

Securities & Exchange Commission
100 F Street, NE
Washington DC
20549

The International Securities Lending Association
1 George Yard
London
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January 7th, 2022

Dear Sir/ Madam

Please accept this email in response to proposal *SEC 10c-1 17 CFR Part 240 [Release No. 34-93613; File No. S7-18-21]*

The International Securities Lending Association (ISLA) represents the common interests of securities lending and financing market participants across Europe, Middle East, and Africa, with a geographically diverse membership of over 170 firms, which includes institutional investors, asset managers, custodial banks, prime brokers, and service providers. For further information please visit the following site <https://www.islaemea.org/about-isla/>.

ISLA members request that a response be provided to the SEC regarding File No. S7-18-21, specifically to draw attention to several potential challenges. However, as there exists a degree of uncertainty regarding scope, and therefore the potential to impact ISLA members' activities, this email will be restricted to high-level comment only.

We understand that many U.S. based firms and trade associations will be providing more detailed responses. ISLA would like to specifically endorse the principles detailed by the Securities Lending Council of the Risk Management Association (RMA).

In addition to ISLA's feedback on potential challenges, we would like to include relevant conclusions drawn from the experience of the European Union's Securities Finance Transaction Regulation (SFTR) (Article 4 of (EU) 2015/2365 <https://www.esma.europa.eu/policy-activities/post-trading/sftr-reporting>) and lastly, a brief introduction to current and planned work that intends to facilitate market standardization, transparency and future regulatory reporting.

Regarding questions and challenges raised in the proposal, we would like to note the following comments received from our members:

1) Providing data within 15 minutes of loan effected or modified.

ISLA members have remarked on the technical challenges related to such an undertaking, noting that SFTR reporting is submitted by end-of-day (EOD). This timing provides sufficient transparency to support detailed regulatory oversight in those markets and the onward public reporting of summarized and anonymized data. Please note that some firms do communicate data events sooner, but this is managed on a best-efforts basis and primarily to support the dual-reporting requirements of SFTR.

2) Publication of Securities Lending fees/rebates

Fee/rebate data, without consideration of firm(s) collateral requirements, counterparty/asset exposure(s), applied lending restrictions or jurisdictional obligations, may create an unrealistic and misleading portrayal of prevailing rates. Such fee/rebate data could not be relied upon to support price discovery in the same manner as other markets. Indeed, in relation to other EU based regulations, our market specifically notes that any published fees/rebates cannot be considered as price discovery.

The topic of disclosure, specifically where there is exposure of sensitive financial information into the public domain, triggered discussion about the discretionary nature of securities lending activity, which could result in the cessation of that activity, if required data is disproportional or considered unreasonable.

3) Use of reporting mechanisms

In support of the SFTR reporting obligation, which requires dual-sided reporting, data aggregators and other vendor's technical platforms were utilized to support standardized and validated output. We note that these services considerably reduced the developmental burden of reporting and reinforced both the regulation and industry consensus best practices.

4) Scope

We were advised that up to 18% of lender transactions in the U.S. market are provided by funds outside of the U.S. This statistic implies that a considerable volume of activity may not be captured by the proposed regulation, pending clarity on scope and extraterritoriality.

Members note further gaps may exist in relation to dual listed securities, where the dual listing is outside the U.S.

5) Regulation clarity & timing

With any financial regulation, but especially any regulation regarding data reporting obligations, the clarity of each data point is critical. In relation to the SFTR reporting obligation, we have and continue to host regular meetings for the past 3 years, to find solutions to data issues. In ongoing discussions, Members are still finding issues with simple fields and events such as timestamps, settlement failure, trading venue, maturity date, fee, Legal Entity Identifier, and market valuation. Questions may also be driven by conflicts between primary regulation, later clarifications, and market practices.

ISLA members requested that a special note be made regarding the timing between any regulatory stage and its related delivery date. We would like to draw attention to this concern and see that, although there is some degree of pragmatic recognition of deadlines, the more appropriate the period between regulatory stage and market delivery, the better the quality of outcome and adoption.

We would like to submit for your consideration some further remarks in relation to the experience of SFTR Article 4 transparency reporting. Although a European regulation, its scope extended into other territories and continues to have far reaching implications to the operation and architecture of the securities lending market.

As you may know, SFTR requires the reporting of more than 150 data points across a variety of SFT markets (lending, prime, repo, buy/sell). However, before SFTR reporting began, regulators had already recognized missing data elements. For example, although there are potentially different currencies for valuation, collateral, and billing, SFTR only has one currency field, which therefore requires some workaround. Although currency fields are not a good example for U.S. market, it does highlight the potential drawbacks inherent in the historical approach to regulatory reporting.

Specifically, instructing firms to push a wish list of data points towards a regulator, creates two undesirable dynamics. First, an inability for regulators to quickly amend their data requirements and second, an additional burden on markets to comply with 'new' requirements. Although the SEC 10c-1 proposal requires a relatively small number of fields, the securities lending market, like all global financial markets, is undergoing significant architectural evolution towards tokenization, distributed ledgers and blockchain.

Another significant development to consider, is the imminent arrival of new reporting requirements in support of sustainability transparency. All these developments point to potential changes to the proposed SEC10c-1 content to extend scope, describe new types of market activity, or create another reporting requirement, adding further cost to both market and regulator(s).

Returning to the experience of SFTR, in hindsight the consensus is that, had there been a market standard data representation of securities lending prior to that regulation, SFTR's implementation would have been significantly faster, not required years of consultations and clarifications, would not have required any development by market participants and would have offered regulators a clean view of our markets.

This concept is currently referred to as 'pull versus push' reporting and has been explored by the Financial Conduct Authority (FCA) and the Bank of England (BOE) in the 2019 Digital Regulatory Reporting (DRR) pilot study. Please see the following assessment of the DRR pilot for further details of that work for your reference:

<https://www.fca.org.uk/publication/discussion/digital-regulatory-reporting-pilot-phase-2-viability-assessment.pdf>

In brief, the DRR pilot demonstrated how a regulator could draw data directly from market participants, and then change those requirements without impact to the market and those participants.

We are aware of similar discussions in both Europe and Asia, and recognizing the multiple upcoming technical evolutions, ISLA, the International Swaps & Derivatives Association (ISDA) and the International Capital Markets Association (ICMA) are working with members and other associations to create a consensus derived market data standard. This standard is currently called the Common Domain Model (CDM). The CDM will represent all data elements and the related functions of our respective markets to facilitate settlement efficiency, support future regulatory transparency and simplify migration to new technologies.

Although the approach outlined above might be beyond the scope and mandate of SEC 10c-1, we strongly urge that the support of a market derived data set be considered, both to facilitate the transparency proposed and assist the market in its future development.

We are at your disposal to discuss any of the above points and are most keen to meeting with you to present on the development of the Common Domain Model.

Yours Faithfully

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