9 October, 2022

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: Reporting of Securities Loans (File No. S7-18-21)

Dear Secretary Countryman,

I am writing in strong support of rule 10c-1, “Reporting of Securities Loans”.

However, before commenting on the proposed rule, I must mention how deeply disgraceful I find it that thousands of public comments (which, I note, were **overwhelmingly** in support of the proposal) were lost by the SEC.

The possibility of such a thing happening in the public body responsible for regulating the world's largest stock markets is **absurd**, and suggests gross incompetence or even raises the possibility of malicious intent or criminality. This should be investigated urgently – indeed it is highly likely that records should still be available with regard to when the data was there, when it was no longer there, and what happened to cause it to no longer be there (and who initiated whatever action caused the data to be lost). Although investigating wrongdoing does not appear to be a strong suit of the SEC, still an attempt should be made when something as concerning as this happens.

As an international investor in the US stock markets, I feel that I must further preface my comment on the proposed rule by mentioning how low my trust in the SEC as an impartial and capable regulator has fallen. The US stock markets are quite clearly no longer free and fair markets. Absurd situations propagate every single day, with barely a whimper from the SEC, including, but not limited to:

- Spoofing and banging the close, particularly in order to manipulate prices on options expiration dates, in order to prevent options expiring in-the-money

- Short and distort campaigns, with misinformation pushed by “news outlets” owned by hedge funds that hold the short positions

- Enormous and blindingly obvious conflicts of interest, such as two entities with common ownership and management (Citadel) being both the largest market maker able to influence price discovery for most instruments on the stock markets, and a hedge fund able to profit from movements in the prices of the same instruments

- Open and brazen market manipulation, such as taxpayer-funded public bodies labelling a group of stocks a derogatory term that implies that they are not serious value investments (e.g. “meme stocks”), defining such term in an official report and listing the specific securities included, and then spending taxpayer money on absurd videos to explicitly tell / beg retail investors not to buy those stocks

- Routing retail buy orders off-exchange, so that they do not have any impact on price discovery. That this is still allowed to happen at all is mind-boggling, particularly as Gary Gensler is well aware of it and has been for quite some time

Evidence of all of the above is **abundant**, and no doubt has been sent to your office numerous times by many concerned market participants. (Or has it all been lost, too?)

In cases where the SEC does take action, it tends to take place many years after the daily crimes have been committed, and is so weak that it would never act as a deterrent to prevent firms from continuing to breach the law on a daily basis. If an illegal scheme or failure to report earns a firm billions in profit, and a decade later the SEC finally issues that firm a fine of ten million dollars (with no requirement that they even admit guilt), then it is again blindingly obvious that those firms will continue to break the law and defraud ordinary investors – it remains profitable and viable for them to do so. On a percentage basis, I have often paid transaction fees from brokers that are higher than the level of fines imposed by the SEC.

Fines must be set at considerably over 100% of the profit from illicit schemes, and in serious breaches management must face jail time, in order to form a proper disincentive. The SEC must act far more rapidly.

The continuing failure of the SEC to take meaningful action to protect the integrity of US stock markets leads to increasing concerns over the possibility of complete **regulatory capture**, and quite frankly any international investor must now factor this in when considering investing in the US markets**.** Counter-arguments to this possibility are increasingly scarce.

Turning to the rule proposal at hand, in my view short-selling presents one of the largest present risks to the US stock markets. It creates a perverse set of incentives: profiting from the destruction of companies (resulting in the destruction of wealth of the owners of those companies, and the employees losing their source of income). In many cases the companies concerned may well have been successful, and may have brought to market innovations that would have improved the lives of many, were it not for the predatory profit-seeking of hedge funds. As short-sales have unlimited downside risk, their prevalence poses a clear risk to the stability of the financial system – one idiosyncratic risk on a short position held by a systemically important financial institution could quite feasibly get well out of hand if the value of the underlying instrument increases, leading to more

perverse incentives for various parties in the market to attempt to prevent the unwinding of those short positions from happening, whatever the cost to their integrity and credibility, and indeed whatever the legality. In other words, large short positions can become “too big to close”, and risk the entire game stopping.

The main argument in support of the existence of short-selling appears to be that it facilitates price discovery and uncovers fraud.

Regulatory bodies and auditors are tasked with uncovering fraud. If they are not up to the task, that is a problem with their organisations, which must be resolved. Market participants should not be required to discover fraud, and indeed it is not appropriate that they should, as they are not regulated or required to comply with any standards when doing so, and they have their own financial incentives that prevent impartiality.

Price discovery can be adequately achieved by market participants simply buying and selling stocks. If a company under-performs, investors will want to sell their shares, and in those circumstances any prospective buyers may have the upper hand in setting the price for such sales, leading to a fall in the market price of the shares. Therefore, the necessity of short-selling itself is highly dubious, and warrants much further discussion.

The wisdom of allowing failures-to-deliver to take place at all, or any short-selling without an identifiable, unique located share that has been offered for a lending programme, is also highly questionable. Exemptions that allow short-selling to take place without a locate, but only with a reasonable confidence of a locate, are quite plainly absurd and should be revoked immediately.

Already on quite shaky logical foundations, any parties that go further and suggest that the above should take place with very delayed, unauditable, aggregated, opaque data, are frankly taking a viewpoint which is not credible whatsoever.

And finally, suggesting that firms being allowed to do all of the above with minimal reporting requirements is somehow beneficial for retail investors or for “liquidity”, is downright disingenuous and clearly false.

Most retail investors do not engage in short-selling, and only invest in long positions in stocks or stock call options (as their primary motive for investing is often a positive one – to buy and hold the stock of a company that I like and wish to see succeed, rather than investing with a motive to profit from destroying a company). Most profit from short-selling is likely taken directly from the pocket of retail investors. If the mechanism for this (short-selling) must remain legal, then at the very least retail investors should have access to data about it, so that they can make informed investment decisions.

Liquidity itself should never be imposed on the markets for its own sake. If a stock is illiquid, it

clearly suggests that no sellers are willing to part with their shares at the bid price, and therefore buyers must increase their bids in order for them to be accepted. No assurance of liquidity should override this principle – doing so prevents true price discovery. In any case, liquidity as an argument for less reporting data is really quite a stretch. It seems to be a buzz word that Wall Street firms throw around as a known benefit that must be guaranteed.
It must also be noted that many profitable short sale transactions do not result in any taxes at all being contributed to the US Treasury. In the case that short-sellers are successful in their goal of bankrupting the company, it has sometimes been the case that they will never close the short position at all, as doing so would trigger the tax obligation. After all, due to the mechanism by which a short position is opened, they have already pocketed the income at the outset. Such "cellar-boxed" securities are often then removed from exchanges, preventing other market participants from investing in those securities to expose the short positions that remain open, which they may choose to do, for example, if the security price has been pushed down so far as to be below the book value of expected liquidation distributions.

In my view the proposed rules should be amended to go further than they do at present. The following changes would improve the rule and go some way towards levelling the playing field:

- The legal names of the parties to the loan should be **included** in the information made public. Retail investors must be able to investigate which parties are lending securities on any given day, particularly as broker-dealers appear to lend securities belonging to their customers without their explicit consent (for example burying some wording within a margin account agreement). This would allow retail investors to make informed decisions about where they keep their investments, and also provide transparency over which large market participants are bearish on certain stocks. By the way, it appears to me deeply unjust that the owners of securities do not earn the benefit from the lending of their asset. How can it be that broker-dealers keep the interest earned from lending assets owned by their customers? Would members of the Commission find it fair if their house was rented out (without their explicit consent), and their real estate agent kept the rental income???

- The reporting should be expanded to include other types of positions which result in an equivalent to an short position. For example, short positions can be hidden in married options, deep out-of-the-money put options, and swaps, leading to the positions no longer being reported on official short interest disclosures, but without being closed out. Indeed, as short interest is self-reported and the reporting is not routinely audited or verified, any firms that do not want the extent of their direct short positions to be publicly known might, under current rules, simply not report the position, or mark the short as long and pay a paltry fine to the SEC a decade later. It is notable in this context that all reporting of swaps has been delayed until late 2023, with barely any scrutiny over the merits of this decision, and barely any justification whatsoever given. The existence of these loop-holes is presumably known to the Commission, and must be closed in order to level the playing field of the US stock

markets

I note that the proposal requires that a unique transaction identifier would be assigned for each securities lending transaction. In my view this is a positive aspect of the proposal. Presumably this information would allow the SEC to begin the mammoth task facing them, of cracking down on the rampant naked short-selling that takes place in the US stock markets every day (by hedge funds and market makers, and openly facilitated by the DTCC). Hopefully, armed with such information, the SEC might be slightly more successful in cracking down on naked short-selling than they have to date.

I understand that speaking truth to power can be challenging, and the largest Wall Street firms and banks can be intimidating and hold significant sway with US legislators. And, equally, the promise of extremely well-compensated roles with those firms, or on the speaking circuit, following your time in office, must be alluring.

Even so, I would urge you to reflect on the importance of the responsibility that you have been entrusted with by the investing public. Ordinary people, from all over the world, that simply want to have the ability to invest their honestly-earned money in markets that are genuinely free and fair, rather than skewed to suit the interests of a powerful minority. They are relying on you. Although the SEC has not been up to the task to date, the chance to make a positive impact during your time in office yet remains.

I close with a statement that should already be clear to you: the era of market rules being set and enforced in the dark, with no public scrutiny or input whatsoever, has passed. When you fail to establish sufficient rules to protect retail investors from predatory and / or illegal practices of large firms, or fail to enforce the existing rules, large numbers of people now notice, and will hold you to account. When Commissioners lobby against common-sense rules for data transparency in reporting, and those same Commissioners are funded by (or have other close connections to) the same firms that benefit from not having to disclose data on their predatory short-selling practices, large numbers of people now notice, and will hold you to account.

Although it may be naïve, I must confess to holding on to some shred of hope that you may yet surprise everybody, and choose to side with the little guy just this once. That would surely be a positive legacy to leave behind: the iteration of the SEC that finally took on the most powerful actors in Wall Street, and took real steps to ensure a free and fair market for everyone.

Please, do not lose this comment by accident, or allow it to be lost by deliberate action. I will keep a copy myself, and will resubmit it as many times as necessary.

Sincerely, and with ever-growing concern about the state of the US markets and the competence and impartiality of their regulators,

A Concerned Investor