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7th January 2022

Vanessa A. Countryman, Secretary
U.S. Securities & Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

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

Dear Ms. Countryman,

Pirum Systems Limited welcomes the opportunity to provide comments on the proposal by the Commission regarding the reporting of securities lending transactions.

As a brief introduction, Pirum Systems Limited is a technology company founded in 2000 offering post-trade automation services to participants in the securities finance markets globally. Pirum provides a secure processing hub which allows market participants to electronically process and verify transaction details. As part of these services, we also have experience providing solutions that assist in scope firms with transaction reporting for their existing reporting obligations under the Securities Finance Transaction Regulation (SFTR) within the EU and UK. In our position as global service provider we have worked closely with the European regulators on SFTR to develop a resilient and efficient solution and would welcome the opportunity to do so with the Commission.

Please find below our comments on areas of the proposal that we believe would benefit from additional clarification and/or amendments to achieve the Commission's stated aims.

1. Additional time for review

Based on both our internal review and discussions with industry associations and market participants, we believe additional time would allow interested parties to review the proposal in more detail and consequently provide the Commission with more detailed and considered comments from all relevant stakeholders. The relative complexity of the subject matter coupled with the time of year will otherwise mean that many affected firms will have both less time and resources to review the proposal adequately. We therefore believe that an extension of the review window to 90 days would be both warranted and welcomed.

Notwithstanding our comments above, we set out below some of the key points we have identified within the currently permitted timeframe for review.

2. Reporting Timeframe

Although we appreciate the Commission's desire for timely data, we believe the proposed timeframe for the transaction reporting (15 minutes both for the initial trade reports and any subsequent modifications) would pose a significant operational challenge for reporting participants and disproportionately increase the cost and complexity of compliance without significantly improving the quality of the publicly available data.

With regards to the Commission's aim to increase price transparency, we believe end of day reporting on a T+1 basis would achieve such aim without compromising the quality of the data.

Whilst near real-time data may be warranted in other financial markets where the price of the transaction is generally fixed at point of execution and is the key economic factor, we do not believe it is appropriate in this context. For securities lending transactions it is ultimately the fee or rebate rate that primarily determines the earnings of both parties and although an initial rate will be agreed, this rate can be renegotiated at any point during the lifetime of the loan. This is done via a 're-rate' whereby, if either party takes the view that the current rate being paid/received is no longer in line with prevailing market conditions, they can initiate a re-rate to adjust the rate accordingly. If the other counterparty does not agree to the re-rate, then the loan can be closed out via a return allowing each party to seek to lend/borrow the same security from another counterparty at what they believe is a prevailing market rate. Such re-rates can take place daily through natural supply and demand dynamics of the on-loan security.

Consequently, there is not a strong correlation between the exact time that the relevant securities loan is first executed and the economic outcome for both parties over the lifecycle of the same trade, and as such the currently proposed 15 minute reporting window would add substantive operational burden and additional cost to all market participants without providing any significant transparency benefits. In support of this belief, we note that under the EU Markets in Financial Instruments Regulation (MiFIR) securities financing transactions were classified as non-price forming and excluded from the pre- and post-trade transparency reporting requirements on a similar basis.

Similarly, for modifications to previously reported transactions, we note that a significant number of these happen in batch processes at specific times throughout the day. For example, one of the most common modifications is the daily mark-to-market exercise whereby the price of the loan (loan value and required collateral value) and potentially the associated collateral amounts are adjusted to reflect market value changes in the underlying security on loan. Open loans are commonly marked-to-market to the closing price of the relevant security from the previous business day, plus margin and rounding. As a result, the actual modification of the open loan tends to happen across all positions the next day and at relatively common times across the market. With the proposed 15-minute reporting window this would potentially lead to a significant number of reports all being sent within the same 15-minute window for processing across the vast majority of counterparties, which could cause issues due to significant volumes having to be actioned within a very short timeframe by the Registered National Securities Associations (RNSAs) and recipients of the data. Equally, for large periods of the day there would be few or no updates sent at all. As a consequence, each firm required to report, the RNSAs themselves and any investor wishing to consume the data would end up investing significant time and resources in a real-time reporting system which in reality would have several small windows in which the majority of data would be processed and received in large batches, only to then be largely underutilized for the vast majority of each day.

We also note that within equivalent regimes most firms have existing control processes in place around their transaction reporting to ensure accuracy of any data submissions. For example, many systems will route the data records which require review to control teams for attestation prior to onward submission. The currently proposed window would effectively give firms no time to perform such checks before onward submission, which would negatively impact the quality of the data received and published by the RNSAs, thereby undermining the value of the desired transparency.

For the above reasons we would strongly recommend requiring firms to report any new trades and modifications on an end of day basis on T+1. This would (i) reduce the overall implementation cost and timeframe for participants, (ii) allow them to better manage the flow of data in line with the existing internal processes for reporting in order to ensure the accuracy of the data produced and achieving the overall price transparency aim of the Commission.

3. Clarification of territorial scope

Having reviewed the proposal and discussed with market participants we have noted that there does not appear to be universal agreement and clarity regarding the exact territorial scope of when a securities lending transaction becomes reportable.

Although the proposed rule states that 'Any person that loans a security on behalf of itself or another person' has a reporting requirement we cannot see that it specifies whether it is the domicile of the person lending the security, the security itself or a combination of both which brings a transaction into scope for reporting.

By way of comparison under the SFTR regimes in the EU and UK it is primarily the domicile of the transacting entities which determines the reporting obligations, such that an EU entity (or an EU based branch of a non-EU entity) are required to report under the EU version of SFTR with a similar rule in place for UK entities and branches for the UK equivalent.

Is it the intention of the Commission that only US domiciled entities are required to report under the proposal in a similar manner? If this is the case, we believe several additional clarifications below would be required:

(i) Would the US entity only need to report transactions in US securities, or would it encompass transactions in non-US securities as well?
(ii) How would this work where lending is 'on behalf of' basis? For example, where a lending agent is employed, is it the domicile of the underlying lender i.e. "beneficial owner" or the lending agent that is relevant to assessing scope?
(iii) When a branch of an institution is involved in the transaction, would it be the domicile of the branch or the legal entity of which the branch is part that is relevant to assessing scope?

If the intention of the Commission is for a broader territorial scope than US domiciled entities, then that is likely to lead to a significant overlap with the existing SFTR regime where EU and UK based firms are already reporting transactions in US securities to the relevant Trade Repositories (TRs), meaning that entities would have to report such transactions under both the European and US regimes. Such duplication in reporting could have an adverse impact on the global aggregation as envisaged by the Financial Stability Board (FSB). This issue would also be exacerbated when combined with our subsequent comments regarding the proposed unique transaction identifier (UTI) model.

We would recommend adding a specific provision on territorial scope to the final proposal.

4. Unique Transaction Identifier (UTI) Model

In addition to our previous comments regarding the territorial scope, we note that the proposed model for the issuance of UTIs by the RNSAs on receipt may cause additional complications.

In the equivalent European reporting regimes, UTIs are supplied to the recipient by the reporting participants themselves. This process is driven by a prescribed hierarchy within the regime which indicates which party to a given transaction should issue a UTI, which depends on the transaction type, trading or confirmation venue used and whether the translation is cleared. This hierarchy is largely based on the guidance of the Committee on Payments and Market Infrastructures (CPMI) and International Organization of Securities Commissions (IOSCO) on the harmonization of the Unique Transaction Identifier. The CPMI-IOSCO guidance was requested by the FSB specifically to ensure that a globally consistent UTI is used for transactions and to avoid duplication in the global aggregation of data.

In line with the existing reporting requirement and the CPMI-IOSCO guidance, many platforms will issue UTIs at the point of booking transactions, thereby allowing firms to capture them at or shortly after the point of execution in their trade capture systems. These UTIs are then recorded through firms' downstream processes, including any required transaction reporting. As a result, existing reporting processes within these firms are primarily designed to ingest the UTIs into their reporting process and then to include them on their initial submissions to the relevant authority, as opposed to reporting the transactions first and receiving the UTI back from the recipient authority.

The proposed model whereby the RNSA would issue the UTI on receipt of the initial report creates potential complications:

(i) Redesigning firms' existing mechanisms (designed to capture UTIs earlier in the process and include them on the transaction report) to support a model whereby the initial report is to omit the UTI (which instead is to be provided later in the process by the RNSA) would reduce the reusability of the existing mechanisms and as a result increase the overall cost and time required to implement the proposed reporting for in scope firms.

(ii) Depending on the territorial scope that the Commission confirms, if transactions which are already reportable under the existing EU/UK SFTR regimes will also need to be reported under the US regime, we believe that such transactions would end up with two distinct UTIs. This is due to the incompatibility between the UTI model proposed in the Commission's rule and the model already created in existing European reporting regimes. For example, a firm required to report a transaction to both regimes would have to receive a UTI from an RNSA in the Commission's proposal, but due to the UTI hierarchy mentioned previously would have to use a different UTI issued by the relevant party to report the same transaction under the EU or UK SFTR regimes, thereby making any global aggregation impossible.

We can see no technical challenge in allowing firms to assign and report their transactions using UTIs they have created/received, which would allow them to observe the relevant global guidance and enable deduplication between jurisdictions as required for global aggregation. We note also that because of existing regimes and the CPMI-IOSCO guidance, firms already have existing mechanisms to ensure that UTI's remain globally unique by prefixing the UTI with part of their own Legal Entity Identifier (LEI), meaning that there is no requirement for the RNSAs to manage UTI issuance to ensure uniqueness.

As such, we strongly recommend that allowance is made for the UTI to be provided to the RNSA by the reporting party, with an on-receipt issuance model only available should firms have no existing UTI for a reportable transaction.

5. Delegated Reporting model

We note that the proposal makes specific provision for reporting to be delegated to broker-dealers by lenders subject to a written agreement having been put in place and, as proposed, this appears to be the only form of delegated reporting permitted by the proposed rule. Based on our experience and feedback from market participants, although the proposed delegation may have some utility to some lenders, we believe that other lenders will also want the option to utilize external parties other than broker-dealers to assist with the reporting process.

In this context it is worth highlighting that Pirum, in collaboration with another firm, offers reporting solutions to assist market participants in fulfilling their reporting obligations relating to securities finance transactions under the existing transaction reporting regimes. The collaboration has effectively allowed the parties to communalize the development and ongoing support costs of such technical reporting solutions and thereby to significantly reduce the overall cost of compliance to the market. We believe that US market participants may want to look at similar joint solutions to the Commission's proposal to help manage their compliance requirements and associated costs.

Additionally, the proposal to allow reporting to be delegated via a registered broker-dealer may create potential confidentiality and conflict of interest issues, as often the lenders subject to the reporting requirements will be engaged in securities lending with the same broker-dealers that they also use for transactions in the cash markets. As such, we believe that there will be concerns from the beneficial owners having to disclose their positions to broker-dealers as a result of having to report their lendable inventory under the delegated reporting model included in the proposal. Without an alternative, beneficial owners would either be forced to build their own direct reporting to RNSAs to mitigate these concerns, thereby significantly increasing their costs, or to exit the market entirely, thereby reducing overall liquidity.

We recommend that specific clarification is provided in this regard such that, in addition to delegation via a broker-dealer, lenders can utilize technical reporting solutions while retaining the regulatory responsibility. Furthermore, in such cases, as the Commission would retain oversight of the compliance of the lenders subject to the reporting obligation, we do not believe it would be necessary for the reporting solution to be an RNSA member themselves, although we do appreciate that some form of simplified registration may be appropriate to allow a third-party to submit reports on behalf of a firm that is itself subject to the reporting obligation.

Conclusion

We fully support the overall aim of the proposal, and believe that with the incorporation of the above recommendations, this can be achieved in a manner that satisfies the Commission's intentions whilst also minimizing the compliance burden on the industry.

We remain at your disposal should you wish to discuss any of the comments raised directly. If you have any questions please do not hesitate to contact me directly at [redacted]

Yours faithfully,

Robert Zekraus

COO & Head of Americas

For and on behalf of

Pirum Systems Limited