



January 7, 2022

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

**Re: Reporting of Securities Loans (Release No. 34-93613; File No. S7-18-21)**

Dear Chairman Gensler:

The American Securities Association (ASA)<sup>1</sup> welcomes this opportunity to comment on the recent proposal from the Securities and Exchange Commission (SEC) regarding securities lending disclosures (the Proposal).

The ASA has consistently supported measures to increase transparency in the capital markets, particularly around short selling practices<sup>2</sup>, financial reporting of Chinese-based companies<sup>3</sup>, and transparency surrounding clearinghouse margin requirements.<sup>4</sup> Greater transparency and well-designed disclosures benefit retail investors and increase confidence in the U.S. capital markets.

Today, investors, especially retail investors, have no idea what the cost to borrow a security in the market is at any given time. The SEC and the public need transparency into what a loan costs, in addition to knowing what it actually cost. Securities lending is one of the last markets in which a few actors benefit from unequal information advantages, and we applaud the SEC for addressing this issue.

The Proposal seeks to “improve price discovery in the securities lending market and lead to a reduction of the information asymmetry faced by end borrowers and beneficial owners in the securities lending market.”<sup>5</sup>

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<sup>1</sup> The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA’s mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. The ASA has a diverse membership of almost one hundred members located in every geographic region of the United States.

<sup>2</sup> <https://www.americansecurities.org/post/asa-sends-letter-on-financial-services-markup>

<sup>3</sup> <https://www.americansecurities.org/post/asa-opinion-washington-must-end-china-s-fraud-on-our-markets>

<sup>4</sup> <https://www.americansecurities.org/post/asa-raises-questions-on-gamestop-market-frenzy>

<sup>5</sup> Proposal at 10





As a general matter, the ASA supports the Proposal. However, as drafted the Proposal would create several compliance and implementation challenges for broker-dealers and other market participants. The ASA has some concerns that the Proposal will not achieve its objective of leveling the securities lending market playing field for all investors.

**Compliance costs will fall disproportionately on mid-size and smaller entities**

The Proposal does not consider that many regional broker-dealers contract with outside vendors to assist with securities lending. Vendors would need time to modify and upgrade their technology systems to comply with any new standards. The costs of these upgrades would presumably be passed on to the vendors' broker-dealer clients.

Additionally, our members, unlike the biggest financial firms, are not required to comply with Europe's Securities Financing Transactions Regulation, and we are concerned that compliance lead times may be an issue for firms not subject to the EU rule. This seems to be another case where large firms are pushing regulation in a certain direction because it gives them a compliance advantage over their competition.

Given the already truncated comment period of 30 days for the Proposal, we urge the SEC to consider the unique obstacles that hundreds of broker-dealers and other entities would face in a final rule. Otherwise, the SEC risks deepening the unfair advantage the largest firms, who can dedicate millions toward compliance, have in this market.

**The proposed 15-minute reporting requirement is impractical and would not benefit investors**

As currently drafted, the Proposal provides that terms of a securities lending transaction are reported to a registered national securities association (RNSA) within 15 minutes of the transaction. This reporting would include publicly available information (e.g. legal name of the issuer and amount of securities loaned) and non-public information (e.g. borrower identity).

We do not consider there to be any type of market demand or utility for such a short reporting timeframe and believe it would create greater logistical challenges for entities obligated to report. Additionally, such a short timeframe will create noise and misleading information in the market which would undermine the very purpose of the Proposal.

Consistent with previous recommendations the ASA has made regarding short-selling disclosures, we believe an end-of-day requirement to report securities lending transactions would be appropriate and provide investors with sufficient transparency regarding the terms of these





transactions. We also support the proposed daily reporting of the amount of securities *available* to lend.

**The proposed non-public disclosures regarding borrower identity will be vulnerable to cyberattack**

The Proposal bifurcates the information to be collected into public and non-public categories. Certain information – including the identity of borrowers – would be kept non-public because, in the SEC’s view, “making this information available to the public would be detrimental because it may reveal a specific market participant’s investment decisions.”<sup>6</sup>

Whether this concern is warranted, we believe it is misguided to assume that borrower identity information collected by a RNSA will also be kept confidential. The SEC’s own EDGAR system was the target of a recent cyberattack by individuals seeking a competitive edge to trade stocks<sup>7</sup>, and countless other government and private sector organizations have been the victims of massive hacks in recent years.

It is not a question of if, but *when* an individual or foreign-sponsored organization illegally obtains the identify of a hedge fund or others that may be shorting a particular stock and then profits off that information. When that occurs, it will undermine credibility and confidence in our capital markets.

**Conclusion**

We look forward to working with the SEC on the Proposal and in making changes prior to any final rule being issued. While greater transparency in our markets is a good thing, new rules must carefully balance the need for transparency with the potential costs and risks they pose for regulated entities and investors.

Sincerely,

*Christopher A. Iacovella*

Christopher A. Iacovella  
Chief Executive Officer  
American Securities Association

<sup>6</sup> Proposal at 54

<sup>7</sup> <https://www.nytimes.com/2019/01/15/business/sec-edgar-hacking-indictment.html>

