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**Via E-mail**

Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

RE: Reporting of Securities Loans; File Number S7-18-21

Dear Ms. Countryman:

NYSE Regulation (“NYSER”)<sup>1</sup>, the regulatory unit of the NYSE Group, Inc.<sup>2</sup>, appreciates the opportunity to comment on the Securities and Exchange Commission’s proposed Rule 10c-1 regarding the reporting of securities loans.<sup>3</sup> As proposed, Rule 10c-1 would require a lender of securities to report certain information to a registered national securities association (“RNSA”), a subset of which the RNSA would make available to the public. Additionally, the RNSA would be required to share certain non-public information about each securities loan with other persons as the SEC may designate by order upon a demonstrated regulatory need.

NYSER believes that regulatory oversight of the securities lending market will be meaningfully enhanced if Rule 10c-1 is adopted. However, as discussed below, NYSER believes that a requirement for regulators that are not RNSAs to seek an order from the SEC to access information reported pursuant to the rule is overly burdensome and could unnecessarily delay regulatory investigations. NYSER respectfully recommends that, if adopted, Rule 10c-1 allow the RNSA to provide information to self-regulatory organizations (“SROs”) that are not RNSAs, such as NYSER, without obtaining an SEC order.

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<sup>1</sup> NYSER is responsible for monitoring and investigating activities on the NYSE’s markets—*i.e.*, the New York Stock Exchange LLC, NYSE Arca, Inc., NYSE American LLC, NYSE National, Inc., and NYSE Chicago, Inc. (collectively, the “NYSE Exchanges”)—and for addressing NYSE Exchange members’ non-compliance with Exchange rules and federal securities laws. By performing these duties, NYSER supports the NYSE Exchanges’ efforts to promote just and equitable principles of trade, encourage free and open markets, and protect investors and the public interest. Many of these regulatory functions are performed directly by NYSER; others are performed by FINRA or other self-regulatory organizations pursuant to a regulatory services agreement, national market system plan, or other arrangement.

<sup>2</sup> NYSE Group, Inc. has separately submitted a comment letter regarding Proposed Rule 10c-1 on behalf of New York Stock Exchange LLC, NYSE Arca, Inc., NYSE American LLC, NYSE National, Inc. and NYSE Chicago, Inc.

<sup>3</sup> Reporting of Securities Loans, Release No. 34-93613; RIN 3235-AN01 (November 18, 2021) (the “Proposal”), available at <https://www.sec.gov/rules/proposed/2021/34-93613.pdf>.

Rather, the RNSA should be permitted to share any confidential Rule 10c-1 information using existing information sharing mechanisms.

### ***Regulatory Oversight by NYSEER Could Be Enhanced Using Information Reported Pursuant to Proposed Rule 10c-1***

Broker-dealers, all of which are members of one or more SRO, play a central role in securities lending transactions.<sup>4</sup> The Proposal notes that Rule 10c-1 would provide FINRA (as the only RNSA) “with data that could be used for important regulatory functions, including facilitating and improving its in-depth monitoring of member activity and surveillance of security markets. Further, the data elements are designed to provide regulators with information to understand: whether market participants are building up risk; the strategies that broker-dealers use to source securities that are lent to their customers; and the loans that broker-dealers provide to their customers with fail to deliver positions.”<sup>5</sup> The Proposal further notes that “requiring 10c-1 information be provided to FINRA could assist FINRA with its surveillance” of certain FINRA rules that relate to short sales and the borrowing and lending of securities.”<sup>6</sup>

NYSEER agrees that information reported pursuant to Rule 10c-1, as proposed, would have regulatory benefits for FINRA. NYSEER believes that its regulatory program could similarly benefit from information about securities lending. Like FINRA, NYSEER performs monitoring, surveillance, and enforcement functions for compliance with federal securities laws, including Regulation SHO. And, as with FINRA, the effectiveness of NYSEER’s regulatory program depends on its ability to understand risks created by market participant activity, including from activity that may occur away from the Exchanges. NYSEER does not believe it needs direct access to information reported pursuant to Rule 10c-1. But, nonetheless, there may be NYSEER inquiries or investigations where securities lending information would be important, and where time could be of the essence.

### ***Information Reported Pursuant to Proposed Rule 10c-1 Should be Available to SROs Using Existing Information Sharing Mechanisms***

Under the framework set out in the Proposal, securities lenders would report information required by Rule 10c-1(e) that is “necessary for . . . regulatory functions” to FINRA, but FINRA would keep that information confidential.<sup>7</sup> FINRA could use this information for the regulation of its own members, but would only be required to share it with other SROs “as the Commission may designate by order upon a demonstrated regulatory need.”<sup>8</sup> NYSEER agrees that the information required to be reported under Rule 10c-1(e) should not be made public, but NYSEER believes that FINRA should be permitted to confidentially share such information with other regulators even absent an SEC order. This would bring access to 10c-1(e) information in line with other information collected by FINRA through the various transaction reporting systems that it operates today.<sup>9</sup>

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<sup>4</sup> See Proposal, *supra* note 3, at 13. Of the 3,554 broker-dealers registered with the SEC as of December 2021, 385 are members of one or more SRO other than FINRA. Of those, 231 broker-dealers are members of one or more of the NYSE Exchanges, and 46 broker-dealers that are members of one or more NYSE Exchange are not FINRA members.

<sup>5</sup> Proposal, *supra* note 3, at 10-11.

<sup>6</sup> Proposal, *supra* note 3, at 28.

<sup>7</sup> Proposal, *supra* note 3, at 53.

<sup>8</sup> Proposal, *supra* note 3, at 68.

<sup>9</sup> See Proposal, *supra* note 3, at 27 n.73.

Currently, to the extent NYSE believes that non-public information collected by FINRA or another SRO is relevant to an NYSE investigation, NYSE can request and obtain that information through the information sharing provisions of the Intermarket Surveillance Group (“ISG”) Agreement, to which FINRA and all registered national securities exchanges are signatories.<sup>10</sup> The ISG Agreement requires signatories to use best efforts to share information with other members upon request, limits the use of that information to regulatory purposes, and requires the receiving party to keep the information confidential. Pursuant to that agreement, NYSE and the other members of the ISG routinely share non-public information similar to that which would be reported under Rule 10c-1(e), if adopted. Additionally, FINRA in the normal course provides information obtained in connection with examinations and cross-market investigations to NYSE pursuant to a regulatory services agreement. And there are other types of information, such as Reg SHO threshold data, which FINRA collects and provides to NYSE on an ad-hoc basis without the need for an SEC order. Permitting SROs to obtain Rule 10c-1(e) information from FINRA pursuant to existing mechanisms such as an ISG request (and without obtaining an order from the SEC) would further the regulatory benefits the SEC describes in its proposal and increase the efficiency and effectiveness of SROs’ investigations, while still protecting the confidentiality of the information.

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NYSE commends the Commission’s desire to improve transparency for securities loan transactions and welcomes the enhanced regulatory oversight of this market that, if adopted, Rule 10c-1 would make possible.

Respectfully submitted,



Jaime Klima

cc: The Honorable Chair Gensler  
The Honorable Hester Peirce  
The Honorable Elad Roisman  
The Honorable Allison Lee  
The Honorable Caroline Crenshaw  
Dr. Haoxiang Zhu, Director, Division of Trading and Markets  
Mr. David Saltiel, Deputy Director, Division of Trading and Markets

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<sup>10</sup> The Commission has recognized the importance of ISG and its information sharing function by requiring national securities exchanges to become ISG members as a condition of registration. See, e.g., In the Matter of the Application of MEMX LLC for Registration as a National Securities Exchange; Findings and Opinion of the Commission, Exchange Act Release No. 34-88806 (May 4, 2020); In the Matter of the Application of MIAX Pearl, LLC for Registration as a National Securities Exchange; Findings and Opinion of the Commission, Exchange Act Release No. 34-79543 (December 13, 2016); In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange; Findings and Opinion of the Commission, Exchange Act Release No. 34-42455 (February 24, 2000).