U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

January 7, 2022

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

Submitted via email: rule-comments@sec.gov

Re: Reporting of Securities Loans [Release No. 34-93613; File No. S7-18-21]

Dear Ms. Countryman:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on Exchange Act Rule 10c-1, proposed by the Securities and Exchange Commission ("the Commission") for public comment on November 18, 2021. Exchange Act Rule 10c-1 ("the proposal") would require lenders of securities to provide the material terms of securities lending transaction to a registered national securities association ("RNSA"), such as the Financial Industry Regulatory Authority ("FINRA"). The material terms of the securities lending transaction would then be made available to the public.

Section 984 of the Dodd-Frank Act mandates that the Commission promulgate rules designed to increase the transparency of information available to brokers, dealers, and investors. We agree that the market would benefit from increased transparency in securities lending, and we are interested in working with the Commission to ensure that the proposed rule makes information available that will improve market functioning. We believe it is equally important that the Commission carefully weigh the complexities of the policy changes contemplated in the proposal including the compliance costs that would be imposed on covered persons.

The Commission provides for a surprisingly brief comment period for such a complex proposal. We have multiple questions about how the proposal would be enacted including the scope of the reporting, the information to be reported (and what will be made public), the frequency of reporting, and the mechanics of implementation.

The SEC is increasingly allowing insufficient time for the public to comment on substantive changes in regulation. The SEC should provide an additional opportunity for public input before finalizing a rule.

The proposal was voted on by the Commission on November 18, 2021, with a 30-day comment period commencing upon publication in the Federal Register. The use of 30-day comment periods for major changes in regulation increasingly appears to be the regular practice of the Commission. The Chamber recently expressed its concern with the comment period for the Notice of Proposed Rulemaking on Proxy Voting Advice, noting that a minimum of a 60-day comment period would be appropriate, and that a 90-day comment period is not unusual for important financial regulatory proposals.[1] Congressman Patrick McHenry (R-NC), the Ranking Member of the House Financial Services, recently requested that all comments periods from the SEC should be at least 60 days, noting precedent from the Obama Administration. [2]

In general, a 30-day comment period is not enough time for the public, including market participants, to provide thoughtful comment on complex changes in regulation such as those outlined in the proposal. Commenters need the requisite time to analyze the proposal, including the various unanswered questions and ambiguities, before they can communicate thoughtful feedback on how it may affect their respective business and financial markets. In the case of this proposal, practitioners of securities lending, information technology experts, and legal counsel will all need to be consulted to provide useful feedback to the Commission. We share the views expressed in a joint letter sent by the Securities Industry and Financial Markets Association, SIFMA Asset Management Group, Risk Management Association, Managed Funds Association, Investment Company Institute, Investment Adviser Association, and Security Traders Association expressing the importance of extending the comment period.[3]

The timing of the comment period has made it extremely difficult to coordinate with our member companies for input for our comment letter. The rule was voted on by the Commission the week before Thanksgiving, published in the Federal Register on December 8, 2021, providing for a comment period that concludes on January 7, 2021.[4] It is unfortunate that the comment period would fall directly over a period of multi-faith holidays and year-end processing, a time when it is very difficult to coordinate useful input. A comment period that was a week longer, or started a week later, would likely have substantively improved the feedback made available to the Commission.

The SEC should provide an additional opportunity to comment on the proposal before issuing a final rule. By issuing an updated proposal, the Commission would have an additional opportunity to review input from the public, including the market participants that are most affected. This opportunity, at minimum, could be used to bring clarity to vague concepts and ambiguous terms used in the proposal that would have been addressed in an advanced notice of proposed rulemaking.

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[1] http://www.centerforcapitalmarkets.com/wp-content/uploads/2021/11/211130_Comments_Proxy-Extension_SEC.pdf?#
[2] https://republicans-financialservices.house.gov/news/documentsingle.aspx?DocumentID=408223
[3] https://www.sec.gov/comments/s7-18-21/s71821-9402961-262828.pdf
[4] https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-25739.pdf

Ambiguity regarding scope of reporting entities and their respective responsibilities for reporting

There is significant ambiguity regarding who exactly is covered by the proposal. It is unclear what lenders would be covered by proposal, what it means to "lend," and the scope of securities that would be covered. For example, would the proposal only apply to U.S.-domiciled firms or does it envisage an extra-territorial reach? Given the proposal appears to contemplate reporting to FINRA, the only RNSA in existence, will all covered entities need to be members of FINRA? Similarly, it is unclear what securities would be covered. For example, would there be an extra-territorial reach on foreign-issued securities? Additionally, the "examples" of reporting obligations provided in the proposal may create greater confusion than clarity, and each reflect steps that beneficial owners, lending agents, or others would have to take in order to come into compliance. We urge the Commission to think through these examples so that borrowers and lenders know exactly who is responsible for reporting lending information.

It some cases the individual responsibilities for reporting are not clear. For example, in the event an agent pulls securities from multiple funds, is the lender or agent responsible for reporting? Additionally, there are questions about how liability would be borne in some instances: for example, there may be a situation wherein the reporting mechanism unexpectedly goes offline meaning the required reporting would not be met (especially if there is a 15-minute reporting interval).

There are numerous unanswered questions regarding the data reporting mechanism and data repository that will need to be constructed by the RNSA. Outstanding questions regarding the back-end reporting are critical to understanding the compliance costs. For example, we would encourage the SEC to consider whether it would be more practical for the lender (i.e., reporter) to provide the Unique Transaction Identifier rather than having this be generated by the RNSA before/after receipt of information on the transaction. The proposal also does not make clear how the front-end of the data repository would operate, how the publicly available information could be accessed, and how data would be aggregated and anonymized to prevent identification of market participant positions. It would be helpful for the Commission to draw on prior experience implementing public dissemination requirements in new asset classes and consider public dissemination after a period of regulatory-only reporting.

A 15-minute reporting interval may be unnecessarily frequent and undermine the proposal's stated objectives

The proposal would require the lender (its lending agent or reporting agent) to submit the required information to the RNSA within 15 minutes after the securities loan is affected or the terms of the loan are modified. It is unclear exactly why this reporting interval was proposed, and why this frequency is appropriate. There does not appear to be any stated rationale in the proposal for how a 15-minute interval would be helpful to market participants. The reporting comes with significant costs and operational challenges– these costs must be weighed against the benefit of the material changes of information that would be realized during this interval.

At a minimum, it may be more appropriate for this information to be reported end-of-day or next day consistent with the Securities Financing Transaction Regulation ("SFTR") implemented in

the European Union. Securities lending markets do not encounter significant intraday volatility, including for the prices of these transactions. And, much of securities lending is at standard rates. Therefore, the Commission would find itself with information that is rarely changed during the 15-minute interval that is contemplated by the proposal rule. Moreover, since workflows are typically reconciled by end of day, a 15-minute reporting window could lead to misleading inferences about lending by the Commission and market participants.

Compliance period

We would encourage the Commission to provide ample time to provide for compliance with the proposal if a rule is to be finalized. We would further encourage the Commission to provide the industry with guidance on any final rulemaking.

It is unclear how much time it would take the RNSA to create a reporting mechanism and data repository that meets the objectives of the proposed rule. The development of the reporting mechanism cannot, and should not, be completed unilaterally by the RNSA – it will require significant coordination to ensure appropriate interoperability for any person that loans a security on behalf of itself or another person. Presumably FINRA would be the designated RNSA; however, the proposal would require reporting from firms that are not currently members of FINRA or equipped to report.

The SFTR may be instructive as to the magnitude of the undertaking outlined by the proposal and the requisite compliance period. The European Commission published its proposal in January 2014 and did not issue its final report on guidelines on reporting under Articles 4 and 12 SFTR until March 2019. The SFTR also recognized that a phased approach for implementation would be appropriate.

In the case of this proposal, we would encourage the Commission to consider a phased implementation by asset class. This could reduce operational challenges by permitting firms flexibility in the use of the requisite resources required for implementation. The Commission could consider what asset classes may be easiest to report (e.g., U.S. equities), and devise reporting dates for other asset classes on a go-forward basis.

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We look forward to working with the Commission as it embarks on its project to increase transparency in the securities lending market.

Sincerely,

Tom Quaadman
Executive Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce