

MEMO# 33986

January 7, 2022

ICI Files Comment Letter with SEC on Proposed Reporting of Securities Loans

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TO: ICI Members
Investment Company Directors
Equity Markets Advisory Committee
Fixed-Income Advisory Committee
Investment Advisers Committee
Operations Committee
SEC Rules Committee SUBJECTS: Cybersecurity
Fees and Expenses
Fixed Income Securities
Investment Advisers
Operations
Trading and Markets RE: ICI Files Comment Letter with SEC on Proposed Reporting of Securities Loans

ICI has filed a comment letter with the Securities and Exchange Commission on proposed rule 10c-1 ("Proposal") under the Securities Exchange Act of 1934, which would require the reporting of securities loans to FINRA.[\[1\]](#) ICI's letter is attached and is summarized briefly below.

ICI supports the objectives of the Proposal to provide investors and other market participants with greater market transparency and to facilitate regulatory oversight. We do not support the Proposal as drafted, however, because it would not result in accurate, useful data that would help achieve the SEC's objectives. Further, the Proposal's impractical reporting obligations would result in increased costs that would undermine the important benefits of securities lending to funds and their shareholders. The letter urges the SEC to extend the comment period for the Proposal, explaining that a 30-day comment period is too short for market participants to provide adequate feedback on this important and complex rulemaking.

The letter explains that securities lending is an important tool for funds to generate additional income for the fund and add to fund returns, thus directly benefitting fund shareholders. Securities lending also provides important benefits to the capital markets. The letter notes that funds are among the most conservative of securities lenders and

highlights the strict regulatory limits under which they engage in securities lending, as well as the extensive reporting and disclosure funds currently provide regarding their securities lending activities.

Reporting Party

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. We recommend, however, that the SEC not limit permitted "lending agents" for purposes of the rule to banks, clearing agencies, brokers, or dealers, as proposed, but instead permit any lending agent that acts as an intermediary to a loan of securities to report on behalf of a beneficial owner.

Reporting Time Frame

The proposed rule's 15-minute reporting requirement, which is based on the reporting time frame for transactions in corporate fixed income securities under FINRA's TRACE system, is not feasible and does not reflect how securities loans are transacted. The SEC should, instead, require that information about securities loans be reported on a T+1 basis or, at the earliest, the end of the business day the loan is effected.

Scope and Applicability of Rule

ICI recommends that the SEC clarify the scope and applicability of the rule. First, we urge the Commission to not initially include all securities within the proposed rule, but instead limit the initial rollout of any final rule to loans of US-listed equity securities, and evaluate whether to expand the reporting obligation to additional asset classes, as appropriate. Second, the SEC should make explicit within any final rule the types of securities loans to which rule 10c-1 would apply so that market participants have clarity as to which types of securities loans must be reported.

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 market participants will need to comply and report accurately.

Securities Available to Lend

The Commission should eliminate 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 inflated estimate of securities that are actually available to lend. If the SEC nonetheless requires that this information be reported, it should require FINRA to keep it confidential and not disseminate it publicly.

Cost-Benefit Considerations

The Commission does not adequately consider the costs and benefits of the proposed rule and, in particular, the considerable costs of the rule to fund shareholders. Securities lending is an important and beneficial source of income to fund shareholders. The rule's costs ultimately will come directly out of the pockets of beneficial owners, including funds and their shareholders, to the detriment of their long term interests. Such costs may result in higher costs to administer a securities lending program or the potential decision by a fund

that it no longer is economically worthwhile to operate a securities lending program, in either case lowering fund returns for shareholders.

Confidentiality Concerns

ICI urges the Commission to require that FINRA make public only on an aggregated basis any 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 on FINRA with respect to this data. We also urge the SEC to ensure that FINRA has appropriate cybersecurity measures to protect the enormous volume of sensitive and confidential data that will be reported to it under the rule.

Implementation Considerations

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. ICI also recommends that the SEC clarify its approach to reporting of securities loans that are outstanding when rule 10c-1's reporting obligations commence.

Sarah A. Bessin
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endnotes

[1] Reporting of Securities Loans, 86 Fed. Reg. 69802, 69804 (Dec. 8, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-25739.pdf>.

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