

**MEMO# 33962**

December 16, 2021

## **ICI Draft Letter on SEC's Proposal on Reporting of Securities Loans - Your Comments Requested by December 23**

[33962]

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TO: Equity Markets Advisory Committee

SEC Rules Committee RE: ICI Draft Letter on SEC's Proposal on Reporting of Securities Loans - Your Comments Requested by December 23

As discussed previously, the Securities and Exchange Commission recently proposed rule 10c-1 ("Proposal") under the Securities Exchange Act of 1934 to increase transparency and efficiency in the securities lending market.[\[1\]](#)

**ICI has prepared the attached draft letter for your review and comment. Please provide your written comments to me at [sarah.bessin@ici.org](mailto:sarah.bessin@ici.org) by next Thursday, December 23 or, at the very latest, Friday, December 31. Please note that I have included numerous questions throughout the draft on which I am seeking your input and feedback. I apologize for the short turnaround, but comments are due to the SEC on Friday, January 7 and I know many members will be away during the holidays.**

ICI's draft letter supports the objective of the Proposal to provide investors and other market participants with access to pricing and other material information about securities lending transactions in a timely manner. The Proposal would create a consolidated tape for reporting of securities loans administered by FINRA. ICI does not support the Proposal as drafted, however, because it does not accurately reflect the operation of the securities lending market and would not result in accurate, useful data that would achieve the SEC's objective. Further, the significant operational challenges raised by the Proposal's impractical reporting requirements would result in increased costs that would undermine the benefits of securities lending to funds and their shareholders.

ICI's draft letter makes the following key points:

- The SEC should extend the comment period for the Proposal—a 30-day comment period is too short for market participants to provide meaningful feedback on this important and complex rulemaking.

- Securities lending is an important tool for funds to generate additional income for the fund that is used to offset fees and transaction costs and improve fund returns and provides important benefits to the capital markets. ICI supports transparency of key data about securities lending activity and notes the extensive reporting and disclosure funds currently provide regarding their securities lending activities. The SEC's proposed reporting requirements do not accurately reflect how the securities lending market operates, however, and are based on outdated information about the securities lending market structure.
- ICI supports the Proposal's single-sided reporting approach in which securities lending agents or broker-dealers that serve as "reporting agents," for purposes of proposed rule 10c-1, would have the primary obligation to report.
- The proposed rule's 15-minute reporting requirement, which is based on the reporting timeframe for transactions in corporate fixed income securities under FINRA's TRACE system, is not feasible and does not reflect how securities loans are transacted.
- ICI recommends that the SEC clarify the scope and applicability of the rule. First, we urge the Commission to not include all securities within the proposed rule, but instead limit the initial rollout of any final rule to loans with respect to US equities. Second, the SEC should limit proposed rule 10c-1 to traditional securities loans made under industry-standard lending documentation, such as the Master Securities Loan Agreement (MSLA). Third, we recommend that the SEC require reporting only above a de minimis threshold of securities lending activity.
- We encourage the SEC to analyze and clarify the cross-border implications of the Proposal. The intent of proposed rule 10c-1 appears to be to increase transparency of securities lending information with respect to the US markets for the benefit of US brokers, dealers, and investors. This is not clear from the Proposal, however, which appears to have a broad reach. More generally, the Commission must ensure that any final reporting regime provide the clarity and certainty that beneficial owners, lending agents, and reporting agents will need to comply and report accurately.
- The Commission should modify the proposed rule's requirement to report, as of the end of the day, the "total amount of each security that is not subject to legal or other restrictions that prevent it from being lent ('available to lend') . . ." This number, which does not reflect regulatory restrictions applicable to funds, would result in an inaccurate and inflated number of securities that are actually available to lend.
- The Commission does not adequately consider the costs and benefits of the proposed rule and, in particular, the considerable costs it will impose on fund shareholders.
- We urge the Commission to require that FINRA make public only on an aggregated basis the data that would be required to be reported within 15 minutes. Further, the SEC should strongly consider the approach taken by FINRA with respect to TRACE of not publicly disseminating trading data for a newly reported asset class until FINRA and market participants have had an opportunity to gain experience with reporting data for that asset class.
- To protect the confidential securities lending information that would be reported to FINRA under proposed rule 10c-1, the SEC should impose explicit confidentiality obligations with respect to this data on lending agents, reporting agents, and FINRA. The SEC also should impose data security obligations on FINRA, given it will serve as a repository of a large amount of sensitive and non-public securities lending data.
- The SEC and FINRA must provide a sufficiently long implementation period for beneficial owners, lending agents, and reporting agents to take the myriad steps that will be necessary to comply with any final rules, including implementing rules promulgated by FINRA. Implementation should provide for phase in of reporting requirements by reporting party and by asset class. We also recommend that the SEC

or FINRA confirm that securities loans that are outstanding on the applicable phase-in date are not required to be reported to FINRA.

Sarah A. Bessin  
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**endnotes**

[1] For a summary of the Proposal, please see ICI Memorandum No. 33911 (Nov. 22, 2021), available at <https://www.ici.org/memo33911>.

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