemplate disclosing individual borrows between prime brokers and their customers effected to facilitate short transactions; however, public disclosure of these transactions would impede short selling activity and by extension disincentivize accompanying research. Despite these negative impacts, the Proposal's cost-benefit analysis fails to consider them, including the fact that immediately disclosing short selling activity would signal to all other market participants that a short position is being established. This would create a market impact that increases the costs associated with continuing to build a short position over time (particularly in hard-to-borrow securities) and could increase the risk of reverse engineering of investment strategies.

Furthermore, the Proposal's 15-minute reporting requirement would also provide market participants the ability to evaluate the terms and potential signals of recently effected loans. Such an outcome, however, will provide too much proprietary information to the market regarding closely guarded trading strategies, potentially leading to a situation in which it is possible to infer information about a particular market participant's trading positions and strategies. This would potentially expose firms to being victims of manipulative trading activities, including short squeezes and front-running (particularly in hard-to-borrow securities), as well as copycat trading. Consequently, market

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<sup>5</sup> Available at <https://www.sec.gov/comments/s7-18-21/s71821-20111675-265016.pdf>.

<sup>6</sup> Which the Commission has now done with Proposed Rule 13f-2.

participants may adjust their trading strategies and/or exit the borrowing market when they otherwise would be active participants. This could lead to reduced liquidity and increased volatility.

Proposed Rule 13f-2 thoughtfully examines the negative market impacts that can materialize from too much granular disclosure.

In the proposing release for its recently proposed rule that would establish a reporting framework for short sales, the Commission goes to great lengths to highlight the negative impacts that can result from the disclosure of individual market participants' identities and strategies.<sup>7</sup> The Commission explains that disclosing data reported on proposed Form SHO would "likely spur copy-cat trading strategies," an outcome that it notes has been documented to occur in the EU where individual short sellers' names are made public.<sup>8</sup> The increase in copycat short selling strategies would likely lead to herding and increased volatility.<sup>9</sup>

The Commission ultimately concludes to aggregate data reported on Form SHO prior to publication so as "to protect the identity of reporting Managers"<sup>10</sup> and help "safeguard against the concerns . . . related to retaliation against short sellers, including, short squeezes, and the potential effect that such public disclosure may have on short selling."<sup>11</sup>

A final rule establishing a reporting regime for securities lending should not include the retail lending market, and the Commission should instead publish only aggregated, wholesale lending data.

The same rationale and negative outcomes, particularly copycat trading, the Commission explicitly examines in Proposed Rule 13f-2 apply here if short positions are covered by a transaction-by-transaction disclosure regime, yet the Commission fails to contemplate or examine these concerns in the Proposal. We respectfully request that the Commission take on board the findings in the short sale proposal as it contemplates considering a final rule here. It would be arbitrary decisionmaking for the Commission to conclude that the costs of a transaction-by-transaction short sale disclosure regime outweigh the benefits in one rule proposal but not another.

Accordingly, and to avoid these adverse effects, we believe the Commission should exclude the retail lending market from the scope of any final rule and limit its application to only the wholesale market. The wholesale market lends itself to a standardized transparency regime, while the retail market consists of complex transactions that are part of bespoke relationships with nuanced inter-related contractual terms regarding factors, such as collateral, counterparty and term, that are often not finalized until the end of the day (or even later). As a result, retail market transaction data would lead to non-comparable and often misleading data being reporting and disseminated publicly.

Instead, we recommend that a final rule require only the reporting and publication of aggregated, wholesale lending market data. This aggregated, wholesale data could be published either end-of-

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<sup>7</sup> Proposed Rule 13f-2, *supra* note 3, at 14952.

<sup>8</sup> *Id.* at 15005.

<sup>9</sup> *Id.* at 15007.

<sup>10</sup> *Id.* at 14980.

<sup>11</sup> *Id.* at 14955.



day or T+1, with either method achieving the additional transparency the Commission seeks and without the adverse effects discussed above.

We would be happy to elaborate further on any of the points raised in this letter. For further information please contact Daniel Austin, AIMA's Director of U.S. Policy and Regulation, by email at [REDACTED] or phone at [REDACTED].

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J. Król", is positioned below the closing.

Jiří Król  
Deputy CEO, Global Head of Government Affairs  
AIMA

Cc: The Honorable Gary Gensler, Chair  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Allison Herren Lee, Commissioner  
The Honorable Caroline A. Crenshaw, Commissioner