



January 7, 2022

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

Submitted online via <https://www.sec.gov/regulatoryactions/how-to-submit-comments>

**RE: Reporting of Securities Loans (File No. S7-18-21)**

Dear Ms. Countryman:

BlackRock, Inc. (together with its subsidiaries, “BlackRock”) respectfully submits the following comment letter on the proposed rule, “[Reporting of Securities Loans](#)” (“the proposal”).

BlackRock is generally supportive of the Securities and Exchange Commission’s (“SEC” or “Commission”) efforts to bring more transparency to the securities lending markets. However, we have identified several areas where the proposal should be modified to ensure any new reporting requirements (i) account for the structure and operations particular to securities lending markets, (ii) adequately manage implementation timelines and costs, (iii) align with the objective to simplify and harmonize transaction reporting standards, and (iv) ensure publicly available data is informative to market participants.<sup>1</sup>

BlackRock is a fiduciary to its asset management clients and, consistent with our fiduciary duties, manages assets for many funds and accounts which have chosen to make their portfolios available for securities lending by appointing a lending agent. In many cases, those funds and accounts have appointed a BlackRock affiliate as their lending agent,<sup>2</sup> whereby, consistent with our responsibilities as a fiduciary, BlackRock arranges loans of our clients’ portfolio securities for the purpose of accruing additional revenue to improve fund performance and potentially offset fees and other expenses otherwise borne by the fund or account. We believe doing so is in our clients’ long-term best financial interests. BlackRock

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<sup>1</sup> Note, BlackRock is a 10% owner of Equilend, whose Datalend product is one of the commercially available options for those interested in securities lending data.

<sup>2</sup> BlackRock has two U.S. legal entities that act as lending agents: BlackRock Institutional Trust Company, N.A. (“BTC”) and BlackRock Investment Management LLC (“BIM”). In its capacity as lending agent on behalf of certain funds and accounts, BTC or BIM, as applicable, manages all aspects of a securities lending transaction, including facilitating loans, operational oversight, risk management, and reporting.

also manages assets for funds and accounts that borrow securities, mostly through prime brokerage arrangements.

Our views on the proposal are summarized as follows:

- We recommend the Commission opt for T+1 securities lending reporting instead of the proposal's requirement to report 15 minutes after time of trade. Intraday reporting will be of low informational value that is unlikely to achieve the potential benefits the Commission highlights, given the majority of securities loans are at stable pricing levels throughout the day. The additional cost borne by lenders of reporting 15 minutes after time of trade is significant compared to next-day reporting, on both an initial and ongoing basis. Additionally, the nature of the securities lending markets poses a number of logistical hurdles that will make intraday reporting impractical. In light of these considerations, we believe next-day reporting is a better solution to achieve the Commission's goals.
- To improve the transaction level data collected, we recommend the transaction record for cash collateralized loans include the name of the reference rate used and the spread to that reference rate instead of reporting the rebate rate. While there is a market convention of using the Overnight Bank Funding Rate ("OBFR") as the reference rate, this is a negotiable term between the parties to the lending transaction. The price negotiation centers on the spread to that reference rate, not the rebate, and the rebate will fluctuate daily as the reference rate value changes. Loans where the selected reference rate and spread to that reference rate do not change should be out of scope for loan modification reporting.
- We recommend the Commission provide more clarity on the scope of lenders and loans subject to the proposed requirements. In our view, only traditional securities lending market trades (i.e., transactions whereby a lender lends securities to a borrower in exchange for collateral but excluding repurchase transactions where the purpose of the trade is to provide cash financing in exchange for non-cash collateral) made on behalf of a U.S.-lender (including U.S. domiciled lending funds and accounts and entities subject to U.S. broker-dealer registration requirements) should be in scope for the rule. Non-market trades such as reallocations of existing market loan opportunities by lending agents to different in-scope lending funds and accounts within their lending programs should be excluded as a reportable loan modification. Additionally, as securities lending market dynamics differ by the asset class, we recommend the Commission provide further clarity on which asset classes are in scope.
- In order to avoid misleading data caused by reporting large, pooled loans across lenders at the individual lender level, the Commission should modify the proposal to require the lending agent as a reported field instead of the lender's legal entity identifier ("LEI"). This will avoid the potentially confusing appearance of tens or even hundreds of individual loans that are, in reality, part of the same overall loan transaction negotiated between a

borrower and a lending agent or third-party intermediary on behalf of the underlying lender(s) for an aggregate notional amount.

- When determining scope, the SEC should look to avoid overlap or duplication with Securities Financing Transactions Regulation (“SFTR”) reporting in Europe. We strongly encourage the Commission to minimize the number of individual loans required to be reported under both regimes.
- In setting the implementation date of a final rule, we encourage consideration of the complexity of any new requirements and reporting pathways to allow ample time for compliance. We also recommend the Commission consider a phased approach to implementation by asset class (e.g., begin with reporting for U.S. equity loans and then re-evaluate and determine whether to extend to other in-scope asset classes over time) and structure a timeline with consideration for the number of entities that will be reporting transactions to the dedicated registered national securities association (“RNSA”) for the first time.

Additionally, the Commission should consider ways to report and identify open securities loans initiated before the first day any new requirements are effective; this is the “day-one problem”. As these live loans will continue to be modified until they are eventually terminated, either the Commission or the designated RNSA will need to devise a solution for appropriately incorporating them into the data set.

- The Commission should ensure that direct reporting to the RNSA is logistically feasible for entities that are not broker-dealers to avoid both operational and confidentiality considerations involved with appointing a reporting agent.

### **Frequency of Reporting**

While BlackRock is supportive of transparency of securities lending data, we do not believe there is any additional value to investors in providing intraday data, given the nature of pricing for securities lending transactions, the potential for intraday data to confuse investors, and the unnecessary costs and burdens it would pose to market participants. We recommend that the Commission require next-day reporting (i.e., T+1 reporting).

As a general matter, most of the securities lending market, encompassing loans of so-called “general collateral”, does not exhibit intraday pricing changes. General collateral refers to loans where the supply of lendable securities is more than sufficient to satisfy borrowing demand, and as a result, the pricing of such securities loans is unlikely to change intraday (or even day-over-day). For general collateral securities, which account for 79% of transactions and 87% of market

value of those transactions in the U.S. equity lending market,<sup>3</sup> once the terms of the loan transaction are agreed upon by the parties thereto on the loan's trade date, such terms virtually always remain valid for at least that day. In fact, the pricing of general collateral loans between a lender and borrower often do not change over the course of months or even years. And while loans of securities with a more limited supply and higher demand, commonly referred to as "specials", will see more price movement day over day between a lender and borrower, they are also unlikely to see significant price movement intraday.<sup>4</sup> Additionally, since the vast majority of loans are "open" (i.e., without an agreed upon termination date) and their initial terms are valid for just one day, the incremental value of intraday data relative to next-day is likely marginal at best for market participants. Lenders and borrowers will be able to use next-day reporting if they choose to renegotiate loan terms later in the life of the loan. Finally, with respect to loans of U.S. Treasuries, the Commission should consider that the size of such loans is generally agreed to throughout the first half of the trading day, with a single lending spread for all U.S. Treasury loans of the same type between a specific borrower and lender set later in the day.<sup>5</sup> As a result of these dynamics, we believe that by requiring next-day reporting the Commission can still achieve the benefits of enhanced transparency in the securities lending markets without unintended consequences.

Focusing on the pricing of general collateral loans as an example, lending agents and borrowers generally negotiate the pricing at a single lending spread applicable to all general collateral loans, which may lead to differences in general collateral pricing across borrowers for the same security. However, deviations in general collateral loan pricing are not a function of borrowing demand for the underlying securities; rather they give the borrower or lending agent the ability to negotiate pricing based on a number of other factors including but not limited to the credit worthiness of the counterparties and overall borrowing relationship. Intraday data provided to the public could mislead investors as to the source of pricing deviations, which may be misinterpreted as a byproduct of market dynamics, rather than a function of the broader negotiations between respective borrowers and lenders on general collateral.<sup>6</sup> Allowing investors to only view next-day pricing would mitigate their risk of being misled.

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<sup>3</sup> IHS Markit Data & BlackRock research from January 1, 2021 to December 31, 2021. Additionally, based on BlackRock research, approximately 91% of the U.S. equity lending market traded with virtually no daily price volatility (i.e., standard deviation less than 0.1 basis points).

<sup>4</sup> While specials can exist in any asset class, they are most notable in equities where there can be heightened demand for borrowing a specific issuer's securities. For the period from January 1, 2021 to December 31, 2021, over 90% of BlackRock's most special U.S. Equity lending transactions by volume traded within a range of less than 100 basis points (for the same asset) in a given day with a specific borrower. Specials, in this case, include any security with a lending fee greater than 300 basis points and trades greater than \$1 million in market value.

<sup>5</sup> For the period from January 1, 2021 to December 31, 2021, 92% of BlackRock's U.S. Treasury lending transactions by volume traded at a single daily lending spread.

<sup>6</sup> To illustrate this point, consider the following example: lending agent has negotiated specific general collateral pricing with borrower A and borrower B as (i) OBFR less 5 bps and (ii) OBFR less 10 bps, respectively. If the lending agent, on behalf of a lending fund or account, lends a specific general collateral equity security to both borrower A and borrower B but reports one loan before

Other aspects of the securities lending market also do not align well with intraday reporting. Unlike in other markets, lending trades are not conducted with an implied guaranteed settlement. If the lender cannot facilitate settlement or the borrower fails to accept the pending trade before the market closes on settlement date,<sup>7</sup> the Depository Trust Corporation (“DTC”) will automatically drop the trade, effectively canceling it. Further, trades can be rejected after settlement by either party through a Don’t Know (“DK”) process. This is very different from bond trades subject to TRACE reporting or equity trades executed on an exchange, which are contractual at time of trade with a guaranteed transfer of risk from seller to buyer. Additionally, trades and trade terms can be verbally confirmed well before they are booked into any system; under the proposal, the exact timing of when a trade would need to be reported in these cases would be uncertain. For example, there is no market requirement for when a renegotiated rebate or other trade modification needs to be processed by either party, and many market participants will update these trade terms throughout the day, even after market close. Further, new trades can be executed for market delivery at any time during the day before the close of settlement at DTC. Consequently, some market participants will book trades in batches or at their discretion, as opposed to individually when agreed. These considerations illustrate why other global reporting regimes do not require intraday reporting, as certain activity reported intraday might ultimately not result in an executed trade. Accordingly, investors and the securities lending market would be better served by adopting T+1 reporting, which would ensure only executed trades are disclosed.

Beyond the limited value to investors of producing intraday pricing data, intraday reporting would pose a significant operational and cost burden to the reporting party, on both an initial and ongoing basis. The securities lending industry is familiar with next-day reporting; SFTR reporting requirements, post-trade loan reconciliations between lenders and borrowers and reporting to third-party data vendors are already being done on a next-day basis. Relative to next-day reporting, a move to intraday reporting would likely create an industry-wide obligation to enhance technology and processes in order to produce reports of similar quality and accuracy to the T+1 reporting under SFTR and would increase costs to deliver data throughout the day.<sup>8</sup> This additional cost is likely to be passed on to lenders and could inadvertently disadvantage smaller market participants and make lending uneconomical for some investors.

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the other (due to timing of the trades), such data could be misinterpreted by investors as a fluctuation in market pricing of the equity security. In actuality, the differences in pricing are only a reflection of the overall negotiated general collateral pricing between the lending agent and the specific borrower. If loans are reported on a T+1 basis, this misconception would be avoided because investors have the benefit of the full context of all general collateral trades executed on that day.

<sup>7</sup> Of note, most loans of U.S. equity settle on T+0.

<sup>8</sup> These challenges and costs would be potentially amplified if the same lending transactions were to be reported in both the US and EU/UK.

Overall, next-day reporting would still allow the Commission to fulfill its objective of providing timely pricing information to market participants. This would result in reduced information asymmetries and improved monitoring and surveillance of securities markets by the RNSA and regulators, while effectively balancing those benefits with the cost burden borne by market participants.

### **Transaction Record Data**

We also believe the Commission should reconsider the appropriate transaction record data to best characterize the securities lending markets. When loan transactions are collateralized by cash, the pricing of such trades is based on a lending spread to a reference rate, most commonly OBFR. The spread and the reference rate determine the rebate paid to the borrower. While the Commission proposes reporting of the rebate rate, the more critical data point for pricing is the spread. While the rebate can change daily due to changes in OBFR,<sup>9</sup> the spread only changes if the parties to the loan choose to renegotiate. For a general collateral security, the spread can often remain unchanged for the entire life of the loan. The proposal, however, would consider any changes to the rebate as a repricing, even though the borrower and lender did not actually agree to reprice the loan.

In order to appropriately capture the negotiated terms of the loan, we believe that the transaction record for cash collateralized trades should include the reference rate name as well as the lending spread, instead of the rebate. This would eliminate the need to submit daily loan modifications for each loan in order to reflect changes in rebates due to fluctuations in OBFR (or other applicable reference rates). As a result, loan modification data pertaining to pricing would be restricted to actual renegotiations of the lending spread.

We would also ask that the requirement to report the legal name and/or LEI of the security issuer be removed from the proposal. We believe that many issuers may not have LEIs, and more importantly, the proposal also asks for a security identifier which should provide relevant information, for persons interested in such details.

### **Scope of Reporting**

The proposal does not include specific parameters around the scope of lenders and loans subject to the reporting requirements. As currently drafted, the proposal applies to all “lenders”, which is broadly defined to cover any person who loans a security on behalf of itself or another person.<sup>10</sup> Given the purpose of the proposal is to increase transparency in the securities lending markets, it is important to have clarity around what constitutes a loan of securities in order to ensure consistency with respect to the data provided. Furthermore, without further clarification the proposal may capture transactions outside of the traditional securities lending

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<sup>9</sup> For example, if OBFR is 25 basis points, and the security is priced at OBFR less 10 basis points, the rebate rate paid to the borrower would be 15 basis points. If on the following day OBFR is 27 basis points, then the rebate rate is now 17 basis points.

<sup>10</sup> See Federal Register Vol. 86, No. 233, p69803, footnote 9 for the definition used in the proposal.

market, which may skew the data and negatively impact the utility of the information provided.<sup>11</sup> In defining what constitutes a loan of securities covered by the proposal, the SEC should limit the scope to traditional securities lending transactions where the parties have entered into the loan transaction in order for a borrower to obtain use of the securities for a fee,<sup>12</sup> rather than to provide a lender with cash financing that is collateralized with non-cash collateral.

In order to satisfy a large loan request from a borrower, it is not uncommon for a lending agent to pool together available supply of a given security across multiple lenders in their lending program, into a pooled pass-through account from which to conduct market trades. This allows the lending agent to satisfy significantly larger loan transactions in a single delivery to a borrower instead of settling individual loans from each lending fund or account separately. Given borrowers have a preference for larger, stable trades, and, for most securities, supply far outstrips demand, creating pools of lendable inventory increases the lending funds' and accounts' ability to enter market trades. To allocate these large, bulked loans to individual lending funds' and accounts' inventory, lending agents use algorithms which are constantly allocating and reallocating parts of open loan opportunities throughout the day as the inventory of individual lenders shifts. The ability to reallocate a loan opportunity across various lenders allows the lending agent to avoid recalling the loaned securities from a borrower due to a change in a particular lender's underlying portfolio. Instead, the change in lender is reflected operationally and communicated to the borrower via the Agent Lender Disclosure ("ALD") process. Given no change in the economics of the trade or any physical movement of securities, these intraday record entries are not market trades and should not be reported as such.

Additionally, for loan transactions executed through a third-party intermediary or lending agent, we believe it would be potentially misleading to report the underlying lender(s) because lending transactions are typically negotiated between a lending agent and a borrower for a specified notional amount. Requiring disclosure of the underlying lender(s) could result in a negotiated loan transaction with a borrower being reported as tens or even hundreds of individual loans which may be potentially confusing to investors. Modifying the proposal to require the lending agent as a reported field instead of the lender's LEI would resolve this issue. However, we understand that the Commission might have other reasons for wanting to understand the specific lenders involved in a loan transaction. At the end of the day, lending agents provide borrowers with information on exactly which underlying lenders are party to their bulked trades through the ALD process for

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<sup>11</sup> While the proposal makes reference in footnote 2 (Federal Register Vol. 86, No. 233, p69803) that it is not the intention of the SEC to include repurchase agreements within the scope of the rule, further specificity is needed with respect to which transactions are intended to be covered. Given the similarities between a securities loan and a repurchase transaction, certain securities lending transactions could be executed under an industry standard Master Repurchase Agreement or other non-traditional lending documentation. Therefore, it is important that the SEC provide express guidance on what constitutes a loan of securities in order to ensure the relevant loan transactions are appropriately captured.

<sup>12</sup> A fee can include an interest rate on the cash collateral where the intent is for that interest rate to be below what could be earned in a cash reinvestment fund over the life of the loan.

counterparty exposure analysis purposes. Next-day reporting of multiple individual lenders, along with their respective allocations to each open loan as a private field, could allow the Commission to conduct similar analysis without distorting the publicly reported information on the overall market trades negotiated between lending agents and borrowers.

In addition, we recommend the Commission provide further clarification around the scope of lenders that are subject to the proposal. As noted above, the current definition of “lender” is extremely broad and does not include guidance on how non-U.S. entities (including both lending agents and underlying beneficial owners) are impacted under the proposal. We suggest the Commission expressly limit the scope of reporting to U.S. lenders (including U.S.-domiciled lending funds and accounts and entities subject to U.S. broker-dealer registration requirements) that are engaged in securities lending transactions (as clarified above) either directly or through a third-party intermediary or lending agent. The domicile of the third-party intermediary or lending agent should be expressly excluded as a relevant factor in determining the scope of reporting. Providing explicit parameters around the scope of lenders will not only help to reduce the operational burden of implementing and maintaining a reporting system, but it will also provide more streamlined disclosure with respect to the U.S. securities lending market. In addition, clarifying the scope of lenders as described herein will help reduce overlap with existing reporting regimes such as SFTR.

Under SFTR requirements<sup>13</sup> in Europe, firms domiciled in the EU and the UK<sup>14</sup> are obligated to report securities lending and other financing transactions (e.g., repo and margin lending). However, the scope of the SFTR reporting requirements is determined by the domicile of the lender and/or borrower which enter into a loan transaction and is not driven by the type of instrument being lent. Under the proposal, lenders and lending agents which fall under both reporting regimes may be required to disclose the same loan activity in multiple jurisdictions with different data standards. Therefore, we urge the SEC to draw clear parameters on the scoping points raised herein, thereby offering market participants clarity under which regime reporting obligations fall and, to the extent possible, consistency in reporting fields and timing of reporting.

### **Implementation of Reporting Requirements**

While the Commission did not include an implementation timeline in the proposal, generating the transaction data for transmission is a significant undertaking, requiring meaningful technology development and testing for the designated RNSA as well as most lenders or their lending agents.<sup>15</sup> Any proposed timeline

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<sup>13</sup> Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions.

<sup>14</sup> Since leaving the EU, the UK has mirrored the EU SFTR regime with only small differences in the UK SFTR.

<sup>15</sup> We acknowledge that many market participants transmit certain transaction data to certain commercial data providers today. These existing data transmissions are not in the format



should carefully consider the universe of entities required to report transactions for the first time. As such, we believe the implementation timeline should allow lenders sufficient time to establish internal reporting regimes after the designated RNSA has completed their technology database and requisite testing. In doing so, the Commission should consider its experience in overseeing the establishment of the Consolidated Audit Trail (“CAT”) as the proposal notes the similarities to CAT’s requirements for collection and dissemination of data.

To further alleviate some of these implementation concerns, we also recommend the Commission consider beginning with reporting requirements for loans of U.S. equities only, before evaluating whether to extend reporting to loans of other asset classes. Loans of U.S. equities already mostly occur on electronic trading platforms, making the generation of trade data for these loans more straightforward than for loans of other asset classes.

Additionally, the proposal does not consider a key implementation question regarding the “day-one” problem for reporting existing loans. As the proposal notes, most loans are open-ended without a set termination date. Accordingly, loans are continually resized and rerated until either the lender or the borrower recalls or returns all shares, respectively. Given the longevity of the average loan, there will be a substantial number of loans that exist prior to the implementation date of the reporting requirements, and such loans will likely continue to be modified as long as they remain outstanding.<sup>16</sup> We see three possible paths for handling these “day one” loans: (1) report each loan the first time it is modified after the implementation date as if it were a new loan, (2) provide all existing loans with an identifier on the day of implementation, or (3) exclude all existing loans from all reporting obligations, including reporting of modifications made to those loans after the implementation date.

Finally, we encourage the Commission to ensure that the RNSA provide a direct reporting pathway with equivalent ease of use as the broker-dealer pathway. In our view, lending agents that are not broker-dealers would find it optimal to report directly to the RNSA to avoid both logistic and confidentiality considerations involved with appointing a reporting agent. We note that doing so would require the RNSA to build an interface to receive data from a non-broker-dealer and put in place procedures to govern their relationships with non-broker-dealers. However, understanding that some lenders or their lending agents may prefer the reporting agent option, that path should continue to be available. Additionally, the RNSA that receives the data will need time to determine how they may need to adapt their technology to do so and to establish appropriate processes and procedures for the safe handling of the data. In particular, special attention will need to be paid to the processes surrounding data privacy and confidentiality where applicable.

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specified by the proposal, meaning that new technology builds and process changes will be needed.

<sup>16</sup> Of note, as the proposal considers the termination of an open loan that does not have a preset termination data to be a modification, every loan open on the implementation date will be modified at least once.

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We appreciate the Commission's consideration of our views on the proposed rule and hope our comments and recommendations inform the Commission's assessment of how it might improve the proposal. Should the Commission or staff have questions about our submission, we are pleased to provide additional information at your convenience. Should you have any questions about our views, please reach out to Robert Dunbar ([robert.dunbar@blackrock.com](mailto:robert.dunbar@blackrock.com)).

Sincerely,

Elizabeth Kent  
Managing Director, Global Public Policy Group

Roland Villacorta  
Managing Director, Securities Lending