

**MEMO# 35503**

November 6, 2023

# SEC Adopts Final Rule on Securities Loan Reporting

[35503]

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TO: Derivatives Markets Advisory Committee

Equity Markets Advisory Committee

Investment Advisers Committee

SEC Rules Committee SUBJECTS: Disclosure

Fees and Expenses

Investment Advisers

Operations

Trading and Markets RE: SEC Adopts Final Rule on Securities Loan Reporting

On October 13, the Securities and Exchange Commission adopted new Rule 10c-1a ("Final Rule") under the Securities Exchange Act of 1934 ("Exchange Act"),[\[1\]](#) which is intended to increase transparency and efficiency in the securities lending market. We were pleased that the Final Rule was modified in important respects from the proposed rule,[\[2\]](#) reflecting many of ICI's comments.[\[3\]](#)

The Final Rule will require any "covered person" who agrees to a "covered securities loan" to provide specified information to a registered national securities association (RNSA).[\[4\]](#) Notably, as recommended by ICI and other commenters, the SEC will not require 15-minute reporting of securities loans—the rule instead provides that securities loans must be reported to an RNSA by the end of the day that the loan is effected or modified. The RNSA will be required to make certain information public no later than the morning of the next business day. However, the publication of the amount of an individual loan will not be published until the 20th business day after the loan is effected. An RNSA will publish information pertaining to aggregate transaction activity and distribution of loan rates for each security. As recommended by ICI, the Commission will not require reporting of securities available to lend. The Final Rule is summarized below.

## Who is Required to Report?

Under the Final Rule, a "covered person" means (1) any person that agrees to a covered securities loan on behalf of a lender ("intermediary") other than a clearing agency when providing only the functions of a central counterparty or central securities depository; (2) any person that agrees to a covered securities loan as a lender when an intermediary is not

used, unless the borrower is a broker or dealer borrowing fully paid or excess margin securities; or (3) a broker or dealer when borrowing fully paid or excess margin securities.<sup>[5]</sup> This definition reflects changes from the proposed rule intended to provide clarity to market participants, as requested by ICI and others. Also as recommended by ICI, it does not limit permitted lending agents to banks, clearing agencies, or broker-dealers, as proposed. Instead, the Final Rule defines an "intermediary" to include "any person that agrees to a covered securities loan on behalf of a lender."<sup>[6]</sup>

Under the Final Rule, an intermediary is required to report Rule 10c-1a information to an RNSA. If a covered securities loan consists of a broker or dealer borrowing fully paid or excess margin securities, only the broker or dealer is required to provide the Rule 10c-1a information to an RNSA, not the lender.

The Final Rule also permits a covered person to rely on a reporting agent—a broker, dealer, or registered clearing agency—to satisfy its reporting obligations if the covered person: (i) enters into a written agreement with the reporting agent that agrees to provide the Rule 10c-1a information to an RNSA on behalf of the covered person,<sup>[7]</sup> and (ii) provides the reporting agent with timely access to the Rule 10c-1a information so the reporting agent can report on the covered person's behalf. The Final Rule imposes requirements on a reporting agent, including that the reporting agent must establish, maintain, and enforce written policies and procedures reasonably designed to ensure its compliance with Final Rule 10c-1a and maintain books and records regarding the securities lending information it reports. The reporting agent also must provide the RNSA with a list of each covered person on whose behalf it is reporting securities lending information and update the list by the end of the day when the list changes.<sup>[8]</sup>

The Commission notes that, while a covered person may use a third-party vendor to assist in its Rule 10c-1a reporting, the covered person will remain liable for its reporting obligation to the RNSA. If a covered person uses a reporting agent and satisfies the conditions of the Final Rule, however, the covered person may rely on the reporting agent to fulfill its Rule 10c-1a reporting obligation.

## **Which Securities Loans are Subject to Reporting Under the Final Rule?**

In response to comments of ICI and other commenters, the Commission somewhat limited the scope of securities and loans subject to reporting under the Final Rule. It defines a "reportable security" as any security or class of an issuer's securities for which information is reported or required to be reported to the consolidated audit trail as required by Rule 613 of the Exchange Act and the CAT NMS Plan (CAT), the Financial Industry Regulatory Authority's Trade Reporting and Compliance Engine (TRACE), or the Municipal Securities Rulemaking Board's (MSRB) Real-Time Transaction Reporting System (RTRS), or any reporting system that replaces one of these systems.

The Final Rule defines a "covered securities loan" as a transaction in which any person on behalf of itself or one or more other persons, lends a reportable security to another person. The definition excludes a position at a clearing agency that results from central counterparty services or central securities depository services. The definition also excludes the use of margin securities by a broker or dealer unless the broker or dealer lends such margin securities to another person.

The Commission clarified that a repurchase agreement is not a "covered securities loan" for purposes of the Final Rule, and that short sales do not need to be reported as securities

loans but that securities loans used to cover short sales must be reported under the Final Rule.

## **What Information Must be Reported?**

The Final Rule requires that a covered person report the following terms of a securities loan to an RNSA by the end of the business day on which a loan is effected.[\[9\]](#) This reflects a significant change from the proposed rule, which would have required reporting within 15 minutes of effecting a securities loan. Under Final Rule 10c-1a(c), the data elements that must be reported 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.

In response to comments of ICI and other commenters, the Commission is not requiring reporting of securities available to loan or securities on loan.[\[10\]](#) The Commission had proposed to require this information so that market participants could calculate a "utilization rate" for each security, which could then be used to evaluate whether the security would be difficult or costly to borrow. The Commission, however, agreed with commenters "that there may be challenges to the collection of accurate securities on loan data" and explained that the Final Rule will require an RNSA to make public disaggregated data regarding the amount of a security loan only on a delayed basis, on the twentieth business day after the covered securities loan is effected, in order to protect the sensitive nature of individual securities lending amount information.

For modifications to securities loans, Final Rule 10c-1a(d) requires that a covered person report to an RNSA, by the end of the day on which a covered securities 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;
- The specific modification and data element being modified; and
- The unique transaction identifier assigned to the original loan.

In response to the comments of ICI and other commenters, the Commission clarified the reporting of "day-one loans"—securities loans that are agreed to prior to the implementation date of the Final Rule. The Commission noted that, under the Final Rule, an RNSA must assign a unique identifier to a pre-existing covered securities loan and a covered person is required to report each "day-one loan" the first time the loan is modified after the Reporting Date, as discussed below.[\[11\]](#)

Under the Final Rule, the RNSA must assign each covered securities loan a unique identifier and, with certain exceptions, is required to make public the data elements above regarding securities loans and modifications to securities loans as soon as practicable, but no later than the morning of the business day after the covered loan is effected or modified.[\[12\]](#)

Also by the morning of the next business day, the RNSA must make publicly available, on a daily basis, information regarding the aggregate transaction activity and distribution of loan rates for each reportable security and security identifiers for which an RNSA determines it is appropriate to identify. The RNSA will not make public information about the amount of reportable securities loaned, or the loan and security identifying information, until the twentieth business day after the covered securities loan is effected or modified.

Final Rule 10c-1a(e) requires that additional loan terms be reported to the RNSA, by the end of the day on which a covered loan is effected, but the RNSA will not make these data elements 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.

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

The Final Rule requires 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 must retain the information reported under the Final 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 is required to make available to the public, without use restrictions, for a period of at least five years, the information required to be made public under the proposed rule. The information must be made publicly available on the RNSA's website or a similar means of electronic distribution.

The RNSA is required to make the information collected pursuant to Final Rule 10c-1a(b)(4)[\[13\]](#) and (c)-(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 is required to establish, maintain, and enforce reasonably designed written policies and procedures to maintain the security and confidentiality of the information required to be reported under Rule 10c-1(e) (the confidential data elements of the Final Rule).

### **How Much Will It Cost to Report and Obtain Data?**

The Final Rule provides that the RNSA may establish and collect reasonable fees from each person who reports data to the RNSA. The Commission will oversee the fees the RNSA proposes to charge, and the proposed fees will be published for notice and public comment.

In a change from the proposed rule, the Commission also will permit the RNSA to establish and collect reasonable fees for public access to the data. These fees also will be overseen by the Commission and the proposed fees will be published for notice and public comment.

### **How Will the Final Rule Apply on a Cross-Border Basis?**

In response to requests for clarity from commenters, including ICI, regarding the cross-border application of the Final Rule, the Commission stated that the Final Rule's reporting requirements generally will apply "whenever a covered person effects, accepts, or facilitates (in whole or in part) in the [United States] a lending or borrowing transaction." The Commission disagreed with comments recommending that the Final Rule exclude non-

US residents, stating its intent that the Final Rule include borrowing and lending transactions by non-US persons "when those transactions are effected, accepted, or facilitated (in whole or in part) within the [United States] . . ."

## **When Will the Commission Require Compliance with the Final Rule?**

Rule 10c-1a will become effective on January 2, 2024 ("Effective Date"). The compliance dates for Final Rule 10c-1a require that: (1) an RNSA propose rules to implement Rule 10c-1a within four months of the Effective Date and that such RNSA rules are effective no later than 12 months after the Effective Date; (2) covered persons report the information required by Rule 10c-1a to an RNSA starting on the first business day 24 months after the Effective Date ("Reporting Date"); and (3) an RNSA make specified information publicly available within 90 calendar days of the Reporting Date.<sup>[14]</sup>

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### **Notes**

[1] Reporting of Securities Loans, Securities Exchange Act Rel. No. 34-98737 (Oct. 13, 2023), 88 Fed. Reg. 75644 (Nov. 3, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-11-03/pdf/2023-23052.pdf>. The Final Rule was approved on a 3-2 vote, with Commissioners Peirce and Uyeda dissenting. For the commissioners' statements, see [Chair Gensler's Statement](#), [Commissioner Peirce's Statement](#), [Commissioner Crenshaw's Statement](#), [Commissioner Lizárraga's Statement](#), and [Commissioner Uyeda's Statement](#).

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

[3] ICI's January 7, 2022 comment letter is available at <https://www.sec.gov/comments/s7-18-21/s71821-20111347-264956.pdf> ("ICI Comment Letter").

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

[5] Final Rule 10c-1a(j)(1).

[6] In response to comments, the definition of "covered person" excludes a clearing agency when providing only the functions of a central counterparty or a central securities depository.

[7] In response to commenters' concerns about reporting agents maintaining confidential data received from covered persons, the Commission noted that this agreement could be used by the covered person and the reporting agent to document any measures to which they agree regarding the protection of the covered person's Rule 10c-1a information.

[8] See Final Rule 10c-1(b).

[9] The Commission clarified that covered securities loans must be reported after the parties agree to the loan, which is before settlement.

[10] Securities "available to lend" would have been defined as "the total amount of each security that is not subject to legal or other restrictions that prevent it from being lent" and "security on loan" would have been defined as the total amount of each security on loan that has been contractually booked and settled.

[11] See Final Rule 10c-1a(d)(2).

[12] This is a change from the proposed rule, which would have required that the RNSA make the information public "as soon as practicable."

[13] Final Rule 10c-1a(b)(4) requires that a reporting agent provide an RNSA with a list naming each covered person on whose behalf the reporting agent is providing Rule 10c-1a information to an RNSA, as well as any updates to that list, by the end of the date such list changes.

[14] The Commission did not provide for phased reporting of securities loans under the Final Rule. ICI had recommended that the Commission tailor the final rule to initially apply only to loans of US-listed equity securities, and only consider expanding the scope of securities subject to the rule once FINRA and market participants have an adequate opportunity to establish reporting systems, gain familiarity with the reporting obligation, and determine whether adjustments may be necessary.