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SEC Adopts New Securities Lending Reporting Rule: Proskauer Rose

On October 13, 2023, the Securities and Exchange Commission (the "SEC") adopted new Rule 10c-1a (the "Securities Lending Rule"), requiring the reporting of certain securities lending transactions. Certain material terms of securities lending transactions relating to "reportable securities" are required to be reported to a registered national securities association ("RNSA") by the end of the day on which the loan is agreed or modified. The RNSA is required to make the information – other than that deemed confidential as defined below – public on the morning of the next business day. The amount of the loan is to be made public on the 20th business day following submission of the report. Of note, currently the Financial Industry Regulatory Authority ("FINRA") is the only registered RNSA and is expected to accept the securities lending reports once the Securities Lending Rule is effective.

The SEC states that the purpose of the new rule is to increase the transparency and efficiency of the securities lending market. The Securities Lending Rule will provide market participants with access to pricing and other material information in a timely manner, as well as aid regulators in their oversight of the securities lending market.

What Securities Are Covered by the New Rule?

All loans of "reportable securities" (with a few exceptions noted below) are required to be reported to an RNSA. Reportable securities is defined 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 (CAT) as required by Rule 613 and the CAT National Market System Plan, FINRA's Trade Reporting and Compliance Engine (TRACE), the Municipal Securities ***Rulemaking Board Real-Time Transaction Reporting System***, [emphasis added] or any reporting system that replaces one of these systems. Reportable securities include equity securities (both exchange traded and those traded OTC), debt securities subject to TRACE reporting, and digital asset securities that meet the definition of "reportable security" (each a "Reportable Security"). It is important to note that the definition of Reportable Securities is not limited to U.S. exchange traded securities or securities issued by U.S. public companies, and there may be overlap with EU or UK SFTR reporting requirements.

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Proskauer Rose LLP – Elanit Snow, Frank Zarb and Louis Rambo

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