

**MEMO# 33911**

November 22, 2021

# **SEC Proposes Rule on Reporting of Securities Loans: ICI Member Call on November 30, at 2:00 pm ET**

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TO: Equity Markets Advisory Committee

SEC Rules Committee RE: SEC Proposes Rule on Reporting of Securities Loans: ICI Member Call on November 30, at 2:00 pm ET

The Securities and Exchange Commission recently proposed rule 10c-1 ("proposed rule") under the Securities Exchange Act of 1934 ("Exchange Act")<sup>[1]</sup> to increase transparency and efficiency in the securities lending market. The proposed rule, which is summarized below, is a mandated rulemaking under Section 984 of the Dodd-Frank Act.

**Comments on the proposal are due 30 days after publication in the *Federal Register*. ICI will hold a members-only call to discuss potential comments on the Proposal on Tuesday, November 30, from 2:00-3:00 pm ET. We will send an Outlook calendar invitation with dial-in information to participate in the call. If you do not receive an invitation and would like to participate, please contact Jennifer Odom at [jodom@ici.org](mailto:jodom@ici.org). Please note that, due to the short comment period, we will look to the members who participate in the November 30 call for feedback on our comment letter. Accordingly, if you are unable to attend the November 30 call, but would like to provide feedback or comment on our draft letter once we prepare it, please provide Jennifer Odom with your contact information.**

## **Background**

Section 984(a) of the Dodd-Frank Act, which was added to the Exchange Act as Section 10(c)(1), provides the SEC with the authority to engage in rulemaking regarding the loan or borrowing of securities. Section 984(b) of the Dodd-Frank Act mandates that the SEC "promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors with respect to the loan or borrowing of securities."<sup>[2]</sup>

The SEC acknowledges that registered investment companies ("funds") are required to make disclosures about their securities lending activities pursuant to Forms N-CEN and N-

PORT, but that parties to securities lending transactions are not currently required to report the material terms of these transactions. The SEC believes that the securities lending market is opaque, and that this lack of public information and these data gaps create inefficiencies in the market. The Commission notes that the March Congressional testimony relating to trading activity in the meme stocks supported the creation of a "consolidated tape" or public data feed of securities lending information.[\[3\]](#) The proposed rule is intended to address these concerns by providing investors and other market participants with access to pricing and other material information regarding securities lending transactions in a timely manner. The proposed rule is also intended to provide a registered national securities association (RNSA)[\[4\]](#) with data that could be used for important regulatory functions. The SEC believes that its proposed reporting requirements will provide beneficial owners and borrowers with better tools to assess current market conditions for securities loans and determine whether the terms they receive for their loans are competitive.

## **Proposed Rule**

Proposed rule 10c-1 would require securities lenders to report the material terms of securities lending transactions to an RNSA on a real-time basis. The proposed rule would apply to securities lending with respect to all securities. Most of the information would need to be reported within 15 minutes of the securities loan being effected or the terms of the loan being modified,[\[5\]](#) and would be made public as soon as practicable.

## ***Who Would be Required to Report?***

Reporting parties would not be limited to securities lending agents, broker-dealers, or even SEC-registered entities. Rather, a lender would include any person that loans a security on behalf of itself or another person, which would include banks, investment companies, insurance companies, and pension plans, among others.

The SEC proposes a hierarchy of reporting, however, as follows:

- If a beneficial owner of securities uses an intermediary that is a bank, clearing agency, or broker-dealer to loan its securities, the lending agent would have the obligation to report the information required by proposed rule 10c-1 to an RNSA.[\[6\]](#)
- Persons with a reporting obligation under the proposed rule, including beneficial owners and lending agents, could use a broker-dealer that agrees to act as a "reporting agent," for purposes of proposed rule 10c-1, and report the information required by the rule to an RNSA on their behalf.[\[7\]](#) To do so, the lender must enter into a written agreement with the reporting agent that includes terms specified in the proposed rule, and provide the reporting agent with timely access to the information required to be reported.[\[8\]](#) The reporting agent would be required to establish, maintain, and enforce written policies and procedures reasonably designed to ensure its compliance with proposed rule 10c-1 and maintain books and records regarding the securities lending information it reports. The reporting agent would be required to provide the RNSA with a list of each beneficial owner or lending agent on whose behalf it is reporting securities lending information and update the list by the end of the day when the list changes.
- If a beneficial owner does not employ a lending agent or enter into a written agreement with a reporting agent, the beneficial owner would be responsible for complying with the requirements of proposed rule 10c-1 to report securities lending information to an RNSA. The Commission recognizes that some large beneficial owners run their own lending programs and do not use a lending agent, and

preliminarily believes that, if the proposed rule is adopted, such beneficial owners likely would enter into a written agreement with a reporting agent.

### ***What Information Would be Required to be Reported?***

Proposed rule 10c-1 would require the following terms of a securities loan to be reported to an RNSA within 15 minutes of effecting a securities loan. The RNSA would make the information public as soon as practicable.<sup>[9]</sup> To track the securities lending transaction, the proposed rule would require the RNSA to assign each securities lending transaction a unique transaction identifier. These proposed terms include:

- Legal name of the issuer of the securities to be borrowed and the LEI, if any;
- The ticker symbol, ISIN, CUSIP, or FIGI of the security, if assigned, or other identifier;
- Time and date of the loan;
- Name of the platform or venue, if one is used;
- Amount of securities loaned;
- Rates, fees, charges and rebates for the loan as applicable;
- Type of collateral used to secure the loan and the percentage of the collateral provided to the value of the loaned securities;
- Termination date of the loan, if applicable; and
- Borrower type, e.g., broker, dealer, bank, customer, clearing agency, custodian.

For modifications to securities loans, the proposed rule would require that a lender report to an RNSA, within 15 minutes after each loan is modified, the following information, if the modification results in a change to the information required to be provided to the RNSA listed above:

- The date and time of the modification;
- A description of the modification; and
- The unique transaction identifier assigned to the original loan.

The RNSA would be required to make such modification information public as soon as practicable.

Proposed rule 10c-1 would require that additional loan terms be reported to the RNSA but these terms would not be made public, including:

- The legal names of the parties to the loan and their identifiers (CRD, IARD, MPID, LEI, as applicable);
- When the lender is a broker-dealer, whether the security loaned to its customer is loaned from the broker-dealer's inventory; and
- Whether the loan will be used to close out a fail to deliver pursuant to rule 204 of Regulation SHO or whether the loan is being used to close out a fail to deliver outside of Regulation SHO.

Proposed rule 10c-1 also would require that, by the end of each business day, detailed information regarding a lender's total amount of securities on loan or available to loan be reported to an RNSA, including:

- The legal name of the security issuer and its LEI, if it has one;
- The ticker symbol, ISIN, CUSIP, or FIGI of the security, if assigned, or other identifier;
- For lending agents, information about the total amount of each security available to lend (i.e., not subject to legal or other restrictions that prevent it from being lent) by

- the lending agent, as well as the total amount of each security on loan;
- For lenders that do not employ a lending agent, the total amount of each security available to lend, as well as the total amount of each security on loan owned by the person.

Due to the sensitivity of this information, it would be made publicly available by the RNSA only on an aggregated basis, and the RNSA would be required to keep confidential, subject to applicable law, identifying information about lending agents, reporting agents, and other persons using reporting agents.<sup>[10]</sup>

### ***What Could an RNSA Do with the Information?***

The proposed rule would require the RNSA to implement rules regarding the format and manner to administer the collection and distribution of the securities lending information required to be reported. The RNSA would be required to retain the information reported under the proposed rule in a convenient and usable standard electronic data format that is machine readable and text searchable for a period of five years. The RNSA would be required to make available to the public, without charge and without use restrictions, for a period of at least five years, the information required to be made public under the proposed rule. The Commission preliminarily believes this information should be available on the RNSA's website or a similar means of electronic distribution. The RNSA would be required to make the information collected pursuant to rule 10c-1(a)(2)(iii) and (b)-(e) available to the SEC or other persons, such as SROs or other regulators, as the Commission may designate by order upon a demonstrated regulatory need. The RNSA would be required to establish, maintain, and enforce reasonably designed written policies and procedures to maintain the security and confidentiality of the information that would be required to be reported under proposed rule 10c-1(d) and (e)(3).

### ***How Much Would It Cost to Report?***

The SEC proposes that the RNSA would establish and collect reasonable fees from each person who reports data directly to the RNSA. The Commission would oversee the fees the RNSA proposes to charge, and the proposed fees would be published for notice and public comment.

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### **endnotes**

<sup>[1]</sup> Reporting of Securities Loans (November 18, 2021), available at <https://www.sec.gov/rules/proposed/2021/34-93613.pdf> ("Proposing Release"). The SEC's fact sheet on the Proposal is available at <https://www.sec.gov/rules/proposed/2021/34-93613-fact-sheet.pdf>.

<sup>[2]</sup> The SEC notes that Section 984 is limited to securities, and thus the Proposal does not extend to repurchase agreements.

<sup>[3]</sup> Proposing Release at text accompanying nn. 11-12.

[4] At this time, FINRA is the only RNSA.

[5] For purposes of the proposed rule, a loan is considered "effected" when it is agreed to by the parties. Similarly, a loan is considered "modified" when the parties agree to the modification.

[6] The SEC preliminarily believes that responsibility for failing to provide the information required by proposed rule 10c-1 to an RNSA should be directly on the lending agent because the lending agent is directly responsible for the loan of securities and may have information about the securities loans that the beneficial owner does not have. Proposing Release at 32.

[7] The SEC explains that only SEC-registered broker-dealers could serve as reporting agents because they are directly regulated by the Commission.

[8] The SEC explains that a beneficial owner or securities lending agent that enters into a written agreement with a reporting agent would not be obligated to provide the information required by proposed rule 10c-1 to an RNSA. If, however, the reporting agent is unable to provide the information to the RNSA because it lacks timely access to it, the person who entered into the written agreement with the reporting agent would be responsible for providing the information to the RNSA. For these purposes, "timely access" would mean that the reporting agent has access to the information within 15 minutes after the securities loan is effected or the terms of the loan are modified.

[9] For most of the data elements, the Commission does not specify what "soon as practicable" means, except for data required by proposed rule 10c-1(e), for which "as soon as practicable" would mean not later than the next business day.

[10] The SEC requests comment, however, on whether the RNSA should not aggregate the information by security; whether the SEC should require the RNSA to make the information publicly available in a manner that identifies the lender if that lender volunteers to make the information public; and whether, to avoid the provision of information about individual market participants' proprietary portfolios, the Commission should limit the requirement to provide this information to lending programs that pool the securities of multiple beneficial owners. See Proposing Release at pp. 63-65 (Questions 43, 44, 50).