



January 7, 2022

Via Electronic Mail (rule-comments@sec.gov)

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

Re: Proposed Rule on Securities Lending Transparency / Reporting of Securities Loans¹
File No. S7-18-21 (Release #: 34-93613; RIN 3235-AN01)

Dear Ms. Countryman:

On behalf of Data Boiler Technologies, I am pleased to provide the U.S. Securities and Exchange Commission (SEC) with our comments on the captioned release concerning the proposed rule. The proposal's intent is to increase the transparency and efficiency of the securities lending market. It will require any person that loans a security on behalf of itself or another person to report the material terms of those securities lending transactions and related information regarding the securities the person has on loan and available to loan to a registered national securities association ("RNSA").

First, are there improvement opportunities to the securities lending sector? Our answer is yes.

Second, does the industry have a need for securities lending related data? The answer is yes, as it is proven by the demand of private data vendors' services.

Third, would improve transparency in securities lending help advance the goals of Securities Exchange Act? Our answer is it depends. In short, "no fish would be able to survive in the pond when the water is overly clear" and we will explain in this comment letter.

Forth, should lenders of securities be required to provide certain terms of their securities lending transactions to an RNSA? Our answer is no. Policy makers may set rule(s) to curb exploitations in securities lending business and boundaries to the lending terms. Yet, commercial practices in securities lending remain a private transaction between the lender and borrower. Reference our comment letter to the SEC dated May 3, 2021 (footnote 28 in particular)², we argue that prior to identifying "symptoms of irregularity", the Commission, RNSAs and other self-regulatory organizations ("SROs"), and other Federal financial regulators (collectively "regulators") should have no right to demand information that is proprietary and deem private assets to its rightful owner. Let's use tax filing with the Internal Revenue Service (IRS) as an illustrating analogy. The IRS asks for income information, but does not ask for the complete detailed transactions unless the party is being investigated for wrong doing and/or summoned in court. Security lending transactions are often complex and may be contingent upon several factors, such as terms, duration, collateral, client business, other transactions, etc.

Fifth, as of today, do regulators have access to essential information in identifying symptoms to potential irregularity in securities lending market? Our answer is yes. Regulators should truly and fully implement the Dodd-Frank Volcker Rule's RENTD (Reasonable Expected Near-Term Demand/ Securities Inventory Plan) requirements. Unfortunately, the Volcker rule has been watered-down (e.g. scrutiny has been reduced to only the largest systemic important banks, "presume" compliance, etc.). There are many tools that regulators can use to prevent undesirable market events and to properly regulate the market, including but not limited to antitrust investigation that we will explain in this comment letter.

Sixth, should securities lending data be collected and consolidated in a centralized database? Our answer is no. What is the intent to collect and consolidate the data in a centralized database? Why is it being collected and how will it be used as

¹ <https://www.sec.gov/rules/proposed/2021/34-93613.pdf>

² https://www.databoiler.com/index_htm_files/DataBoiler%20SEC%20CAT%2020210503.pdf



appropriate? The purpose, the rights and obligations should be clearly identified and delineated. Collecting and consolidating because it can be done is not a useful reason, other than to increase fees and increase certain cloud company profits! Reference our numerous comment letters to the SEC about the “Outdated Design of Consolidated Audit Trail (CAT)”, we advocate that data should be analyzed directly at its source to minimize data-in-motion³. All the non-essential data ‘at-rest’ and ‘in-motion’ makes it more vulnerable to security threats than modernized Real-time analytical platform (RTAP). Data-vault, data-lake, and ‘golden source of data’ are indeed attractive targets for hackers to treasure hunt. Hackers do not necessarily come from outside; compromised internal executive(s) and staff(s) and contractors may pose even higher dangers because of potential cover ups and abilities to profit off any stolen data.⁴ The Central Intelligence Agency – Edward Snowden case⁵ is a prime example. Additionally, the Director of National Intelligence has warned about China and Russia being the biggest threats to the U.S. in the latest assessment report.⁶ An insecure and breached RNSA system can cause the destabilization of the U.S. capital market, which trades in trillion dollars daily.

Besides, the frequent transmittal of data in-and-out and within the propose RNSA’s database (unnecessary data-in-motion traffic) is wastage and more susceptible to defects. When data is ‘at-rest’ rather than ‘in-use’, it serves no value other than one has to pay for storage of the data. As data is redundantly stored at industry members’ systems and at the proposed RNSA’s system and then is regurgitated in bulk to SROs’ systems, causing significant wastage. Real-time analytic platform (RTAP) and modern techniques could be applied closest to the original source of the data to avoid multiplicity of storage and data protection costs. Nevertheless, real-time or velocity of data serves to provide higher values than veracity of data during a market crash’. T+X days regulatory access means unproductive idle time wasted to take timely action in curbing potential abuse, protecting investors, and/or regulating an abnormal market event. Prior to address these wastages, it is unfair and premature to appoint which public or private party is the best to develop this RNSA’s system.

Seventh, should the Commission prescribe FINRA as the de facto RNSA? Our answer is no. It is against governance best practices for open bid. As mentioned in our comment letter to the SEC dated August 16, 2021 (B11 on page 16-17)⁷, the SEC should be mindful about potential cross-subsidization of existing surveillance and cloud processing business of SROs. FINRA and Amazon Web Services (AWS), FINRA’s cloud vendor, should fend off any public concerns about too big to fail (TBTF) by voluntarily providing full disclosure. The SEC should ensure there is no mixed-in and/or cross-subsidizing existing surveillance and cloud processing business. There is a thin line between synergy and potential conflicts of interest. Especially since FINRA holds the SRO power to fine broker-dealers over surveillance system deficiencies.

Eighth, should the Commission nationalize the provision of securities lending data? Our answer is no. Unlike dissemination of consolidated market data via Securities Information Processor (SIP) which the industry looks for a “public utility” and depends on a de facto National Best Bid and Offer (NBBO) as “anchor” for price discovery (also, multi-NBBOs would result in “benchmark reference price arbitrage”), securities lending market does not have such requirement. One of the potential causes that private vendors have yet to satisfy all the demand of securities lending data may be an antitrust issue. If a vendor is majority owned or controlled by the elites, there is an incentive to keep the data exclusively available and affordable only to an elite group of subscribers. The SEC should work with the US Department of Justice (DOJ) to assess whether there is potential antitrust violation or discover ways to better regulate the market rather than jumping into the conclusion of nationalizing a certain private business.

³ https://www.databoiler.com/index_htm_files/DataBoilerInMotion.pdf

⁴ <https://www.linkedin.com/pulse/big-data-privacy-security-control-kelvin-to/>

⁵ <https://www.britannica.com/biography/Edward-Snowden>

⁶ <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2021-Unclassified-Report.pdf>

⁷ https://www.databoiler.com/index_htm_files/DataBoiler%20SEC%20CAT%20Funding%20202108.pdf



The Commission and SROs may subscribe to the proprietary feeds for any non-public data, or seek expressed consent to voluntarily share, or use of its permissible authority to summon the relevant private information. Rulemaking to seek sole benefit for a government agency or the affiliated SROs should be prohibited because it contradicts with serving the public interest. Nevertheless, regulatory reporting has become a cottage of industry benefiting big law, consulting firms and data/ cloud vendors. Securities lending data that was originally private assets will become digits and bits in the RNSA's data vault for plan participants to exploit without pay or summon. Both private rights and the public interest will be impaired. The proposal lacks an objective assessment of the divergence between private and social costs.⁸

Ninth, what aspects have the Proposed Rule on Securities Lending Transparency yet to consider? One of our concerns is: where the funding of the project comes from. As illustrated by our criticism⁹ and the SROs ultimate withdrawal of the CAT funding model proposal,¹⁰ we worry that the RNSA's data project would repeat the same mistakes. If the project funding is a "pay to play" bundled cost to participate in a market, then this "tax" is a barrier of entry inconsistent with the competition, capital formation, and other goals of the Exchange Act. We oppose requiring all Industry Members to pay for the project. Why should one who is doing things fairly and squarely be subjected to regulatory scrutiny and RNSA's system cost burden? Section 31 like fees should be discouraged and avoided wherever possible.

Another concern we have about the project is the potential implications to borrowers and lenders. If the information becomes widely available information, would borrowers be squeezed when all lenders jump in at once to tighten liquidity? A well-run market should consist of diversified players taking diversified investing (including securities lending) perspectives and taking correspondence risks with certain degree of imperfect information.

We are concerned that the rise of the MEME stock phenomena and/or foreign adversaries may exploit this information to potentially speculate or manipulate the market while they hide under the guise of "retail". Be vigilant of rebellious moves by an insurgent or who has the war chest to orchestrate a market wide shake-up. Well-intended policy requires comprehensive measurements to counter all possible adverse consequences, which include but are not limited to the above-mentioned concerns. It will be our honor to engage in any discussions and/or opportunities where our expertise might be helpful.

Tenth, is it possible to conduct effective market surveillance with incomplete data? Our answer is yes. We believe a good decision made now and pursued aggressively is substantially superior to a perfect decision made too late. As in the case of CAT, a golden-source (or a "gigantic data-vault") while well intended is out-of-date. It will take "forever" to produce a "golden" unified "single source of truth". By the time a common standard is adhered, value of the data will subside to be almost worthless in the context of market surveillance. Analysts need sensors, not an encyclopedia. Our counter suggestion is to leverage the "crowd" to reduce unknown unknowns¹¹. Please see Appendix 2 of our comment letter to the SEC dated May 3, 2021².

Other Remarks and Conclusions

We applaud the SEC for the honorable goal to improve the transparency and efficiency of the securities lending market. Yet, we have reservations and concerns about the SEC's proposed requirements. "No fish would be able to survive in the pond when the water is overly clear" is an analogy referring to a phenomenon where transparency could be detrimental to the survival of market participants. Diversified market participants who did the hard work in legitimately obtaining

⁸ <https://iea.org.uk/wp-content/uploads/2016/07/THE%20MYTH%20OF%20SOCIAL%20COST.pdf>

⁹ https://www.databoiler.com/index_htm_files/DataBoiler%20SEC%20CAT%20Funding%20202108.pdf

¹⁰ <https://www.sec.gov/rules/sro/nms/2021/34-93817.pdf>

¹¹ <https://www.pmi.org/learning/library/characterizing-unknown-unknowns-6077>



useful securities lending information for an educated investment decision and bearing the risks of any incompleteness of data may earn a fair reward. For that, one person's trash could be another person's treasure. Policy makers should refrain from burdening market participants who are doing things fairly and squarely; while the related securities lending data vendors may require the SEC and DOJ to conduct further research on possible antitrust issue. The proposal as presented repeats many of the flaws of the outdated design of CAT. We think there are better alternatives. The allowable comment period is too short for a major project like this. In our opinion the proposal lacks a comprehensive study of potential implications to the value-chain¹² and an objective assessment of the divergence between private and social costs⁸. We recommend the Commission go back to the drawing board and revisit the underlying assumptions used in preparing this proposal that "nationalizes" securities lending data.

Feel free to contact us with any questions. Thank you and we look forward to engaging in any discussions and/or opportunities where our expertise might be helpful.

Sincerely,

Kelvin To

Founder and President

Data Boiler Technologies, LLC

CC: The Honorable Gary Gensler, Chairman
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
Mr. Haoxiang Zhu, Director, Division of Trading and Markets

This letter is also available at:

https://www.DataBoiler.com/index_htm_files/DataBoiler%20SEC%20Lending%2020220107.pdf

¹² <https://www.linkedin.com/pulse/smile-curve-changes-securities-value-chain-evolves-kelvin-to/>