

## CLIENT ALERT

November 7<sup>th</sup>, 2023

# SEC Adopts Rule to Promote Transparency of Securities Loans

## 1. Introduction

On October 13, 2023, the U.S. Securities and Exchange Commission (the “SEC”) adopted two final rules designed to promote greater transparency around securities lending and short selling activities to both regulators and the public.<sup>1</sup> This alert relates to Rule 10c-1a<sup>2</sup> (the “Rule”), which requires covered persons to report specific terms of their securities lending transactions to a registered national securities association (“RNSA”). The Financial Industry Regulatory Authority (“FINRA”) is currently the only RNSA.

## 2. The Rule

The material terms of securities lending transactions are not currently subject to reporting and public dissemination requirements. The SEC has expressed the view that a lack of public information and data in this area creates certain inefficiencies in the securities lending market and makes it difficult for borrowers and lenders to observe current market conditions.<sup>3</sup> The Rule will require a covered person that “agrees to a covered securities loan” to report specified information to the RNSA by the end of the day on which the transaction is executed or modified. The RNSA will then make public certain anonymized transaction-specific data by the morning of the following business day, although the dissemination of loan amount information will be delayed by 20 business days.<sup>4</sup> The Rule does not encompass repurchase transactions.<sup>5</sup>

### a. Covered Person

Covered person is defined broadly to refer to (1) any person that agrees to a covered securities loan on behalf of the lender (intermediary) other than a clearing agency when providing only the functions of a central counterparty or a central securities depository, (2) any person that agrees to a covered securities loan as the lender when an intermediary is not used, and (3) a broker or dealer when borrowing fully paid or excess margin securities.<sup>6</sup> The Rule adopts a single-sided approach to reporting, where the obligation lies on either the intermediary that agrees to a covered securities loan on behalf of the lender, or any person that agrees to a covered securities loan as a lender when an intermediary is not used. The Rule permits the use of a reporting agent, subject to certain conditions.

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<sup>1</sup> [SEC Adopts Rule to Increase Transparency in the Securities Lending Market.](#)

<sup>2</sup> [17 CFR § 240.10c-1a.](#)

<sup>3</sup> [SEC Fact Sheet: Final Rule Reporting of Securities Loans.](#)

<sup>4</sup> [17 CFR § 240.10c-1a\(g\)\(2\) and \(3\)\(ii\).](#)

<sup>5</sup> [17 CFR § 240.10c-1a](#) at p. 74.

<sup>6</sup> [17 CFR § 240.10c-1a\(j\)\(1\).](#)

Examples of covered persons include investment advisors, funds that run their own securities lending programs, broker-dealers, custodian banks acting as agent lenders, and certain clearing agencies.

Covered persons include both U.S. persons and non-U.S. persons engaged in securities lending activities in the U.S.

#### **b. Transaction Scope**

Any loan involving a reportable security<sup>7</sup> is subject to the Rule. The Rule provides exclusions for (i) positions at a registered clearing agency that result from central counterparty services or central depository services and (ii) the use of margin securities by a broker or dealer unless such broker or dealer lends such securities to another person.

#### **c. Information to be Reported**

The Rule requires covered persons to report two sets of data: (i) Loan Data and modifications thereof and (ii) Confidential Data.<sup>8</sup>

- (1) **Loan Data** includes information such as the legal name of the issuer of the securities to be borrowed, ticker symbol of that issuer, time and date of the covered securities loan, name of the platform or venue used, number of reportable securities loaned, rates and fees for the loan, type and percentage of collateral provided, and borrower type.
- (2) **Confidential Data** includes information such as, if known, the legal names of each of the parties to the loan; when the lender is a broker-dealer, whether the security loaned to its customer is loaned from the broker-dealer's inventory; and, if known, whether the securities loan is being used to close out a failure to deliver that is subject to Rule 204 of Regulation SHO or outside Rule 204.<sup>9</sup> This information will not be made available to the public.

Loan Data and Confidential Data must be reported to the RNSA by the end of the day on which the loan is executed. Modifications to the loan data elements must be provided to the RNSA by the end of the day on which the modification occurred if the modification occurs after other information about the loan has already been provided to the RNSA.<sup>10</sup>

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<sup>7</sup> [17 CFR § 240.10c-1a\(j\)\(3\)](#). The term reportable security means 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 § 242.613 ("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 Real-Time Transaction Reporting System ("RTRS"), or any reporting system that replaces one of these systems.

<sup>8</sup> [17 CFR § 240.10c-1a\(c\), \(d\) and \(e\)](#).

<sup>9</sup> [17 CFR § 242.204](#). Rule 204 of Regulation SHO generally requires closing a firm's failure to deliver position in equity securities at a registered clearing agency by purchasing or borrowing securities of like kind and quantity. Accordingly, under the Rule, this data element will provide regulators with information both about the loans used by brokers or dealers to close out failures to deliver as required by Regulation SHO, as well as additional insight into the use of loans.

<sup>10</sup> [17 CFR § 240.10c-1a\(g\)\(3\)\(i\)](#).

### 3. Implementation Timeline

The Rule will become effective 60 days following the date of publication of the adopting release in the Federal Register. The RNSA must propose rules to implement the Rule within four months of the effective date of the Rule and such RNSA rules must be effective no later than 12 months after the effective date of the Rule. Covered persons will begin to report the information required by the Rule to the RNSA starting on the first business day that is 24 months after the effective date of the Rule (“Reporting Date”). The RNSA must begin to make specified information publicly available within 90 calendar days of the Reporting Date.

### 4. Next Steps

The Rule will impose significant operational and compliance burdens on a number of market participants. Covered persons are encouraged to begin considering the systems and other operational implications of reporting the required information in order to comply with the Rule.

If you have any questions regarding the above or would like further information about the impact of the Rule, please contact one of the following:

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