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Submitted electronically

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

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

Dear Ms. Countryman:

Fidelity Investments (“Fidelity”)¹ appreciates the opportunity to comment on the Securities and Exchange Commission’s (“SEC” or the “Commission”) proposed rule to increase the transparency and efficiency of the securities lending market by requiring 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”), such as FINRA. The proposed rule would also require that the RNSA make available to the public certain information concerning each transaction as well as aggregate information on securities on loan and available to loan.²

Fidelity is an active participant in the securities lending market as a principal lender, borrower, prime broker, lending agent and a securities lending data provider. Fidelity has overseen a securities lending program for its mutual funds for over thirty years and has offered securities lending programs to its institutional and retail clients since 2001. In 2003, we launched

¹ Fidelity and its affiliates are one of the world’s leading providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and other financial products and services to more than 30 million individuals and institutions, as well as through 13,500 financial intermediaries. Fidelity submits this letter on behalf of National Financial Services LLC, a Fidelity Investments company, a SEC registered broker-dealer clearing firm and FINRA member. Fidelity generally agrees with the views expressed by the Securities Industry and Financial Markets Association, Investment Company Institute, Managed Fund Association, Financial Industry Forum, Risk Management Association and the U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness in their comment letters and Fidelity submits this letter to supplement their views on specific issues.

² Reporting of Securities Loans, Exchange Act Release No. 93613 (November 18, 2021), 86 FR 69802 (December 8, 2021) the “Proposed Rule” or the “Proposal.”

a prime brokerage business and in 2019 started an agency lending business. Fidelity has also developed PB Optimize, a proprietary portfolio finance and treasury management solution for institutional investors, that provides, among other items, securities lending data, benchmarking, custom analytics and streamlined workflow solutions.

Fidelity supports greater transparency in stock loan transactions. Transparency gives owners of securities a better sense of their security's true value in the stock lending market and the ability to compare providers based on common metrics. Fidelity offers transparency in stock loan transactions today across our retail and institutional platforms. For institutional customers, PB Optimize was designed to provide transparency into dealer spreads. For retail customers, Fidelity discloses the rate that is paid, or charged, to the retail customer respectively either to lend securities using Fidelity's fully paid lending program or to borrow to affect a short sale by way of Fidelity's margin account agreement.

Fidelity supports enhancements to securities loan transparency that are clearly defined and provide investors and the marketplace meaningful information on securities lending transactions. Our comments on the Proposal focus on the following areas:

- The SEC should exclude short positions from the Proposed Rule;
- The reporting timeframe for transactions should be no earlier than end of day;
- The SEC should clarify the scope of the Proposed Rule, particularly with regard to: (i) potential extra-territorial application; (ii) the definitions of what is considered a "securities loan" and what is "available to lend;" and (iii) the time a loan may be considered "effected" for purpose of reporting;
- The SEC should provide market participants additional time to respond to the Proposal, and should undertake an outreach campaign to further understand the impact of the Proposal on the marketplace; and
- The SEC should provide a minimum two-year implementation period for any final rulemaking and issue any necessary guidance to implement the Proposal a full year prior to the implementation date.

Each of these points are discussed further below.

The rule should exclude short positions.

As currently drafted, the Proposed Rule's reporting requirements would apply to any "person," as defined under Section 3(a)(9) of the Exchange Act³, that loans a "security," as

³ 15 U.S.C. § 3(a)(9).

defined in Section 3(a)(10) of the Exchange Act⁴, on behalf of itself or another person. Such a broad definition would allow the Proposed Rule to require the reporting of transactions that are not considered to be part of the traditional securities lending market, which is generally characterized by transactions that are: (i) documented under securities lending agreements; (ii) booked as securities loans; and (iii) treated as securities loans for financial reporting purposes.

Short positions, whose terms are governed by a brokerage account agreement and U.S. margin rules, are not established subject to a written securities lending agreement and are not documented or booked as a securities loan between two parties. Short positions are neither carried on a firm's books and records as securities loans, nor treated as securities loans for financial reporting purposes. Therefore, we strongly urge the Commission to exclude short positions from any securities lending reporting required under the Proposed Rule.⁵ The inclusion of short positions in the required reporting under the Proposed Rule would be inappropriate from a securities lending market perspective, as well as potentially misleading, as it could result in inaccurate double counting of loans, and will create confusion in the marketplace, frustrating the legislative intent and regulatory goals of the Proposal.

The reporting timeframe should be no earlier than end of day.

The Proposed Rule would require a beneficial owner lender of securities, or such beneficial owner's Lending Agent or Reporting Agent, to provide to a RNSA certain detailed transaction terms for public dissemination within fifteen (15) minutes after the securities loan is effected. If one of the required transaction terms is modified during the duration of the loan, details on that modification would also need to be reported within fifteen minutes after the modification is made. The Proposed Rule would further require additional information to be reported to the RNSA within fifteen minutes after the securities loan is effected, but the RNSA would not be required to make such information publicly available.

Given the large number of detailed terms to be reported under the Proposed Rule, a fifteen-minute reporting requirement will result in the publication of incomplete and inaccurate data. Such data would be potentially misleading and ultimately not useful to market participants, particularly given that the terms of securities loans are subject to change during the course of a day and are generally not finalized until the end of the day. Accordingly, we urge the Commission to consider requiring the reporting of data under the Proposed Rule no earlier than the end of the trading day.

⁴ 15 U.S.C. § 3(a)(10).

⁵ The Commission should also not include short positions in the Proposed Rule because short positions are already subject to a regulatory reporting regime under FINRA Rule 4560 which requires broker-dealers to report short interest positions in all customer and proprietary accounts in all equity securities twice a month. FINRA has recently proposed changes to its short interest reporting rule. See FINRA Regulatory Notice 21-19: *FINRA Requests Comments on Short Interest Position Reporting Enhancements and Other Changes Related to Short Sale Reporting*. Fidelity commented on the FINRA proposal and our comments are available at: https://www.finra.org/sites/default/files/NoticeComment/Fidelity_Michael%20Lyons_21-19_9.30.2021%20-%20FINRA%20RN%2021_19_NFS.pdf

The scope of certain aspects of the Proposed Rule should be clarified.

The proposed scope and many defined terms in the Proposed Rule require clarification. For example, as currently drafted, the Proposed Rule broadly requires the reporting of loans on *any* type of security identified under Section 3(a)(9) of the Exchange Act⁶ and by *any* person, as defined under Section 3(a)(10) of the Exchange Act⁷, who loans a security on behalf of itself or another person. With this broad reporting requirement, the extra-territorial scope of the Proposed Rule is not clear. In particular, the Proposed Rule does not clearly address whether the Proposed Rule is intended to require the reporting of loans of non-U.S. securities. We recommend that the Proposed Rule not require the reporting of loans of non-U.S. securities as such loans are already subject to reporting under the European Union’s Securities Financing Transactions Regulation.⁸

Further, the Proposed Rule does not define what it means to “loan a security” and contemplates the reporting of a loan when it is “effected.” We recommend that the Commission clearly define what it means to “loan a security” to avoid capturing transactions and data that may not be meaningful or otherwise further the Rule Proposal’s transparency objective. For example, and as noted earlier, we recommend that the Commission exclude short positions from the definition of a “securities loan.” We also urge the Commission to further define when a loan is “effected” and consider that, while borrowers and lenders may agree to the terms of a loan, in the marketplace, a securities loan is not considered “effected” by the parties until the loan has been contractually booked and settled, which may be an end-of-day or next day process.

The Proposed Rule also requires the reporting of the “total amount of each security that is not subject to legal or other restrictions that prevent it from being lent (‘available to lend’) ...”⁹ to allow the evaluation of whether a security may be difficult or costly to borrow. As currently defined, however, we believe this proposed definition and calculation could be misleading as it may overstate the data that a lender is actually willing to lend. Without these more clearly defined terms and refined scope of the Proposed Rule, the Commission’s goal to provide securities loan transparency may be undermined.

Additional comment time and market outreach is necessary for the rulemaking process.

In 2010, Congress, through Section 984(b) of the Dodd-Frank Act, directed the Commission to “promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors with respect to loan or borrowing securities.” Since 2010, through both Democratic and Republican administrations, the SEC had not initiated this required rulemaking until November 18, 2021, when it announced the Proposal in a Press

⁶ 15 U.S.C. § 3(a)(9).

⁷ 15 U.S.C. § 3(a)(10).

⁸ Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.

⁹ Rule 10c-1(e).

Release¹⁰ without a public Open Meeting. The SEC determined, as part of its rulemaking process, to provide market participants and investors just thirty (30) days to submit their views on the wide-ranging Proposal, a comment period that occurred during a global infectious disease pandemic, industry year-end processing, and multi-faith holiday periods, making it difficult to substantively comment on the Proposal.

We do not believe that thirty days is a sufficient time period for market participants and investors to fully examine the Proposal, understand its potential implications and estimate its potential costs. For this reason, we support the joint trade group's request for additional time to comment on the Proposal.¹¹ If the Commission determines not to provide this additional requested time, or in connection with an additional comment period, we urge the Commission to consider further outreach efforts to market participants and investors on the Proposal. Such outreach efforts could include, for example, issuing a second rulemaking proposal on securities lending transparency that addresses comments received on the current Proposal and/or holding a public hearing or roundtable on the Proposal, at which both written and oral comments would be accepted. These SEC outreach efforts might also include the provision of educational information to investors on the securities lending market either by the SEC's Office of Investor Education and Advocacy or through the SEC's Office of the Investor Advocate. We believe that such educational information could also help to address misinformation we have observed on social media sites and in other public forums on the topic of securities lending.

Implementation time period and staff guidance.

When finalized, a wide range of market participants will use technology resources to develop and code new and existing processes to implement rulemaking on securities lending transparency. These technology resources are already subject to heavy workloads due to a wide range of regulatory rulemakings currently under, or soon subject to, implementation including but not limited to, the Consolidated Audit Trail, anticipated industry move to T+1, and the requirements associated with the Commission's rule for use of derivatives by investment companies and fund of fund arrangements. Similarly, the Proposal raises numerous interpretative questions, which may or may not be addressed in a final rulemaking.

The Commission should provide a two-year implementation period for any final rulemaking on the Proposal. Advanced planning will allow market participants to strategically allocate resources among different required regulatory projects, addressing resource burdens placed on technology personnel at implementing firms. The Commission should also provide

¹⁰ Securities and Exchange Commission, *SEC Proposes Rule to Provide Transparency in the Securities Lending Market* (November 18, 2021), available at: <https://www.sec.gov/news/press-release/2021-239>

¹¹ Several trade groups noted concerns with the 30-day comment period in a letter to the Commission and requested an extension of the comment period to allow for more fulsome consideration of the Proposed Rule; however, the Commission rejected the request. *See* Letter on Reporting of Securities Loans (Nov. 23, 2021), <https://www.sec.gov/comments/s7-18-21/s71821-9402961-262828.pdf>; *see also* Commissioner Hester M. Peirce, *Rat Farms and Rule Comments – Statement on Comment Period Lengths* (Dec. 10, 2021), <https://www.sec.gov/news/statement/peirce-rat-farms-and-rule-comments-121021> (“Thirty days is typically not enough time to get feedback on a rule proposal...”).

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necessary guidance to market participants on the final rule a full year in advance of the implementation date. Such a course of action will allow market participants to properly code new systems and processes to help ensure compliance with the final rule, in conformity with both SEC and Congressional direction.

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Fidelity would be pleased to provide further information, participate in any direct outreach efforts the Commission undertakes, or respond to questions the Commission may have about our comments.

Sincerely,



cc: Chair Gary Gensler
Commissioner Hester M. Peirce
Commissioner Elad L. Roisman
Commissioner Allison Herren Lee
Commissioner Caroline A. Crenshaw

Mr. Haoxiang Zhu, Director of the Division of Trading and Markets
Mr. David Saltiel, Deputy Director, Division of Trading and Markets
Ms. Josephine Tao, Assistant Director, Office of Trading Practices, Division of Trading and Markets
Mr. Rick Fleming, SEC Investor Advocate