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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](mailto:rule-comments@sec.gov)

August 11, 2023

Dear Ms. Countryman:

**Reporting of Securities Loans (File No. S7-18-21), Position Reporting of Large Security-Based Swap Positions (File No. S7-32-10) and Short Position and Short Activity Reporting by Institutional Investment Managers (File No. S7-08-22)**

The Alternative Investment Management Association (“AIMA”)<sup>1</sup> appreciates the U.S. Securities and Exchange Commission’s (“SEC” or “Commission”) recent determinations to reopen the comment periods for several of its proposed rules.<sup>2</sup> The Commission explains in some of these reopening releases that the reason for doing so is to invite comments on the aggregate and/or overlapping

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<sup>1</sup> AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA’s fund manager members collectively manage more than \$2.5 trillion in hedge fund and private credit 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 250 members that manage \$800 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 specialized 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](https://www.aima.org).

<sup>2</sup> See Proposed Rule; Reopening of Comment Period, “Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies, 88 Fed. Reg. 16,921 (Mar. 21, 2023) (the “Cybersecurity Reopening”); Proposed Rule; Reopening of Comment Period, “Reopening of Comment Period for Modernization of Beneficial Ownership Reporting”, 88 Fed. Reg. 28,440 (May 4, 2023) (the “Beneficial Ownership Reopening”); Proposed Rule; Reopening of Comment Period, “Supplemental Information and Reopening of Comment Period for Amendments Regarding the Definition of ‘Exchange’”, 88 Fed. Reg. 29,448 (May 5, 2023) (the “Exchange Definition Reopening”); Proposed Rule; Reopening of Comment Period, “Reopening of Comment Period for Position Reporting of Large Security-Based Swap [“SBS”] Positions”, 88 Fed. Reg. 41,338 (June 26, 2023) (the “SBS Reopening”).

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effects of some of its other proposed rules.<sup>3</sup> Other reopening notices have been accompanied by additional analysis of the proposed rule from the Commission’s Division of Economic and Risk Analysis (“DERA”).<sup>4</sup> In the spirit of this welcome trend, we would also encourage the Commission to consider strongly the timing by which it adopts some of its proposed rules, particularly those that create new, similar and, in some instances, overlapping reporting burdens.

In November 2021, the Commission issued a proposed rule that would require the reporting of securities loans to a registered national securities association (“RSNA”)<sup>5</sup> within 15 minutes after each loan is effected or modified (the “Securities Lending Proposal”).<sup>6</sup> A month later and as a part of a proposed rule addressing SBSs, the Commission proposed new Rule 10B-1 under the Securities Exchange Act of 1934 (the “Exchange Act”) that would require any person that exceeds one of several SBS position thresholds to file new Schedule 10B with the Commission no later than one day after such threshold is exceeded (the “SBS Proposal”).<sup>7</sup> Finally, in February 2022, the Commission proposed new Exchange Act Rule 13f-2 that would require institutional investment managers that meet or exceed a specified threshold to report monthly short position data (the “Short Sale Proposal”).<sup>8</sup> Collectively, we refer to these three rulemakings as the “Position Disclosure Proposals.”

We believe the Position Disclosure Proposals are arbitrary, inconsistent and risk materially harming the efficiency of U.S. markets – the most glaring issue being the inconsistent disclosure frameworks among the three rulemakings. We again encourage the Commission to address this issue, as well as several others, in any final rule(s).<sup>9</sup> We generally agree with the Commission’s determination and rationale in the Short Sale Proposal to aggregate, anonymize and delay public disclosure of short

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<sup>3</sup> “Reopening the comment period for the Investment Management Cybersecurity Release will allow interested persons additional time to analyze the issues and prepare their comments in light of other regulatory developments on cybersecurity”, including the cybersecurity-related proposed rules the Commission issued in March 2023. Cybersecurity Reopening, *supra* note 2, at 16,921. “The Commission is reopening the [beneficial ownership] comment period to allow interested persons an opportunity to comment on the additional analysis and data contained in a staff memorandum.” Beneficial Ownership Reopening, *supra* note 2, at 18,440. “The reopening of [the exchange definition] comment period is intended to allow interested persons further opportunity to analyze and comment on the Proposed Rules in light of the supplemental information provided herein.” Exchange Definition Reopening, *supra* note 2, at 29,448. “The Commission is reopening the [SBS] comment period to allow interested persons an opportunity to comment on the additional analysis and data contained in a staff memorandum.” SBS Reopening, *supra* note 2, at 41,339.

<sup>4</sup> See Beneficial Ownership Reopening and SBS Reopening, *supra* note 2.

<sup>5</sup> The Financial Industry Regulatory Authority (“FINRA”) is currently the only RSNA.

<sup>6</sup> Proposed Rule, “Reporting of Securities Loans”, 86 Fed. Reg. 69,802 (Dec. 8, 2021).

<sup>7</sup> Proposed Rule, “Prohibition Against Fraud, Manipulation, or Deception in Connection With Security-Based Swaps; Prohibition Against Undue Influence Over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions”, 87 Fed. Reg. 6,652 (Feb. 4, 2022).

<sup>8</sup> Proposed Rule, “Short Position and Short Activity Reporting by Institutional Investment Managers”, 87 Fed. Reg. 14,950 (Mar. 16, 2022).

<sup>9</sup> AIMA’s response to the SBS Proposal is available [here](#). AIMA’s initial and supplemental responses to the Securities Lending Proposal are available [here](#) and [here](#). AIMA’s response to the Short Sale Proposal is available [here](#).

position data,<sup>10</sup> and the Commission has a long history of acknowledging the benefits of short selling.<sup>11</sup> Some of these benefits include providing the market with liquidity, price discovery and market efficiency, while also serving as an important tool for managing portfolio risk.<sup>12</sup> In the Short Sale Proposal, the Commission acknowledges these benefits and highlights the negative impacts that can result from the disclosure of individual market participant's identities, positions and strategies. These negative impacts include copycat trading that would likely lead to herding and increased volatility, short squeezes and other events that harm market liquidity, price discovery and market efficiency.<sup>13</sup>

The same negative outcomes explicitly examined in the Short Sale Proposal also apply to both the Securities Lending Proposal and the SBS Proposal, whether they be copycat trading, targeted trading or otherwise. A similar type of analysis and acknowledgement regarding these harms, however, is almost *entirely absent* from the Securities Lending Proposal and the SBS Proposal, even though both proposals would disclose granular, position-level data, and the SBS Proposal would disclose the reporting person's name and legal entity identifier (if applicable).

We would therefore reiterate that, if these rules are adopted in some form,<sup>14</sup> the importance of aggregating and anonymizing reported positions – both securities loans and SBSs – before any public disclosure. Failing to do so would harm liquidity, market efficiency, price discovery and competition, while discouraging risk management, because active investors will ultimately limit their trading activity to avoid potentially falling victim to one of the outcomes highlighted in the Short Sale Proposal.

Even if the Commission modifies each of the Position Disclosure Proposals pursuant to our recommendations, market participants will still be faced with new costs and considerations, including, but not limited to, assessing how each new rule may impact their trading and investing strategies, to what extent new reporting frameworks need to be built or amended and whether new personnel are needed and/or additional resources required. Accordingly, we strongly encourage the Commission to consider the Position Disclosure Proposals holistically prior to their adoption because of the reasons stated above and their aggregate and overlapping effects.

For example, as we explain in our responses, the Securities Lending Proposal unnecessarily contemplates the reporting of securities loans that are used to effect short sales.<sup>15</sup> The Commission essentially acknowledged this redundancy in the reopening release for the Securities Lending

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<sup>10</sup> However, we believe the Short Sale Proposal is unnecessary. Instead of mandating a new reporting regime for institutional investment managers, the Commission should enhance and rely upon existing short sale data and reporting thereof, e.g., tailored refinements to FINRA reporting, a properly implemented "buy to cover" order marking requirement and the proposed amendments to the Consolidated Audit Trail that were considered in the Short Sale Proposal. *See supra* n. 9, AIMA response to Short Sale Proposal.

<sup>11</sup> *See, e.g.*, SEC, Final Rule, *Amendments to Regulation SHO*, 75 Fed. Reg. 11232, 11242 (Mar. 10, 2010); SEC, Concept Release; Request for Comments, *Short Sales*, 64 Fed. Reg. 57996, 57997 (Oct. 28, 1999).

<sup>12</sup> *Id.*

<sup>13</sup> Short Sale Proposal, *supra* note 8, at 14,952, 15,007.

<sup>14</sup> As we explained in our responses to the Position Disclosure Proposals, *see supra*, n. 9, we believe reasonable alternatives exist to also address the Commission's concerns and/or perceived regulatory gaps. *See e.g.*, n. 10 and accompanying text. These alternatives would be less costly and less burdensome for market participants, while simultaneously preserving market integrity.

<sup>15</sup> *See supra*, AIMA responses to Securities Lending Proposal at n. 9.



Proposal when it simultaneously issued the Short Sale Proposal.<sup>16</sup> By including loans used to effect short sales in the Securities Lending Proposal, the Commission will be making it more expensive to engage in short selling, which will lead to “stock prices [that] are less reflective of fundamental information both because costly short selling makes trading on information difficult, and because costly short selling dissuades investors from collecting information in the first place.”<sup>17</sup> Moreover, together, these two proposals, if adopted as issued, will discourage investment managers from using short selling as a part of their trading, investing and risk management strategies. Such a result would disincentivize fundamental research and active investing, thereby decreasing investors’ ability to root out corporate malfeasance and fraud, and harm capital formation by increasing hedging costs.

Because the Position Disclosure Proposals have aggregate and overlapping effects, they should be considered holistically and their potential adoption should be appropriately sequenced and their compliance periods appropriately aligned. If the Commission proceeds piecemeal and/or without suitable compliance periods, market participants may face unnecessary costs and/or have already complied with one rule (or be on the path to compliance), then be forced to comply with a separate, conflicting Position Disclosure Proposal rule.

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We would be happy to elaborate further on any of the points raised in this letter. For further information, please contact Daniel Austin, Director of U.S. Policy and Regulation, by email at [daustin@aima.org](mailto:daustin@aima.org).

Yours sincerely,

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

Jiří Król  
Deputy CEO, Global Head of Government Affairs  
AIMA

Cc: The Honorable Gary Gensler, Chair  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Caroline A. Crenshaw, Commissioner  
The Honorable Mark T. Uyeda, Commissioner  
The Honorable Jaime Lizárraga, Commissioner  
Dr. Haoxiang Zhu, Director, Division of Trading and Markets  
Dr. Jessica Wachter, Chief Economist and Director, DERA

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<sup>16</sup> See Proposed Rule, “Reopening of Comment Period for Reporting of Securities Loans”, 87 Fed. Reg. 11,659 (Mar. 3, 2022).

<sup>17</sup> Short Sale Proposal, *supra* note 8, at 14,994.