

FINANCIAL INFORMATION FORUM

January 19, 2022

By electronic mail to rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Vanessa A. Countryman, Secretary

Re: File Number S7-18-21: Reporting of Securities Loans

Dear Ms. Countryman,

The Financial Information Forum (FIF)¹ appreciates the opportunity to comment on the recent rule proposal issued by the Securities and Exchange Commission (the Commission) on Reporting of Securities Loans.² The proposed rule is intended 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”).”³ The proposed rule “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.”⁴

This comment letter is focused on implementation challenges presented by the rule proposal and does not seek to address all of the issues raised in the Commission’s Proposing Release. Based on FIF’s experience over the past twelve years with the Consolidated Audit Trail reporting system (CAT), we consider where relevant approaches adopted for CAT and other reporting systems and how they could apply for the proposed securities loan reporting system.

The implementation process for CAT has demonstrated that new reporting systems are challenging to plan and put into operation. While the CAT implementation has involved, and continues to involve,

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include broker-dealers, exchanges, back office service bureaus, and market data, regulatory reporting and other technology vendors in the securities industry. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² Securities Exchange Act Release No. 93613 (November 18, 2021), 86 FR 69802 (December 8, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-25739.pdf> (“Proposing Release”).

³ Proposing Release, p. 1.

⁴ Proposing Release, p. 1.

extensive and productive coordination among the Commission, the self-regulatory organizations (including FINRA), FINRA CAT (the plan processor for the CAT system) and industry members, during this process firms have identified challenges with collecting and reporting data for specific workflows and interpreting various reporting requirements as applied to specific workflows.

The challenges with the CAT implementation should be taken into account when determining the scope of the final securities lending transparency rule and establishing the process and timeline for implementation. Ideally, the Commission should work with FINRA and industry members to issue preliminary specifications as part of the rule proposal process and allow market participants the opportunity to comment based on those specifications. This would help the Commission to evaluate the proposed rule with confidence that it is not overly burdensome on the industry, that it can reasonably be expected to fulfill its intended purpose, and that it can be completed in a reasonable timeline. This would also enable commenting parties to provide a more accurate cost-benefit assessment of the proposed reporting system.

If the Commission does not adopt this approach, the Commission should ensure that the implementation process and timeline allow sufficient opportunity for industry member input. In particular, FINRA should be required to issue preliminary technical specifications after a final rule has been adopted, but before a timeline is established for compliance. Industry members should have the opportunity to provide input on those specifications through an iterative process that involves the regulators, industry members and other market participants working cooperatively to identify a full set of industry workflows and provide clear guidance on how firms should report based on these different workflows. This process should include a working group of regulators and industry members, similar to the CAT Development Advisory Group, that can provide input prior to the issuance of final specifications. This process should also provide the opportunity for public review and feedback after preliminary specifications have been issued. During this specifications review period, the Commission in conjunction with FINRA should provide interpretive guidance on questions raised by industry members. Any implementation timeframe should run from the time that a full set of technical specifications has been published by FINRA (incorporating industry and public input, as described above), the regulators have addressed the interpretive questions raised by industry members relating to the new reporting requirements, and FAQs or technical specification updates have been published that provide guidance on these interpretive questions.

Based on discussions between industry members and the Commission staff, FIF understands that Commission staff will consider comment letters that are submitted after the January 7, 2022 comment deadline. FIF supports and appreciates this approach. As set forth in the preliminary comment letter that FIF submitted on January 7, FIF believes taking the necessary time to identify and address potential challenges during the rulemaking stage can help to avert problems at the implementation stage and achieve a more effective implementation of the proposed reporting system.

I. Definition of securities loan

FIF members support the position set forth in the comment letters submitted by the Securities Industry and Financial Markets Association (SIFMA) and other commenting parties that the definition of

securities loan should exclude short positions.⁵ As noted in the SIFMA comment letter, short position transactions are not documented or recorded on a firm's books and records as securities loans, and it is unclear how certain of the proposed data fields (for example, data fields relating to collateral) would be reported for these transactions.⁶

II. Time that a loan is effected should be the settlement time

The rule proposal requires that firms report loan transaction data elements "within 15 minutes after each loan is effected".⁷ The Proposing Release clarifies that "for the purposes of Rule 10c-1, a loan would be effected when it is agreed to by the parties."⁸

The securities lending process often involves intra-day modifications before loan terms are finalized and settlement occurs. This includes a lending agent reallocating a securities loan among lenders throughout the day. Modifications also can include re-pricings and changes in collateral. Reporting each reallocation and other modification prior to finalization of loan terms would mean the reporting of terms that are subject to change and never in fact transacted. A better alternative is to report the terms that are ultimately transacted based on the settlement time. In other cases, loan terms that are conditionally determined can be cancelled prior to settlement when the lender is unable to obtain the shares for lending. FIF members do not agree with reporting loan terms that are never in fact transacted.

The approach of reporting based on the settlement time is consistent with general industry practice, as set forth in the standard form Master Securities Loan Agreement, which provides that, "a Loan hereunder shall not occur until the Loaned Securities and the Collateral therefor have been transferred in accordance with Section 15."⁹ More generally, the Commission should make clear that transacting parties have the right to agree between themselves as to when a transaction has been effected or agreed (which can be the settlement time, if agreed by the parties), as it is not clear how the Commission could override that agreement.

III. Reporting should be on an end-of-day basis

Consistent with the discussion in the preceding section, reporting should be on an end-of-day basis. As discussed in the preceding section, intra-day reporting could result in the reporting of loans that are never transacted if the loans are cancelled prior to a transaction being effected. It could also result in

⁵ Letter dated January 7, 2022 from Kenneth E. Bentsen, Jr., President and CEO, SIFMA, available at <https://www.sec.gov/comments/s7-18-21/s71821-20111680-265019.pdf>, pp. 16-17 ("SIFMA letter"). Letter dated January 7, 2022 from Thomas Tesauro, President of Fidelity Capital Markets, Fidelity Investments, available at <https://www.sec.gov/comments/s7-18-21/s71821-20111708-265037.pdf>. Letter dated January 7, 2022 from Richard Karoly, Managing Director, Legal, Charles Schwab & Co., Inc., available at <https://www.sec.gov/comments/s7-18-21/s71821-20111345-264955.pdf>.

⁶ SIFMA letter, pp. 10-11.

⁷ Proposed Rule 10c-1(b).

⁸ Proposing Release, p. 42.

⁹ Master Securities Loan Agreement (2017 Version), available at https://www.sifma.org/wp-content/uploads/2017/06/MSLA_Master-Securities-Loan-Agreement-2017-Version.pdf, p. 1.

the reporting of loan terms that are never in fact transacted if the terms are modified prior to the settlement time. Intra-day reporting also will impose a significant additional overhead on firms and introduce a significant risk of filing inaccurate data. Intra-day reporting also could mean the dissemination of data to the public of transactions and transaction terms that were never in fact executed. Intra-day reporting also will impose significant costs on all industry participants, as discussed below.

While the Proposing Release identifies certain potential benefits of intra-day reporting relating to increased transparency and enhanced surveillance¹⁰, the potential incremental benefits of intra-day reporting should be weighed against the significant costs and challenges that this requirement would impose. If we consider the parties that are potential consumers of the proposed securities lending data, FIF members do not consider that the potential incremental value of intra-day vs. end-of-day reporting would justify the various challenges and costs:

- ***Institutional market participants, including institutional lenders, lending agents, broker-dealers and hedge funds.*** These parties can leverage the end-of-day pricing data to monitor that they are contracting at market rates and take appropriate steps to identify and address any concerns with their agents, customers and counter-parties.
- ***Retail broker-dealer customers who participate in broker-dealer fully-paid lending programs.*** Retail customers can monitor these rates on a daily basis and take appropriate steps to identify and raise any concerns with their broker-dealers. Retail customers also can take this end-of-day data into consideration when evaluating broker-dealers if the customers determine this data to be material.
- ***Regulatory and surveillance personnel.*** The Proposing Release does not identify a surveillance benefit for stock loan transaction data to be reported on an intra-day, as opposed to an end-of-day, basis that would justify the significant costs and other challenges associated with intra-day reporting.

The experience with CAT is instructive on this issue. The proposing release for CAT required “the consolidated audit trail to capture certain information about each order for an NMS security, including the identity of the customer placing the order and the routing, modification, cancellation or execution of the order, in real time.”¹¹ The adopting release for CAT subsequently provided that “the adopted Rule no longer requires that the NMS plan provide for the reporting of order event data to the central repository in real time; rather, it provides that the NMS plan must require the reporting of order event data to the central repository by 8:00 a.m. Eastern Time on the trading day following the day such information has been recorded by the SRO or the member.”¹²

¹⁰ Proposing Release, p. 42.

¹¹ Exchange Act Release No. 34-62174 (May 26, 2010), p. 33.

¹² Exchange Act Release No. 34-67457 (July 18, 2012), 77 FR 45721 (August 1, 2012), p. 45724 (“CAT Adopting Release”).

IV. Aggregating transaction data that is disseminated to the public

The rule proposal distinguishes between data elements for securities loan transactions that will be reported to FINRA on a confidential basis and data elements that FINRA will disseminate to the public. For example, reporting firms are required to identify the transaction participants when reporting to FINRA, but FINRA will not disseminate this information to the public.¹³

FIF members recommend that the transaction information that is disseminated to the public for a particular day be aggregated by security. For example, a firm could enter into securities loan transactions for a security during a trading day with multiple customers and counter-parties. The rate that a lending firm charges for a particular transaction could be impacted by various factors, such as the borrower's credit standing, the quality of the collateral, and concentration risks. As a result, dissemination of the rate for an individual transaction could present an inaccurate view of the market. To mitigate this concern, FIF members propose that transactions when disseminated to the public at the end of each day be aggregated by security. In other words, the public would know the total dollar volume loaned each trading day for each specific security, and the lending rate would be computed on a weighted-average basis.

V. Implementation challenges with reporting securities loans

Challenges for broker-dealers in achieving end-of-day reporting

There will be significant challenges for broker-dealers to achieve end-of-day reporting for securities loans. FIF's membership is comprised of broker-dealers, exchanges and technology vendors in the securities industry. While FIF members are accustomed to various types of intra-day and end-of-day transaction reporting, transaction reporting has not previously been a requirement for securities lending transactions.

For broker-dealers to achieve end-of-day reporting for securities loans, broker-dealers will need to modify front-end systems to allow for manual input of securities loan transactions in a manner that captures, in a structured format, all data elements that will be required by the Commission. It will also be necessary for firms to update these systems to allow for manual input of all modification details that will be required by the Commission. These initial transaction and modification details must be captured in a structured format that will enable automated reporting. As the rule is currently proposed, it will be necessary to integrate these systems with other firm systems that capture customer and security information. These front-end systems also will require integration with back-end trade processing and reporting systems. Firms across the industry also will need to integrate with third-party execution platforms to ensure that all execution data that must be reported is provided to firms on a timely basis. It also will be necessary for firms to change trader workflows to ensure that all transactions are entered on a timely basis with all required data. Firms will need to implement these systems changes across different asset classes, including equities, corporate bonds, Treasury and agency securities, mortgage and asset-backed securities and municipal bonds. These asset classes often will have their own front-

¹³ Proposed Rule 10c-1(d).

end and trade processing systems, which will mean separate integrations for each asset class. In addition, within an asset class a firm could have multiple systems. Firms also will need to implement system changes to process feedback from FINRA, identify and resolve errors, and submit corrections.

In addition to receiving data, FINRA will be publishing data to the market. It will be necessary for market participants to implement system changes to receive, process and, depending upon a market participant's business model, disseminate this data to various internal and external systems and users.

Broker-dealers have the capability to implement these changes, but significant work will be required. Broker-dealers also will need to contend with other technical and operational work that will be required during the designated implementation period as a result of other current, proposed and anticipated regulatory mandates (see Schedule A for additional detail). We discuss below further details regarding implementation timeframes.

Additional challenges with intra-day reporting

As discussed in the preceding section, achieving end-of-day reporting of securities loans will require significant work by firms amid many competing regulatory priorities. Intra-day reporting involves additional challenges beyond end-of-day reporting. In particular, intra-day reporting requires a level of full-time and ongoing technical and operational support that goes significantly beyond what is required for end-of-day reporting. Intra-day reporting also limits broker-dealers in their ability to perform validation prior to reporting, which will increase error rates. While broker-dealers currently are subject to real-time reporting pursuant to the TRF, ORF and TRACE reporting systems, broker-dealers currently are not subject to this type of reporting for securities loans. Because of the various complex processes for transacting securities loans, as described above, and the fact that a securities loan represents an ongoing relationship as opposed to a one-time transaction, reporting for securities loans will be far more complex than reporting cash trades in equities and bonds to the TRF, ORF and TRACE.

VI. Defining the parties to a loan transaction

FIF members request additional clarification on how different parties to a loan transaction should be reported. The Proposing Release provides that when a broker-dealer lends a customer's fully-paid securities, "the broker-dealer, acting as the lending agent, is loaning the securities on behalf of its customer".¹⁴ Does this mean that the broker-dealer should be reported as the intermediary and the customer should be reported as the lender? If that is the case, the rule proposal as currently drafted would appear to require the filing by a broker-dealer of customer names, including for retail customers.¹⁵ This presents the risk of unauthorized disclosure of personally-identifiable information (often abbreviated as "PII")¹⁶, as discussed in the next section.

FIF members request confirmation that when a broker-dealer lends margin securities the broker-dealer and not the customer is the lender.

¹⁴ Proposing Release, p. 39.

¹⁵ Proposed Rule 10c-1(d)(1).

¹⁶ As applied to broker-dealers, see Regulation S-P, 17 CFR §§248.1-248.18 and §248.30.

FIF members note that for conduit transactions (for example, where a broker-dealer borrows from a lender or lending agent and relends to another broker-dealer), reporting could be duplicative. The Commission should consider this scenario in determining how to disseminate data to the public.

VII. Protecting PII of customers

The Proposing Release appears to require that a broker-dealer, when lending customer full-paid securities, would be required to report customer names, including for retail customers.¹⁷ This presents the risk of unauthorized disclosure of PII. FIF members recommend that when lending securities pursuant to a fully-paid lending program, a firm should be permitted to identify the lender as a customer of the broker-dealer without reporting the customer's identity. This is important to limit the transmission of the PII of customers. This also avoids the many challenges with reporting customer and account identifying information that have arisen in connection with the implementation of the CAT Customer and Account Information System.¹⁸

VIII. Reporting parties

Reporting parties

If the Commission moves forward with this rule proposal, all lenders (or their lending or reporting agents) should be required to report, whether or not they are registered with the Commission. Otherwise, the data will be incomplete.

Vendor role

For other reporting systems established by the Commission (such as CAT), vendors that are not broker-dealers are permitted to submit reports on behalf of reporting parties.¹⁹ The same approach should apply for the proposed securities loan reporting system. It is unclear from the current rule proposal whether this is permitted. Accordingly, the Commission should clarify the permitted role for vendors in the reporting process. In particular, the Commission should clarify that a vendor that is not a broker-dealer is permitted to submit reports on behalf of a Lender, Lending Agent or Reporting Agent, as applicable, but the regulatory reporting responsibility remains with the Lender, Lending Agent or Reporting Agent that has the reporting responsibility. In this scenario, the vendor would use the reporting credentials of the Lender, Lending Agent or Reporting Agent, as applicable. More generally, the Commission should expressly distinguish between the technical performance of the reporting, which

¹⁷ Proposed Rule 10c-1(d)(1).

¹⁸ See, for example, "CAT Reporting Customer & Account Technical Specifications for Industry Members", Version 2.0 r6 (December 17, 2021), available at https://catnmsplan.com/sites/default/files/2021-12/12.17.21_CCID_Technical_Specification_2.0_R6_CLEAN.pdf.

¹⁹ See, for example: "FINRA CAT Industry Member Onboarding Guide", Version 1.19 (July 23, 2021), available at <https://catnmsplan.com/sites/default/files/2021-07/7.23.2021-FINRA-CAT-Onboarding-Guide-v1.19.pdf>; and "CAT Customer and Account Information System (CAIS) Industry Member Onboarding Guide", Version 1.7 (October 5, 2021), available at <https://catnmsplan.com/sites/default/files/2021-10/10.05.2021-CAIS-Onboarding-Guide-v1.7.pdf>.

a party with reporting responsibility can delegate to a vendor, and certain regulatory responsibilities for reporting a transaction, which a party with reporting responsibility cannot delegate to a vendor but can, based on the rule proposal, delegate to a broker-dealer that qualifies as a Reporting Agent.

CAT provides for separate CAT reporter and CAT submitter roles. The CAT reporter is the party with the regulatory responsibility to report a transaction to CAT; the CAT submitter is the party that in fact submits a transaction to CAT. A CAT reporter can act as its own submitter or engage a third-party submitter. There is no requirement for the CAT submitter to be a registered entity.²⁰ This type of approach similarly should be adopted for the proposed securities loan reporting system.

Correspondent and clearing firms

FIF members request that the Commission clarify that the rule proposal would not impose any reporting obligations on the correspondent firm in a correspondent-clearing relationship.

IX. Jurisdictional scope of transactions to be reported

The Commission should define the jurisdictional scope of the transactions to be reported, including which securities must be reported and which parties are required to report. FIF members support the recommendation in the SIFMA comment letter that the rule would only apply to securities loans where (i) the United States is the country of issue and primary trading market of the securities, and (ii) the lender or lending agent is a US person.²¹

X. Transaction data elements

Unique transaction identifier

The rule proposal refers to a “unique transaction identifier” (or UTI) to be assigned by FINRA, the operator of the reporting system.²² For certain reporting systems in other jurisdictions, the UTI is assigned by a party to the transaction rather than the operator of the reporting system.²³ If the UTI will be assigned by FINRA, as contemplated by the Proposing Release, firms should be required to submit an internal transaction identifier to FINRA, and FINRA should return this internal transaction identifier to the reporting firm along with the FINRA-assigned identifier. This will be necessary for firms to link a modification to the original reported loan.

²⁰ See “CAT Reporting Technical Specifications for Industry Members”, Version 4.0.0 r13 (January 6, 2022), available at https://catnmsplan.com/sites/default/files/2022-01/01.06.2022_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.0.0r13_CLEAN.pdf, p. 3 (“CAT Technical Specifications”).

²¹ SIFMA letter, pp. 19-20.

²² Proposed Rule 10c-1(b).

²³ See, for example, Bank for International Settlements and International Organization of Securities Commissions, “Technical Guidance, Harmonisation of the Unique Transaction Identifier”, available at <https://www.bis.org/cpmi/publ/d158.pdf>.

As an alternative to the UTI being assigned by FINRA, the Commission should consider allowing firms to internally assign UTIs and report them to FINRA. If FINRA assigns the UTI, a reporting party is dependent on receiving feedback from FINRA before the reporting party can submit a modification to a previously reported loan. The CAT system provides for the reporting party to generate and transmit its own event identifier for each submitted transaction and ensures uniqueness through combining the event identifier with other fields, such as the reporter and security identifiers.

Under either approach, FIF members request confirmation that if there is a scenario where a securities loan transaction must be reported to multiple jurisdictions, there is no requirement for the UTI used when reporting to the securities loan reporting system in the U.S. to be the same as the identifier when reporting in the other jurisdiction. This clarification is necessary because a party with a reporting responsibility in the U.S. might not be the party generating the UTI for the other jurisdiction.

Security identifier

The rule proposal would require a firm to report “the ticker symbol, ISIN, CUSIP, or FIGI of the security, if assigned, or other identifier.”²⁴ A firm should only be required to report one identifier for a security. FIF members interpret the wording of the rule proposal to require the reporting of one identifier only for a security and request confirmation on this point. The rule proposal provides for various alternative identifiers that firms can use for reporting. FIF members support this approach and the Commission’s ongoing consideration of additional identifiers that firms can use for regulatory reporting.

Legal name and LEI of security issuer

If firms are reporting a security identifier for each transaction, the requirement to report the legal name and LEI of the security issuer would appear to be duplicative. It is also likely that firms will report an issuer’s legal name using different variations, which makes this data less useful.

Allocations

In many cases a lending agent will agree on a block-level transaction with a borrower and allocate the transaction across multiple lenders. For this workflow the Commission should consider the approach adopted for CAT, which provides for separate reporting of block-level transactions (through trade and similar events) and the associated allocations (through allocation events). In CAT, the allocation events are linked to the associated block-level transactions.²⁵

Benchmarked loans

For securities loans that are priced based on a spread to a benchmark, the Commission should provide reporting parties the option to report pricing by reference to the benchmark and the spread.

²⁴ Proposed Rule 10c-1(b)(2).

²⁵ CAT Technical Specifications, pp. 35-36.

Platform or venue

FIF members request further clarification on what type of system would represent a platform or venue.

XI. Loan terminations and modifications

The Proposing Release provides that “termination of a loan would be a modification for which information would need to be provided to an RSA under paragraph (c) because the termination would result in a reduction of the quantity of the securities initially provided to an RSA for that loan under paragraph (b)(6).”²⁶ In the same manner that a securities loan should be reported based on the settlement time, termination of a securities loan should be reported based on the return of the securities by the borrower against the return of the collateral by the lender. The same approach as proposed for reporting new loans and loan terminations should apply for reporting loan modifications.

XII. Confidential data elements

Party identifiers

It should be sufficient for a firm to report one identifier for a party. FIF members are not aware of any regulatory benefit in requiring a firm to report multiple identifiers for a party. As discussed above, when reporting loans of a customer’s fully-paid securities it should be sufficient for a broker-dealer to report that the lender is a customer of the broker-dealer without specifically identifying the customer.

Reporting if a security is loaned to a customer from a broker-dealer’s securities inventory

Under the rule proposal, when lending a security to a customer, a broker-dealer is required to report whether the security is loaned from the broker-dealer’s securities inventory.²⁷ FIF members request confirmation that securities loaned from a broker-dealer’s securities inventory would not include customer fully-paid securities and margin securities loaned by a broker-dealer.

XIII. Securities available to loan and securities on loan

The rule proposal requires firms to report their securities available to loan. The rule proposal defines “available to loan” as “the total amount of each security that is not subject to legal or other restrictions that prevent it from being lent”.²⁸ FIF members have various concerns with this requirement, including the following:

- There are challenges in interpreting when a security is available to loan
- There are challenges in systematizing this information
- The information will be misleading to the market.

²⁶ Proposing Release, p. 51.

²⁷ Proposed Rule 10c-1(d)(2).

²⁸ Proposed Rule 10c-1(e).

A lender's instruction to a lending agent to make shares available to loan can be conditional on designated market conditions and loan terms. A lender similarly could provide general instructions to a lending agent to contact the lender about one or more specific securities if specific market conditions and loan terms are met. These are often indicative or conditional instructions that are subject to change throughout the day and present challenges to firms in interpreting whether these indicative or conditional communications represent securities being available to loan. Requiring firms to make these types of subjective determinations also will result in inconsistent reporting across reporting firms, which negatively impacts the quality of the reported data. There are also challenges with systematizing these types of indicative and conditional instructions for regulatory reporting.

FIF members recommend as an alternative to the Commission's proposal that firms be required to report the securities on loan and not the securities available to loan. For each security, FINRA could disseminate the total volume of securities on loan by shares or principal value (as applicable) and as a percentage of the shares or principal value (as applicable) of all securities that are outstanding.

XIV. Direct compliance costs

The Proposing Release estimates an annual cost of \$2,480,000 for FINRA to operate the proposed securities loan reporting system.²⁹ In light of the current annual CAT operating costs of approximately \$135 million,³⁰ and the expectation that FINRA's costs for operating the securities loan reporting system will be passed on to industry members, FIF members request that the Commission provide additional detail relating to the underlying assumptions for this estimate. For example, is this estimate based on FINRA's costs for operating another reporting system, such as TRACE?

XV. Implementation timetable

FIF members expect that there will be changes between the proposals set forth in the Proposing Release and the final rule that is adopted by the Commission. At this time, it is not clear what the scope of these changes will be. With the final rule being undefined at this time, it is difficult for FIF members to provide a recommended implementation timeframe. In setting an implementation timeframe, the Commission should take into account the implementation challenges described in this letter. The Commission also should take account of conflicting technology and operations work that other firms are or could be subject to as a result of other regulatory mandates (see Schedule A for additional detail).

The Commission should ensure that the implementation process and timeline allow sufficient opportunity for industry member input. In particular, FINRA should issue preliminary technical specifications after a final rule has been adopted. Industry members and other market participants should have the opportunity to provide input on those specifications through an iterative process that involves the regulators, industry members and other market participants working cooperatively to identify a full set of industry workflows and provide clear guidance on how firms should report based on

²⁹ Proposing Release, p. 142.

³⁰ Consolidated Audit Trail, LLC, "Consolidated Audit Trail Industry Webinar: CAT Costs", September 21, 2021, available at https://catnmsplan.com/sites/default/files/2021-09/09.21.21-CAT-Costs_0.pdf.

these different workflows. During this specifications review period, the Commission in conjunction with FINRA should provide interpretive guidance on questions raised by industry members and other market participants. Any implementation timeframe should run from the time that a full set of technical specifications has been published by FINRA (incorporating industry and public input, as described above), the regulators have addressed the interpretive questions raised by industry members relating to the new reporting requirements, and FAQs or technical specification updates have been published that provide guidance on these interpretive questions. If the regulators subsequently publish material updates to the specifications, additional time should be provided for industry members to implement those changes. Given the complexity and scope of the proposed reporting system, the Commission also should provide for a phased implementation.

While FIF does not propose a specific implementation timeline (based on uncertainty as to the final rule requirements that will be adopted), it is important to highlight that CAT was adopted by the Commission in 2012,³¹ and the implementation process for CAT is still ongoing. In contrast to the CAT Transaction Reporting system, which when adopted represented an enhancement to its predecessor Order Audit Trail System (adopted in 1998)³², there is no existing reporting system for securities loans that industry members and regulators can use as a framework to build upon when implementing the proposed reporting system for securities loans. CAT also created for the first time a new Customer and Account Information System (known as CAIS), and ten years after the Commission's adopting of CAT there are fundamental issues with CAIS reporting that are still being discussed with the Commission.³³ The implementation of the CAT Transaction Reporting and CAT CAIS systems have involved, and continue to involve, extensive and productive coordination among the Commission, the self-regulatory organizations (including FINRA), FINRA CAT (the plan processor for the CAT system) and industry members. While FIF would not expect the proposed securities loan reporting system to require the same implementation period as CAT, the experience with CAT highlights that unexpected complexities often can arise during the implementation of a major new reporting system. The CAT experience also highlights the importance of the Commission taking the necessary time to consider as many issues as possible prior to rule adoption as this will help to avoid subsequent challenges and delays during the implementation phase.

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³¹ CAT Adopting Release.

³² See NASD, "Special NASD Notice to Members 98-33: SEC Approves New Order Audit Trail System (OATS)" (March 1, 1998), available at <https://www.finra.org/sites/default/files/NoticeDocument/p004786.pdf>.

³³ For example, as currently documented, the CAIS system requires industry members to report identifiers such as Social Security Numbers for "Authorized Traders" (as defined in CAIS), yet in many cases there is no legal obligation for firms to obtain the information from the Authorized Trader that CAIS requires firms to report. "CAT Reporting Customer & Account Technical Specifications for Industry Members", Version 2.0 r6 (December 17, 2021), https://catnmsplan.com/sites/default/files/2021-12/12.17.21_CCID_Technical_Specification_2.0_R6_REDLINE.pdf. Financial Crimes Enforcement Network, Treasury; Securities and Exchange Commission, "Joint Final Rule: Customer Identification Programs For Broker-Dealers", Exchange Act Release No. 34-47752 (April 29, 2003), 68 FR 25113, available at <https://www.sec.gov/rules/final/34-47752.htm>, p. 25116.

FIF appreciates the opportunity to comment on the Commission's rule proposal to enhance transparency of the securities lending market. If you would like clarification on any of the items discussed in this letter or would like to discuss further, please contact me at howard.meyerson@fif.com.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum

Schedule A

Other Regulatory Mandates that Require Technical and Operational Work

This Schedule A lists various current, proposed and anticipated regulatory mandates that will require significant technical and operational work for broker-dealers and the technology vendors that they engage. In many cases, the firm resources required to meet the regulatory mandates below will compete with the firm resources required for implementing the proposed securities loan reporting system. The list below is not intended to be a full list of regulatory mandates requiring technical resources and is instead intended to highlight potential conflicting challenges that firms will need to contend with.

- T+1³⁴
- Market Data Infrastructure Rule adopted by the Commission³⁵
- Consolidated Audit Trail (CAT) Transaction Reporting³⁶
- CAT Customer and Account Information System reporting³⁷
- Ongoing updates to reporting under Rule 606 of Regulation NMS³⁸
- Recent proposal by the Financial Industry Regulatory Authority (FINRA) to require order routing reports for OTC equities³⁹
- Recent proposal by FINRA to expand the scope of Short Interest Reporting⁴⁰
- Recent Commission proposal to mandate reporting of large security-based swap positions⁴¹

³⁴ See Securities Industry Financial Markets Association, Investment Company Institute, The Depository Trust & Clearing Corporation and Deloitte & Touch LLP, “Accelerating the U.S. Securities Settlement Cycle to T+1”, December 1, 2021 (available at <https://www.dtcc.com/-/media/Files/PDFs/T2/Accelerating-the-US-Securities-Settlement-Cycle-to-T1-December-1-2021.pdf>).

³⁵ See “Market Data Infrastructure rule”, Exchange Act Release No. 90610 (December 9, 2020), 86 FR 18596 (April 9, 2021), and Exchange Act Release No. 90610A (May 24, 2021) (technical corrections).

³⁶ See “CAT Reporting Technical Specifications for Industry Members”, Version 4.0.0 r13 (January 6, 2022), available at https://catnmsplan.com/sites/default/files/2022-01/01.06.2022_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.0.0r13_CLEAN.pdf.

³⁷ See “CAT Reporting Customer & Account Technical Specifications for Industry Members”, Version 2.0 r6 (December 17, 2021), https://catnmsplan.com/sites/default/files/2021-12/12.17.21_CCID_Technical_Specification_2.0_R6_REDLINE.pdf.

³⁸ See “Responses to Frequently Asked Questions Concerning Rule 606 of Regulation NMS”, available at <https://www.sec.gov/tm/faq-rule-606-regulation-nms>.

³⁹ See FINRA Regulatory Notice 21-35, “Order Routing Disclosures for OTC Equity Securities: FINRA Requests Comment on Proposed Order Routing Disclosure Requirements for OTC Equity Securities and Potential Steps to Facilitate Investor Access to Current Order Routing Disclosures for NMS Securities”, October 7, 2021, available at <https://www.finra.org/sites/default/files/2021-10/Regulatory-Notice-21-35.pdf>.

⁴⁰ See FINRA Regulatory Notice 21-19, “Short Sales: FINRA Requests Comment on Short Interest Position Reporting Enhancements and Other Changes Related to Short Sale Reporting”, June 4, 2021, available at <https://www.finra.org/sites/default/files/2021-06/Regulatory-Notice-21-19.pdf>.

⁴¹ See “Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions”, Securities Exchange Act Release No. 34-93784 (December 15, 2021), available at <https://www.sec.gov/rules/proposed/2021/34-93784.pdf>.

- Technical work to comply with the exception under Exchange Act Rule 15c2-11 for unsolicited transactions from customers who are not insiders and for the expansion of Rule 15c2-11 to cover fixed income securities⁴²
- Recent rule filing by FINRA with the Commission to add modifiers for TRACE reporting of delayed Treasury spot trades and portfolio trades⁴³
- Regulatory notice by the Federal Reserve to expand TRACE reporting to certain bank dealers in Treasury and Agency securities, which will require broker-dealers to coordinate with bank counter-parties for TRACE reporting, matching and error resolution⁴⁴
- Regulatory Notice by FINRA to expand the scope of TRACE reporting for Treasury bonds⁴⁵
- Commission rule proposal to expand the requirements of Regulation ATS and Regulation SCI for alternative trading systems that trade Treasury and Agency securities⁴⁶
- Enhanced regulatory mandates for protection of Personally Identifiable Information (PII) of customers⁴⁷
- Supplemental Liquidity Schedule recently adopted by FINRA⁴⁸
- Proposed Amendments to the margin rules regarding when issued and other extended settlement transactions⁴⁹
- New Beneficial Ownership registry proposed by the Financial Crimes Enforcement Network (FinCEN)⁵⁰.

⁴² See “Publication or Submission of Quotations Without Specified Information”, Securities Act Release 33-10842, Securities Exchange Act Release 34-89891 (September 16, 2020), 85 FR 68124 (October 27, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-10-27/pdf/2020-20980.pdf>.

⁴³ See “Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Rule 6730 To Require Members To Append Modifiers to Delayed Treasury Spot and Portfolio Trades When Reporting to TRACE”, Securities Exchange Act Release No. 34-93699 (December 1, 2021), 86 FR 69337 (December 7, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-12-07/pdf/2021-26452.pdf>.

⁴⁴ See “Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB” (October 21, 2021), 86 FR 59716 (October 28, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-10-28/pdf/2021-23432.pdf>.

⁴⁵ See FINRA Regulatory Notice 20-43, “Trade Reporting and Compliance Engine (TRACE): FINRA Requests Comment on Enhancements to TRACE Reporting for U.S. Treasury Securities”, December 23, 2020, available at <https://www.finra.org/sites/default/files/2020-12/Regulatory-Notice-20-43.pdf>.

⁴⁶ See “Regulation ATS for ATSs That Trade U.S. Government Securities, NMS Stock, and Other Securities; Regulation SCI for ATSs That Trade U.S. Treasury Securities and Agency Securities; and Electronic Corporate Bond and Municipal Securities Markets”, Securities Exchange Release 34-90019 (September 28, 2020), 85 FR 68124 (December 31, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-12-31/pdf/2020-21781.pdf>.

⁴⁷ See “SEC Announces Three Actions Charging Deficient Cybersecurity Procedures” (August 30, 2021), available at <https://www.sec.gov/news/press-release/2021-169>.

⁴⁸ See FINRA Regulatory Notice 21-31, “Supplemental Liquidity Schedule: FINRA Establishes New Supplemental Liquidity Schedule (SLS)”, September 3, 2021, available at <https://www.finra.org/sites/default/files/2021-09/Regulatory-Notice-21-31.pdf>.

⁴⁹ See FINRA Regulatory Notice 21-11, “Margin Requirements: FINRA Requests Comment on Proposed Amendments to the Margin Rule Regarding When Issued and Other Extended Settlement Transactions”, March 15, 2021, available at <https://www.finra.org/sites/default/files/2021-03/Regulatory-Notice-21-11.pdf>.

⁵⁰ See Financial Crimes Enforcement Network, “Beneficial Ownership Information Reporting Requirements”, 86 FR 69920 (December 8, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26548.pdf>.