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SEC Adopts Rule to Enhance the Transparency of Securities Lending Market.

On October 13, 2023, the SEC issued a [release](#) (the “Release”) adopting new Rule 10c-1(a) (the “Rule”) under the Exchange Act “to increase the transparency and efficiency of the securities lending market” by requiring certain persons to report information about securities loans to a registered national securities association (an “RNSA”). In addition, the Rule requires (i) certain confidential information to be reported to an RNSA to enhance its oversight and enforcement functions and (ii) an RNSA to make certain information it receives, including daily information pertaining to aggregate transaction activity and the distribution of loan rates for each reportable security, available to the public. Currently, FINRA is the only RNSA.

Summary Rule Requirements

- For each “covered securities loan,” the Rule requires a “covered person” to provide to an RNSA the material terms of the transaction – in the format and manner required by the RNSA – by the end of the day on which the securities loan is effected or the terms of the loan are modified.
- Covered persons may rely on reporting agents to provide the required information to an RNSA.
- An RNSA is required to make publicly available certain information about reported securities loans, either on a transaction-by-transaction basis or an aggregate basis.

Reporting Requirements for Covered Persons

In General. The Rule requires any “covered person” who agrees to or modifies a “covered securities loan” on behalf of itself or another person to provide to an RNSA the information specified in the Rule. This information (the “Rule 10c-1a information”) must be provided in the format and manner required by the RNSA’s rules no later than the end of the day on which a covered securities loan is effected or modified.

A covered person may rely on a “reporting agent” to satisfy its obligation to provide Rule 10c-1a information if the covered person (i) enters into a written agreement in which the reporting agent agrees to provide Rule 10c-1a information to an RNSA on behalf of the covered person in accordance with the reporting agent requirements specified within the Rule, and (ii) provides the reporting agent with timely access to Rule 10c-1a information.

Covered Person and Reporting Agent. A “covered person” is any of the following:

1. An entity that agrees to a “covered securities loan” on behalf of a lender (an “intermediary”);¹
2. A lender that agrees to a covered securities loan when an intermediary is not used; or
3. A broker-dealer when borrowing fully paid or excess margin securities pursuant to Rule 15c3-3(b)(3) of the Exchange Act.³

A “**reporting agent**” is any broker-dealer or registered clearing agency that enters into a written agreement with a covered person that satisfies the conditions described above.

- The Release states that the Rule “does not prohibit the use of third-party vendors by covered persons.” However, a covered person’s use of a third-party vendor that is not a reporting agent does “not relieve a covered person of its obligation to report Rule 10c-1a information to an RNSA, as reliance on a reporting agent would.”
- The Rule requires a reporting agent to establish, maintain and enforce written policies and procedures that are reasonably designed to provide Rule 10c-1a information to an RNSA as specified in the Rule.
- A reporting agent is required to provide an RNSA with a list naming each covered person on whose behalf it is providing Rule 10c-1a information, as well as providing that RNSA with an update to that list by the end of each day that the list changes. In addition, a reporting agent is required to maintain records of (i) Rule 10c-1a information obtained by the reporting agent from a covered person with the time of receipt and the time of transmission to an RNSA of that information and (ii) its written agreements with covered persons.

Reportable Security and Covered Security Loan. A “**reportable security**” is “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 under] the Exchange Act and the [Rule 613-mandated] CAT NMS Plan (“CAT”), [FINRA’s] Trade Reporting and Compliance Engine (“TRACE”), or the Municipal Securities Rulemaking Board’s Real Time Reporting System (“RTRS”), or any reporting system that replaces one of these systems.”

- The Release notes that the Rule’s definition of reportable security aligns with “securities for which transactions are currently being reported to existing reporting regimes” (i.e., CAT, TRACE, and RTRS).

A “**covered securities loan**” is a “transaction in which any person on behalf of itself or one or more other persons, lends a reportable security to another person.”³

Rule 10c-1a Information and Reporting Deadlines

Rule 10c-1a information falls into one of the following three categories.

Data Elements. For each covered securities loan, Rule 10c-1a information includes 12 specific “data elements,” including the name and LEI of the security issuer, the amount of the reportable securities loaned and collateral to secure the loan, and information relating to fees and charges associated with the loans. The complete list of the 12 data elements that must be provided by a covered person or its reporting agent to an RNSA is reproduced in Appendix A.

Loan Modification Data Elements. Rule 10c-1a information also includes any modification to any of the 12 data elements that occurs after the original data elements are provided to an RNSA. The reportable loan modification data elements include each “specific modification and the specific data element” modified. The Release notes that the actual modification (not a description of the modification) must be reported.

Confidential Data Elements. The Release notes that making certain information publicly available “could be detrimental because it could identify specific market participants or reveal confidential information about the internal operations or investment decisions of specific market participants.” Accordingly, the Rule categorizes certain Rule 10c-1a information as “confidential data elements.” Rule 10c-1a information within this category includes (i) the legal name or certain other identifiers of each party to the covered securities loan, (ii) if the person lending securities is a broker-dealer and the borrower is its customer, whether such person is the lender, the borrower, or an intermediary between the lender and the borrower, and (iii) whether the covered securities loan is

being used to close out a “fail to deliver.”

RNSA Collection and Public Distribution of Rule 10c-1a Information

An RNSA is required to establish rules regarding the format and manner of its collection of Rule 10c-1a information. An RNSA also must make certain Rule 10c-1a information publicly available according to a specified schedule. Some of this information is required to be made publicly available on a transaction-by-transaction basis, while other information is made available publicly on an aggregate basis only.

Transaction-By-Transaction Information. With respect to a covered securities loan’s 12 data elements, the Rule requires an RNSA to make 11 of these data elements publicly available “not later than the morning of the business day after the covered securities loan is effected.” The excepted data element is #6, the “amount, such as size, volume, or both, of the reportable securities loaned.” An RNSA is required to make this excepted information publicly available 20 business days after the covered securities loan is effected. The same disclosure schedule applies to loan modification data elements (i.e., the morning of the next business day for modifications of 11 of the 12 items and 20 business days for modifications of #6 information).

An RNSA is required to maintain the confidentiality of each of a covered securities loan’s confidential data elements. To prevent an RNSA from releasing confidential data elements, the Rule mandates that an RNSA must maintain and enforce reasonably designed written policies and procedures to maintain the security and confidentiality of the confidential data elements of Rule 10c-1a information.

Aggregate Transaction Activity and Distribution of Loan Rates. The Rule requires an RNSA, “not later than the morning of the business day after covered securities loans are effected or modified” to make publicly available “information pertaining to the aggregate transaction activity and distribution of loan rates for each reportable security.”

- *Aggregate Transaction Activity.* The Release states that the term “aggregate transaction activity” is intended to help ensure that only aggregate information, rather than individualized information, is provided to the public. This is a response to “commenters’ concerns about the potential exposure of proprietary information, while still providing volume transparency to market participants.”
- *Distribution of Loan Rates.* The Release states that providing information about the distribution of loan rates for each security “recognizes that the cost-to-borrow for loans of securities is influenced by a number of factors (e.g., counterparty-creditworthiness).” Consequently, information about loan rates on a transaction-by-transaction basis would be an imperfect comparison of such rates between loans of the same security. Nonetheless, information regarding the distribution of loan rates for a given security “can give market participants information to help market participants compare the pricing of their covered securities loan against the pricing of other covered securities loans.” In turn, the Release notes, the ability to compare “can facilitate conversations between beneficial owners and their lending agents or end borrowers with their brokers or dealers regarding the terms of their loan.”

Compliance Date

The Rule’s effective date is 60 days after publication of the Release in the Federal Register. As of the date of this Alert, the Release has not been published therein. Covered persons will be required to report Rule 10c-1a information to an RNSA starting on the first business day that is 24 months after the effective date the Rule. An RNSA must begin publicly reporting Rule 10c-1a information within 90 calendar days following the 24-month period.

Observations

The Release states that the Rule “will result in the public availability of new information for investors and other market participants to consider in the mix of information about the securities lending market . . . to better inform their decisions.”

Funds that engage in covered securities loans will presumably need to enter into written agreements with one or more reporting agents or plan to rely on third-party vendors that are not reporting agents. Each fund complex will need to consider whether there are reasons to rely on third-party vendors that are not reporting agents. The ultimate decision will impact the scope of required written policies and procedures covering reporting of Rule 10c-1a information for the funds’ covered securities loans.

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1. The following are not deemed intermediaries under the Rule: a clearing agency when providing only the functions of a central counterparty pursuant to Rule 17Ad-22(a)(2) under the Exchange Act or a central securities depository pursuant to Rule 17Ad-22(a)(3) under the Exchange Act.
 2. Rule 15c3-3 addresses a broker-dealer’s borrowing of fully paid or excess margin securities of a customer.
 3. There are two exclusions from the definition of covered securities loan: (i) a position at a clearing agency that results from central counterparty services pursuant to Rule 17Ad-22(a)(2) under the Exchange Act or central securities depository services pursuant to Rule 17Ad-22(a)(3) under the Exchange Act and (ii) the use of margin securities, as defined in Rule 15c3-3(a)(4) under the Exchange Act, by a broker-dealer (provided, however, if a broker-dealer lends the margin securities to another person, the loan to the other person is a covered securities loan under the Rule).