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

January 7, 2022

Dear Ms. Countryman:

Reporting of Securities Loans (RIN 3235-AN01)

The Alternative Investment Management Association (AIMA)¹ appreciates the opportunity to comment on the U.S. Securities and Exchange Commission's (Commission) proposed rule to require any person that loans a security on behalf of itself or another person to report the material terms of those securities lending transactions and related information regarding the securities the person has on loan and available to loan to a registered national securities association ("RNSA") (the "Proposal").² The Proposal would also require that the RNSA make available to the public certain information concerning each transaction and aggregate information on securities on loan and available to loan. AIMA's members include institutional investment managers and other market participants, many of whom are borrowers of securities, and would be impacted by the Proposal.

¹ AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 170 members that manage \$400 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

² Proposed rule, Reporting of Securities Loans, [86 Fed. Reg. 69802](https://www.federalregister.gov/d/2021-12-08) (Dec. 8, 2021).



As borrowers in the so-called retail segment of the securities lending market, AIMA's members may not be subject to the Proposal's extensive reporting requirements, but the breadth of the Proposal in its current form would be hugely impactful on both the broader financial ecosystem and our members' investments and risk management strategies. We support the Commission's intent to "increase transparency in securities lending transactions;"³ however, we would encourage the Commission make several important changes to the Proposal, explained further below, prior to considering a final rule.

1. The Commission should limit the scope of the Proposal to the "Wholesale" segment of the securities lending market.

The Proposal notes that loans from lending programs to broker-dealers occur in what is referred to as the "Wholesale Market," while transactions between a broker-dealer and an end customer, such as our members, occur in what is referred to as the "Retail Market" (although we note that such transactions are not typically documented as securities lending transactions).⁴ The data that is made available by vendors today is almost exclusively related to the wholesale market. Implementing rules governing transparency in the wholesale market would be beneficial because such a regime could create a low-cost, comprehensive and consistent data set that is available to all investors. AIMA would support such a decision and believes it is consistent with the Proposal's stated goals.

The wholesale market lends itself to a standardized transparency regime, but the retail market consists of complex transactions that are part of bespoke relationships with nuanced inter-related contractual terms regarding factors, such as collateral, counterparty and term, that are often not finalized until the end of the day (or even later). As a result, retail market transaction data would lead to non-comparable and often misleading data being reported and disseminated publicly.

The current scope of the Proposal appears to contemplate disclosing individual borrows between prime brokers and their customer effected to facilitate short transactions. Such transactions are not typically documented as (or considered to be) securities lending transactions, and public disclosure of these transactions would impede short selling activity and by extension disincentivize accompanying research. Although the Proposal's cost-benefit analysis acknowledges the benefits of short selling,⁵ these negative impacts associated with attempting to capture more than the wholesale securities lending market are not considered at all, including the fact that immediately publicly disclosing short selling activity would signal to all other market participants that a short position is being established. This would create a market impact that increases the costs associated with continuing to build a short position over time (particularly in hard-to-borrow securities) and potentially lead to copycat short selling activity.

In addition, the Proposal creates a significant risk that our members' investment strategies would be reverse engineered.⁶ Our members tend to borrow from a limited number of broker-dealers, which

³ *Id.* at 69803.

⁴ *Id.* at 69805.

⁵ *Id.* at 69839.

⁶ *See id.* at 69830, 69845.



are publicly disclosed in Form ADV. Rates also tend to correlate with both the size and type of investor involved in the transaction. Armed with this information and real-time transaction data, as contemplated in the Proposal,⁷ sophisticated market participants or data vendors may be able to ascertain with significant specificity what actions our members are taking. Even in anonymized form, these disclosures, specifically regarding the securities fee or rate⁸ and the class of borrower, would reveal a significant amount about the actions of individual market participants, an outcome not acknowledged in the Proposal.

The publication of this data would be quite valuable to market participants looking to front-run or short squeeze market participants building a short position or to reverse-engineer firms' strategies taking short positions, particularly when the long positions of firms are available publicly via Form 13F. The Proposal does not contemplate such cumulative disclosures and does not assess the costs and market impact of such disclosures. If the Commission intends to require such broad disclosure, it should do so only after a re-proposal is issued that analyzes the cost-benefit of such disclosure.

We would also encourage the Commission to be mindful of the similar reporting requirement some AIMA members are already subject under the European Union's Securities Financing Transactions Regulation. These members would be subject to duplicative reporting if the Proposal is finalized in its current form and thus lead to additional compliance and reporting costs.

2. The Commission should revise its loan definition to exclude all customer short positions because short positions are not loans and should be addressed through a separate rulemaking.

We believe the Commission's preliminary determination to require the reporting of all customers' short positions to an RSNA is misplaced. The Commission should instead address the disclosure of short positions in a separate rulemaking, pursuant to section 929X of the Dodd-Frank Wall Street Reform and Consumer Protection Act.⁹ Section 929X requires the Commission to promulgate rules that provide for the public disclosure of "the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security."¹⁰

Through this separate rulemaking authority, the Commission could achieve the same policy goals it seeks to in this Proposal – namely to: (i) increase transparency into the aggregate number of short sales for each issuer; and (ii) provide the Commission with data on short positions, which will allow it to better surveil, study and provide oversight of the securities lending market. Accordingly, we encourage the Commission to strive to follow the statutory text and legislative history of section 929X in promulgating this rule.¹¹

⁷ *Id.* at 69845.

⁸ The Commission is proposing to require the reporting of, among other data elements, the securities lending fee or rate, or any other or charges for loans not collateralized by cash. *Id.* at 69814. We note that the overnight bank funding rate is commonly used as a reference rate, but this is not always the case. Accordingly, we recommend the Commission require reporting persons to include the name of the reference rate used for loans not collateralized by cash.

⁹ 15 U.S.C. § 78m(f)(2).

¹⁰ *Id.*

¹¹ Section 929X clearly instructs the Commission to publish aggregate data on the number of short sales in each security.

Limiting the Proposal to the wholesale market would address this issue; however, AIMA reiterates that short positions, regardless of the structural arrangements by which our members take those positions, should be excluded from the Proposal's scope of loans required to be reported to an RSNA because short positions are not loans, in the same way that any other sale of a security does not constitute a loan. The Commission should therefore exclude short positions from the Proposal's scope of loans required to be reported to an RSNA.

3. The Commission should eliminate its proposed 15-minute, loan-by-loan reporting framework and instead publish aggregate, wholesale market loan data on a T+1 basis.¹²

The Proposal would require loan-level data elements to be provided to an RSNA within 15 minutes after each loan is effected or modified, as applicable.¹³ The Commission preliminarily believes that the 15-minute requirement, and the subsequent disclosure of the data elements by the RSNA as soon as practicable, would "increase the transparency of information available to market participants by allowing for the evaluation of the terms of recently effected loans and any signals that these terms provide."¹⁴ Even assuming that the Commission's preliminary determination is correct, the ends do not justify the means.

First, a new 15-minute, intraday reporting requirement adds significant operational complexity for lenders, their lender agent or reporting agent, even if a connection to an RSNA has already been established. It creates another reporting burden that will lead to new costs and compliance challenges as these parties attempt to satisfy this near real-time reporting requirement. Publication of loan-by-loan data every 15 minutes could also be misleading because loans are not reconciled; the data is not simple enough to be adequately scrubbed and cleaned in this time frame. Individual loan characteristics are quite complex and certain key aspects of loans are not determined until they are batch-processed hours or days later. Moreover, the 15-minute reporting requirement does not provide much informational value because of the intraday price stability of most securities loans. Accordingly, a reporting regime published T+1 and based on aggregate, wholesale market loans and weighted averages would achieve the Commission's transparency objectives more efficiently and with significantly better data quality.

Second, as the Commission notes, the 15-minute reporting requirement will provide market participants the ability to evaluate the terms and potential signals of recently effected loans. Such an outcome, however, will provide too much proprietary information to the market regarding closely guarded trading strategies, potentially leading to a situation in which it is possible to infer information

Moreover, the legislative history of section 929X does not contemplate an alternative disclosure regime, e.g., public disclosure of an individual market participant's short positions. There are also myriad public policy reasons to avoid public disclosure of individual short positions: reduced liquidity and increased volatility; targeted trading activity; entrenching management and targeted trading activity, demonstrated recently by the January 2021 volatility surrounding GameStop shares and Melvin Capital.

¹² We reiterate our support for a reporting framework limited to wholesale market loans and that excludes retail market loans from the scope of a final rule. If the Commission does mandate the reporting and subsequent disclosure of aggregate retail lending data, we encourage the Commission to publish such data on a weekly basis.

¹³ 86 Fed. Reg. at 69812.

¹⁴ *Id.*

about a particular market participant's trading positions. This would expose firms to be potential victims of manipulative trading activities, including short squeezes and front-running (particularly in hard-to-borrow securities). Consequently, market participants may adjust their trading strategies and/or exit the borrowing market when they otherwise would be active participants. This could lead to reduced liquidity and increased volatility.

To help alleviate these concerns, the Commission should instead publish aggregated, loan-level information on a T+1 basis. T+1 reporting would still achieve the transparency the Commission seeks to achieve without the potential harmful effects discussed above. The Proposal would also require the RSNA to report end-of-day quantities of securities available for lending and loans outstanding; therefore, more closely aligning these two reporting requirements is more practical and beneficial for the broader financial markets.

4. The Commission should incorporate a phased approach regarding the implementation of any final rule and seek a solution for the "day one problem."

We encourage the Commission to use a phased approach regarding the implementation of any final rule. Such an approach would begin with U.S. equity loans and would provide the Commission the opportunity and time to evaluate the efficacy of the new reporting regime before extending the reporting requirements to other asset classes.

Prior to considering a final rule, we would also like to draw attention to the "day one problem" created by the Proposal: existing loans will not be reported and may continue to be modified until termination. Accordingly, we suggest the Commission find a solution to ensure these loans do not go unreported under a new reporting regime.

We would be happy to elaborate further on any of the points raised in this letter. For further information please contact Daniel Austin, AIMA's Director of U.S. Policy and Regulation, by [REDACTED] or phone at [REDACTED].

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J. Król".

Jiří Król
Deputy CEO, Global Head of Government Affairs
AIMA