December 15, 2021

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

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

Dear Ms. Countryman:

With regard to the above-cited 10c-1 disclosure system, my colleagues and I consider inclusion in the rule proposal of an optional section on alternatives to be a genuine invitation to propose reasonable changes.[1] We assume that the Commission must already realize that the mandated disclosure system, as currently proposed, will likely not achieve its goals.

We support those goals but believe the proposed data model and reporting framework is conceptually flawed, and recommend an extension to allow consideration of alternatives, including lender-owned data trusts and the ESG use cases that we have previously described.[2]

Simply stated, Beneficial Owners are most at risk, yet least served by the proposed disclosures:

1. The free 10c-1 public disclosure, as specified, lacks critical fields for benchmarking the risk-adjusted returns of Securities Lenders. As a result, the 10c-1 data, though perhaps more expansive, will not be useful to Beneficial Owners.

   a. Boards of directors and trustees will still expect monthly benchmark reports.
   b. Agents will still have to subcontract for solutions.

2. Beneficial Owners will likely not use the 10c-1 data despite subsidizing its collection and dissemination to regulators and borrowers. Only an alternative system can close the gaps to avoid the imposition of a costly and ineffective disclosure rule.

3. The current 30-day comment period is insufficient for testing either the proposed or alternative disclosure systems.

This comment letter presents our opinion that the 10c-1 rule proposal will not succeed as currently specified.

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[1] As CSFME executive director, Ed Blount writes with the personal experience of 47 years in securities services automation. Through our affiliate, Advanced Securities Consulting LLC, Mr. Blount has testified as an expert in securities finance before all three branches of the U.S. federal government.

[2] Blount, Edmon W., Letter to Chairman Gary Gensler, "Re: Section 984(b) of the Dodd-Frank Act, Loan or Borrowing of Securities," August 6, 2021 (unpublished), and https://www.sec.gov/comments/df-title-ix/lending-borrowing/lendingborrowing-16.pdf

**Introduction**

The Center for the Study of Financial Market Evolution ("CSFME" or the "Center")[3] appreciates the opportunity to comment on the Securities and Exchange Commission's (Commission) November 18, 2021 proposal, "*Reporting of Securities Loans.*"[4]

Since its founding, CSFME has focused its research on securities lending, repo, and securities finance activities. We have a long history of working with securities lending data.[5] In fact, prior to forming the Center, CSFME's founder created the first securities loan pricing and benchmarking systems and pioneered many of the securities lending metrics used today.

For this reason, the Center has followed and contributed to the Commission's work to improve the transparency of securities lending transaction data domestically[6], as well as the work of the Financial Stability Board and European Securities and Markets Authority on similar issues of transparency globally.[7]

**Background**

CSFME views the disclosure system proposed under rule 10c-1 as a groundbreaking change in the transparency of securities lending markets.

However, the Proposing Release's 97 specific comment requests, coupled with the included discussion of alternatives, clearly implies that the Commission welcomes alternatives. It is also clear that the Commission expects the industry to not only make suggestions, but also to support their suggested alternatives with robust data and analysis.[8]

It is in this spirit of public-private collaboration that we provide our preliminary outline of comments and alternatives herein and in Annex A.

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[3] Founded in 2006, the Center for the Study of Financial Market Evolution (www.csfme.org) is a nonprofit organization whose mission is to support research that promotes sound regulation of capital markets.

[4] Reporting of Securities Loans, Rel. No. 34-93613, 86 Fed.Reg. 69802 (proposed November 18, 2021),(codified at 17 CFR 240). ("Proposing Release").

[5] See, for example, "Borrowed Proxy Abuse: Real or Not?" CSFME and RMA, 2010. https://www.sec.gov/comments/s7-14-10/s71410-174.pdf

[6] See Blount to Gensler, *supra* note 2.

[7] See https://www.fsb.org/wp-content/uploads/CSFME-on-1411DEG.pdf

[8] See, CSFME, "Wisely and Slow; They Stumble That Run Fast: Finding a Better Value Proposition for the SEC's Sec Lending Disclosure Rule," December 13, 2021. https://csfme.org/Commentary/wisely-and-slow-they-stumble-that-run-fast

**Regulatory Ends and Means**

We understand that the new securities lending disclosure regime described in the Proposing Release is intended to "provide transparency in the securities lending market" as directed by the 2010 Dodd-Frank Act[9], by:

- Supplementing publicly available information,
- Closing data gaps in the securities lending market,
- Minimizing information asymmetries between market participants, and
- Providing market participants with access to pricing and other material information.

These data elements are intended to support better market surveillance. Specifically, the disclosures that would be required for each lending transaction include (1) information identifying the securities lent (*i.e.*, the name of the issuer and ticker symbol, or ISIN, or CUSIP); (2) the date and time the transaction took place; (3) how it was executed (which platform, if any); and (4) terms of the lending transaction, including the type and amount of collateral used, the associated rebate rates, fees, and charges, duration of the loan, and type of borrower. The Commission proposes that this information would be made available to the public through FINRA.

As described in Table 1, the Commission also proposes to collect some information that would not be publicly disclosed. This includes the legal names of the parties to the loan, whether the loan will be used to close out a fail to deliver, and whether a broker-dealer has loaned to a customer from its own inventory.

**Table 1. LOAN MARKET DISCLOSURES
AND TRANSPARENCY GOALS (10c-1)**

| DATASETS | SUBMISSIONS FROM | | DISCLOSURES TO | |
|---|---|---|---|---|
| | LENDERS / AGENTS | PRIME BROKERS | PUBLIC / LENDERS | REGULATORS |
| LOAN TICKER | X | X | X | X |
| TIME STAMP[10] | X | X | X | X |
| TRADING VENUE | X | X | X | X |
| MATERIAL TERMS | X | X | X | X |
| COUNTERPARTS | X | X | | X |
| LOAN SOURCE & PURPOSE | | X | | X |
| PRINCIPAL (KYC) | | X | | |

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[9] Pub. L. 111-203, 984(b), 124 Stat 1376 (2010)

[10] The text of rule 10c-1 as proposed is unclear regarding whether the uniform transaction identifier (UTI) would be made public, except in cases of modification. We support the public disclosure of each transaction's UTI in both the original transaction report and in any subsequent modifications.

Note: Regarding Principal Type, only brokers will be required to disclose borrower-type, although lender-type is just as important. Without KYC audit codes[11] and keys to the lenders' asset management styles, loans cannot be classified and lenders cannot be peer-grouped. Unless the current value proposition for the lenders is improved, benchmarking will be impossible. This deficiency alone can cause the proposed disclosure system to fail to meet the Commission's investor protection objectives.

## Lender Subsidies to Free Riders

The goal of proposed rule 10c-1 is to "supplement the publicly available information involving securities lending, close the data gaps in this market, and minimize information asymmetries between market participants."[12] While the potential benefits would seem to flow to all participants within and beyond the securities lending markets, the choice to place the reporting burden on lenders and their agents would also burden those loan participants (lenders particularly) with nearly the entire cost of compliance.

The Proposing Release estimates that startup costs payable by just 409 lenders and agents could total $375 million, with ongoing annual costs of compliance totaling $140 million,[13] largely borne by lenders. A free-rider problem arises if the new data flows mainly benefit borrowers in the lending chain, as described above, and not lenders.

## Unanticipated Costs and Consequences

The estimated costs are understood to be incomplete, since the RNSA (*i.e.,* FINRA) is also entitled to recover its costs from market participants who report securities lending transactions to the RNSA" (again, the lenders and agents).[14] In fact, the Proposing Release suggests that the RNSA could itself ask for permission to on-sell this transaction information to other vendors (who, in turn, would sell performance metrics and analytics based on the data to market participants like lenders).[15] A full projection of anticipated costs has not been released by the Commission.

If rule 10c-1 is adopted, FINRA will pass compliance costs through fees to lenders and agents. Lending agents, in turn, will pass the costs of compliance through to their lending clients. Most beneficial owners participate in securities lending to generate marginal income. If lenders are

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[11] "Know Your Customer" ("KYC") policies *"to help facilitate the identification and prosecution of individuals involved in illegal activities for profit"* resulted from passage of *The Bank Secrecy Act and Money Laundering Statutes* https://www.federalreserve.gov/boarddocs/SupManual/bsa/bsa_p5.pdf

[12] Proposing Release, 86 FR at 69804

[13] Proposing Release,Table 2 "Quantified Compliance Costs for Systems Development and Maintenance Incurred by Lenders and Reporting Agents," 86 FR at 69842

[14] Proposing Release, 86 FR at 69820; see also "E. Report and Dissemination Fees", 86 FR at 69820
   "To fund the reporting and dissemination of data provided pursuant to this Rule, the Commission is proposing paragraph 10c-1(h), which would reflect that the RNSA has authority under Exchange Act Section 15A(b)(5) to establish and collect reasonable fees from each person who provides any data in proposed paragraphs (b) through (e) of proposed Rule 10c-1 directly to the RNSA."

[15] Proposing Release, at note 119 (86 FR at 69820)

forced to bear the final cost of compliance with rule 10c-1, they may find their margins so thin that they can no longer justify their lending activities, pulling their liquidity from the market.

In addition, with lenders dependent upon their agents for reporting to the RNSA, the rule could make it more difficult for lenders to switch agents. This inability to move between agents could weaken lenders' positions when negotiating fees with their agents. The Proposing Release acknowledges each of these potential outcomes in its proposal as "indirect costs," and indicates that they are mitigated by other factors like the increased competition between lending programs and between broker-dealers resulting from better access to information.[16] We do not believe this to be a convincing rebuttal.

**Data Model Flaws and Alternatives**

The information disclosed under rule 10c-1 would be too limited to provide much additional value to lenders. The data collected by an RNSA would not be sufficient to build peer groups for performance measurement and is not granular enough to assist with counterparty credit risk management. As noted in the proposal, lenders' agents currently provide transaction data to data vendors and pay consultants to use these metrics.

One option that meets the transparency aims of rule 10c-1 while simultaneously increasing the benefit to lenders is to expand the scope of data reported for each lending transaction. At first blush, that may sound even more burdensome. But, if lenders could encrypt and pool data for their own uses while still meeting their obligations under rule 10c-1, they could:

1. stop paying data providers to aggregate and analyze their data,
2. use the pooled data to do end-to-end mapping,
3. generate reliable proxy voting metrics,
4. create peer groups for performance metrics,
5. employ the mapped data to integrate ESG strategies into their securities lending programs, and
6. validate the *bona fides* of their cross-border lending transactions.

The potential reductions in the costs associated with counterparty risk alone would be valuable enough to lenders to make this option worth financing and pursuing. Once a competitive feature offered by lending agents, bank capital charges have made borrower default indemnification a costly add-on, with the premiums paid by the lenders.[17]

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[16] "This may pose indirect costs on these broker-dealers' and lending programs' customers. Such costs would include the cost of switching to a new broker-dealer or lending program, the loss of potentially more suitable options for such services if the exiting entity was highly specialized, and potentially higher prices associated with reduced competitive pressures." Proposing Release, 86 FR at 69843 *et seq.*.

[17] CSFME, Will Securities Lending Indemnification Be Regulated Into Oblivion?, December 21. 2014, https://csfme.org/Full_Article/will-securities-lending-indemnification-be-regulated-into-oblivion

**Additional Research Required**

As SEC Commissioner Crenshaw said recently, serious harm can come from regulating in the absence of relevant data.[18]  In August 2021, we wrote to Chairman Gensler[19] in relation to the Commission's work on implementing Section 984(b) of the Dodd-Frank Act.[20]  In our letter, we advised Chairman Gensler that securities lending data presently available to regulators was insufficiently granular to help in monitoring securities financing markets or in developing effective regulations to detect abuses.

We informed Chairman Gensler and the Commission that we intended to embark on a research agenda to test whether the pooling of securities lending data, when coupled with adoption of new technologies like blockchain, distributed ledgers, and digital encryption, could feasibly minimize the need for prescriptive regulations in favor of principled disclosures that support an evolution to near real-time supervisory regimes.

Our research agenda consists of three stages: two case studies using expanded data sources, mapping techniques, and advanced data technologies to study the feasibility of pooling data to derive high quality proxy voting metrics and prove cross-border regulatory compliance. The third phase of our study will examine the feasibility of a permissioned, verifiable, append-only ledger to complement lending agents' legacy technologies and structures.

The goals of our research agenda are even more relevant in light of the conceptional flaws we have identified in proposed rule 10c-1. The results of our studies will bear directly on the generation of high quality securities lending data in increasingly real-time environments like that proposed in the rule 10c-1 framework as well as potential T+1 or T+0 settlement.[21]

When completed, the results of these studies could provide meaningful data supporting alternatives or improvements to the proposed rule 10c-1 disclosure system, thereby improving the final rule, improving the quality of securities lending disclosure for all participants, and creating a better value proposition in relation to the cost.

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[18] https://www.sec.gov/news/speech/mind-the-data-gaps
[19] Blount, Edmon W. Letter to Chairman Gary Gensler, *supra* note 2.
[20] Pub. L. 111-203, 984(b), 124 Stat 1376 (2010)
[21] As experts in equity finance, we believe that a) settlement upgrades depend on disclosure upgrades and b) attainment of both goals will comply with the letter and spirit of Section 984(b) of the Dodd-Frank Act.

**Conclusion**

Given the Proposing Release's short 30-day comment period as well as the intervening holidays, there is insufficient time to complete the research required to inform the Commission's considerations for a final rule 10c-1; to respond meaningfully to the 97 questions posed; or to analyze or analyze alternatives to the proposed reporting system.

We echo the requests of the securities industry's professional Associations[22] to extend the comment period for the Proposal. We also are "eager to work with the Commission and its staff in support of increased transparency in the securities lending market, but additional time is needed to understand and consider the impact of the new securities lending regime proposed by the Commission."

We look forward to discussing how our findings can help the Commission meet its responsibilities under Section 984(b) to develop effective new disclosure regulations.

Sincerely,

Edmon W. Blount
Executive Director

cc: Professional Associations

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[22] Comment Letter, The Securities Industry and Financial Markets Association, The SIFMA Asset Management Group, The Risk Management Association, The Managed Funds Association, The Investment Company Institute, The Investment Adviser Association and The Security Traders Association, collectively the "Associations," https://www.sec.gov/comments/s7-18-21/s71821-9402961-262828.pdf

## ANNEX A

*Shortcomings of Today's Databases*

The securities finance databases of leading data providers such as FIS Astec, Datalend, and IHS Markit, designed more than 20 years ago for performance benchmarking, are inadequate when queried for the purpose of the loans themselves. Even regulatory databases enriched with new SFTR [23] filings to help authorities monitor leverage, are unable to determine the propriety of the loans.

None of the existing databases were intended or designed to map loans edge-to-edge, that is, from the principal lender to the principal borrower. Usually the loan of securities is made by a pension or mutual fund through a series of financial intermediaries to the ultimate borrower, which is generally the trading desk at a hedge fund or broker-dealer. The fungibility of securities allows the systems of the intermediaries to pool the loans and distribute the borrowed securities through a highly-efficient netting system that breaks the chain of loans and borrows. As a result, it is extremely difficult to link the source and use of the borrowed securities.

*The Power of End-to-End Mapping*

A full mapping is needed to determine the purpose of the borrow. As the SEC's counterparts in the EU have come to realize, securities finance transaction data without end-to-end mapping can leave regulators blind to abusive trading and unable to police securities lending designed to evade cross-border surveillance.[24]

End-to-end mapping also creates an environment in which lenders can direct their loans to borrowers whose activities comport with the lenders' ESG principles. A complete understanding of how investors are integrating their approaches to ESG and securities lending is vital as the SEC builds its proposals for ESG for asset managers.[25] The largest lenders are among the most interested in linking their loans to the strategies of their preferred borrowers. However, transparency from lender to borrower is currently limited due to the a) fungible nature of the securities on loan, b) nuances of clearing and settlement practices, and c) confidential terms of certain provisions in the brokers' and borrowers' agreements. Lending in full compliance with ESG principles will require more information about the borrowing trader's policies and intentions.

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[23] Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2365&from=EN

[24] ESMA, Final Report on Cum Ex and other Multiple Withholding Tax Reclaim Schemes, October 2020, https://www.esma.europa.eu/sites/default/files/library/esma70-155-10272_final_report_on_cum_ex_and_other_multiple_withholding_tax_reclaim_schemes.pdf (Final Report)

[25] ESG policies touch on securities lending programs with respect to voting rights, transparency in the lending chain, collateral and cash reinvestment, lending over record date, and the short side of the market https://www.islaemea.org/wp-content/uploads/2021/05/PASLA_RMA_Global_Framework_for_ESG_and_Securities_L endingGFESL.pdf

Thus, end-to-end mapping is the key to making securities lending part of an ESG strategy and should figure into any regulatory efforts under Section 984(b).[26]

## *Append-only Ledgers, DLT, and Smart Contracts*

In our opinion, append-only ledgers, distributed ledger technology, and smart contracts, are the obvious answer to the question of how securities lending transaction data can be made more granular, useful, and traceable. Major players in the repo markets are already employing blockchain and smart contracts to make repo trades, allowing collateral and cash to be interchanged simultaneously and immediately.[27]

Outside the U.S., some have begun to recognize that the benefits of moving securities lending transactions to a blockchain network would be even more profound. Not only is it confidential, verifiable, and indelible, but employing blockchain technologies for securities lending transactions would make possible the end-to-end mapping that will be necessary for beneficial owners to conduct their lending programs in harmony with their ESG policies. Further, loan recalls via a blockchain would be much easier and nearly instantaneous, allowing beneficial owners to make better informed and more timely recalls to vote proxies for shares out on loan.

## *Cross-border Securities Lending Database*

Citi, Northern Trust, ING, and DTCC have also begun employing blockchain technologies in various aspects of their business lines, but at present no full-scope cross-border securities lending blockchain is in operation.[28] We propose to develop such a blockchain which, over time, would create a cross-border and inter-market securities financing and lending transactions database ("CBSL database"). Because the entire transaction would occur on the blockchain, it would capture every data point related to the securities lending transaction, everything from counterparty legal entity identifiers (LEIs) to collateral, rebates, dates, times, etc., well beyond the 153 fields collected on SFTR forms.[29] Further, since the entire transaction would occur on the blockchain,

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[26] CSFME, Squaring ESG with Securities Lending, October 20, 2020. https://csfme.org/Full_Article/squaring-esg-with-securities-lending

[27] Bloomberg, Goldman Begins Trading on JPMorgan's Repo Blockchain Network, June 21, 2021
https://www.bloomberg.com/news/articles/2021-06-22/goldman-sachs-begins-trading-on-jpmorgan-repo-blockchain-network

[28] Citi filed a U.S. patent application in late 2017 for a blockchain-based cross-border payment system. In May 2018, the bank also introduced Dromaius, a blockchained prototype for capital market services. Northern Trust was awarded two patents in 2018 for elements of its private equity blockchain solution, followed in November by an announcement of the first-ever capital call based on those patents. Two more successful blockchain pilots were announced in 2018, for vanilla repo-type securities loans made by the Dutch banking group ING and by Sberbank, Russia's largest bank. DTCC instituted a pilot project in 2018 to re-platform its credit derivatives Trade Information Warehouse (TIW) on distributed ledger technology and cloud.
https://csfme.org/Full_Article/category/all/global-banks-in-test-of-us11-trillion-shared-ledger-at-dtcc

[29] https://www.esma.europa.eu/document/sftr-tables

the need for cumbersome reconciliation between counterparty reports like those for SFTR would not be necessary, increasing data accuracy and reducing or eliminating errors. The result of the collection of this data would be an encrypted CBSL database, the data from which could be made available to regulators for inspection.

*Policy Considerations*

In November 2015, the FSB published the consultation paper, "Standards and Processes for Global Securities Financing Data Collection and Aggregation,"[30] (the "2015 Consultation") building on policy recommendations to address financial stability risks in securities financing transactions (SFT), in particular, recommendations to improve transparency of securities financing markets. CSFME has followed these developments closely, providing feedback to the FSB[31] and creating a university-level curriculum around the move toward greater global SFT transparency.[32]

The FSB followed up with the 2018 publication of "Securities Financing Transactions Reporting Guidelines"[33] with greater specification of the kinds and types of SFT data desired. While end-to-end traceability of individual transactions was never a priority in either of these releases, capturing position-level data from both ends of each transaction has been the focus since the inception of the SFT data collection initiative. As the FSB said in the 2015 Consultation:

> "The global data collection could be based on the aggregation of reporting from either one or both parties to a trade (*e.g.,* repos and reverse repos, securities lent and borrowed). Since the standards and processes are developed for the FSB member jurisdictions, *a two-side reporting scheme, where both counterparties report the trade, would maximize the data collection coverage*." (emphasis added)[34]

Indeed, the FSB emphasized throughout the 2015 Consultation the absolute importance of trade-level data collection to the ultimate goals of obtaining flow data and position/stock data for meaningful risk analysis.

As we mentioned in our comment letter on the 2015 Consultation[35], in the context of securities lending, two-sided reporting is also imperative to regulators and policy-makers in assessing "the

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[30] FSB, Standards and Processes for Global Securities Financing Data Collection and Aggregation, 2015 ("2015 Consultation") https://www.fsb.org/2015/11/standards-and-processes-for-global-securities-financing-data-collection-and-aggregation-3/

[31] CSFME Comment Letter, Feb. 12, 2015. https://www.fsb.org/wp-content/uploads/CSFME-on-1411DEG.pdf

[32] 2015 Consultation, Comment Letters from Fordham University Students. https://www.fsb.org/wp-content/uploads/Fordham-Univ-students-on-1411DEG.pdf

[33] FSB, Securities Financing Transactions Reporting Guidelines, Mar. 5, 2018. https://www.fsb.org/wp-content/uploads/P050318-3.pdf

[34] 2015 Consultation, at 2.2.

[35] CSFME Comment Letter to the FSB, Feb. 12, 2015, p. 3. https://www.fsb.org/wp-content/uploads/CSFME-on-1411DEG.pdf

threat to market stability from widespread recalls and returns of securities loans, as those terminations can lead to forced redemptions of cash collateral and the untimely sale of pool investments."

Given the importance of complete and two-sided trade-level data to the objectives of understanding risk concentrations arising from SFT transactions, we believe that the blockchain-driven CBSL database is necessary to achieve the policy objectives driving section 984(b) in the Dodd-Frank Act and its direction to the SEC.

### *Shortcomings of the SFTR Model*

The European Securities and Markets Authority (ESMA) developed and implemented the Securities Finance Transaction Regulation (SFTR) in response to the FSB's securities finance data collection recommendations.[36] The regulation is intended to enhance the transparency of the securities financing markets by requiring those who enter into securities financing transactions to report the SFT to a trade repository, and was phased in over a nine-month period ending January of 2021.[37]

Now fully in effect, ESMA and the EU member states are beginning to identify some shortcomings in the reporting regime. Aside from reconciliation and other errors between counterparty reports, not to mention the complications of Brexit,[38] the 153 discrete data points selected for reporting are in some cases not providing the breadth of market surveillance perhaps envisioned by the drafters of SFTR.

For example, SFTR data does not inherently provide the kind of information necessary to reveal withholding tax (WHT) reclaim schemes that have caused considerable losses to German and Danish treasuries over the years.[39] The original field layouts for SFTR transmission tables do not include codes to distinguish transactions generated by recalls by lenders, and the resulting returns from borrowers. Therefore, taxing authorities are unable to distinguish new securities loans from the terminations of existing loans, severely limiting member states' surveillance efficiency

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[36] Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2365&from=EN

[37] SFTR applies to the following securities financing transactions (SFT):
- Repurchase Agreements (commonly known as "Repos").
- Securities Borrowing & Lending ("SBL") including Commodities Lending.
- Buy-Sell Back or sell-buy back transactions.
- Margin Lending (in a Prime Finance context).

[38] While the substance of SFTR obligations are largely unchanged as a result of onshoring in the UK, a number of practical effects on SFTR provisions arise as a result of the UK's exit from the EU. https://www.gbm.hsbc.com/financial-regulation/sftr

[39] CSFME, 'Alarm Raised on Stock Loans for "Withholding Tax Schemes" https://csfme.org/Full_Article/alarm-raised-on-stock-loans-for-withholding-tax-schemes

(especially at a time when volatility linked to recalls seems poised to increase, perhaps significantly).

The end-to-end mapping inherent in a blockchain-based securities lending system avoids the ambiguity and limitations of the SFTR's 153 fields. Such a system would ensure transparency for each securities loan executed on the blockchain giving both lenders and regulators clarity as to the purpose of each borrow. Further, as stated above, knowing the purposes to which borrowers intend to put borrowed securities will allow beneficial owners to tailor their lending strategies to their ESG strategies.

### *Digital Regulation and Enforcement*

The industry is coming around to the notion that the solution to more clarity in securities lending data may lie in the use of append-only ledgers (popularly called "blockchains") and distributed ledger technologies, and the move to these digital solutions may be inevitable. According to the RMA:

> ". . . [T]he existing infrastructure around ownership is outdated, creating risk for both brokers and shareholders alike. A distributed ledger provides an effective real-time track record of ownership, making it easy to attribute relevant entitlements such as dividend payments. ... The industry must come together, considering that digital assets may be the new normal, and decide how best to prepare.[40]

As the Commission's staff ponders options for securities finance data collection under Section 984(b), we recommend that they look to solutions that take advantage of the migration to digital platforms. The securities lending append-only ledger we envision would capture detailed, complete, and auditable data for each individual securities lending transaction transacted on the platform. The clarity and real-time nature of the append-only ledger data could streamline and simplify surveillance and enforcement.

Using the ESMA withholding tax issue mentioned above as an example, member states' taxing agencies currently target securities lending activity spikes around dividend dates for evidence of WHT abuses. If end-to-end mapping were possible, as we posit with our proposed permissioned and encrypted append-only ledger, the data could be parsed for recalls and other benign purposes leaving only suspicious trades for examination. In fact, this parsing could be done on an automatic and continuous basis, and cross-border lending transactions with benign purposes could even be pre-cleared as non-abusive, saving tax enforcement authorities enormous time and effort in identifying abuses.

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[40] https://www.rmahq.org/the-new-normal-digital-asset-corporate-actions/

In the context of SEC enforcement, using the blockchain-generated data, regulated entities in the United States could produce reports detailing their compliance with the ESG and proxy voting policies they disclose to shareholders. This would obviate the need for prescriptive and detailed regulations in both these areas, and eliminate the need for time-consuming SEC examinations. And when exams are necessary, the audit trail is readily available.

**Conclusion**

The unparalleled quality of data collected via the cross-border securities lending database we propose would be the *sina qua non* of sound regulation, particularly in the digital age. Given the completeness and flexibility of the data generated from blockchain, we believe it will be far superior to an SFTR-type reporting regime, and serve as an elegant solution to the problems of harmonizing securities lending with ESG investing and responsible proxy voting, all in the interests of the original systemic risk policy priorities of Section 984(b).