



SUBMITTED BY E-MAIL

Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549  
[rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Brussels, 17 January 2022

**SUBJECT: EBF's comments on the Proposed Exchange Act Rule 10c-1 Regarding Securities Lending [Release No. 34-93613; File No. S7-18-21; RIN 3235-AN01]**

The European Banking Federation (EBF) appreciates the opportunity to submit comments on the U.S. Securities and Exchange Commission's ("SEC" or "Commission") proposed Rule 10c-1 (the "Proposed Rule") under the Securities Exchange Act of 1934 (the "Exchange Act") (17 CFR § 240.10c-1) regarding transparency in the securities lending market.

While we support the statutory mandate and the Proposed Rule's aim to increase transparency in connection with the securities loan market, we believe that further clarification is necessary to appropriately and expressly limit the territorial scope of the rule, among other matters laid out in this letter.

Our recommendations are as follows:

1. **Territorial Limits:** The Proposed Rule lacks any guidance on its territorial reach. Absent further clarification, the Proposed Rule's application would be unknowable, impacting a wide range of current practices and creating significant regulatory risk. Lenders and lending agents would have to divine those limits from jurisdictional doctrines, including "conduct or effects" concepts that are impossible to operationalize. We respectfully submit that the SEC may achieve its legitimate U.S. public policy goals, without monitoring securities lending occurring between non-U.S. persons elsewhere in the world.

EBF believes that the SEC could leverage existing concepts within its regulatory framework regarding appropriate extraterritorial scope limitations. For example, the historical territorial approach to broker-dealer regulation could be leveraged to arrive at an express territorial scope of Rule 10c-1. The goal would be to capture securities lending transactions pertaining to the U.S. securities market.

Under this approach, as further articulated in comments submitted to this rulemaking by the Institute of International Bankers ("IIB"), a lender acting for

**European Banking Federation aisbl**

**Brussels** / Avenue des Arts 56, 1000 Brussels, Belgium / +32 2 508 3711 / [info@ebf.eu](mailto:info@ebf.eu)  
**Frankfurt** / Weißfrauenstraße 12-16, 60311 Frankfurt, Germany  
**EU Transparency Register** / ID number: 4722660838-23

  
[www.ebf.eu](http://www.ebf.eu)

itself or as an agent would be required to report to the registered national securities association (such as the Financial Industry Regulatory Authority) to the extent that it: (1) operates from a permanent U.S. location for purposes of soliciting, negotiating or executing the loan; or (2) directs communications to a U.S. location of a counterparty that is permanently resident in, or has a permanent office in, the U.S. in order to solicit, negotiate or execute a loan.

Several other industry comments also provided suggestions to limit extraterritorial scope based on other existing SEC concepts. EBF is supportive of appropriate extraterritorial limitations, which allow the SEC to achieve its public policy goals, without unduly applying proposed requirements to securities lending occurring between non-U.S. persons. We urge the Commission to consider these important concerns and reassess the Proposed Rule's approach to extraterritoriality.

2. **T+1 Reporting:** EBF supports the proposal made by the IIB to require end-of-day reporting on a T+1 basis. We agree that, apart from vastly complicating the operational build, the data the SEC would be receiving intraday would be inaccurate and incomplete given the multiple adjustments made to such trades until they settle. Such inaccurate data would offer no material incremental benefits to market participants and the public, notably as the goal of the rulemaking is to enhance transparency. In fact, capturing such data may have the opposite effect, creating confusion for market participants.
3. **18 Months Phase-In:** EBF's members understand that implementation of this wholly new reporting regime will present operational challenges even if the recommendations on territorial limits made herein are reflected in a final rule. The steps will range depending on the roles a firm finds itself in (e.g., as a lender required to source appropriate data across various systems, set up reporting connectivity, and establish reporting processes, and/or a reporting agent in need of setting up appropriate counterparty documentation, among other things), and will come on top of numerous operational and compliance buildout efforts already under way in connection with other regulatory requirements (including those required by the SEC). Therefore, EBF requests that the SEC provide at least 18 months after publication of technical specifications by the registered national securities association to come into compliance with the new requirements.

EBF is additionally supportive of broader industry comments submitted by IIB and the Securities and Financial Markets Association (SIFMA), which provide detailed policy recommendations covering other key aspects of the Proposed Rule, including regarding public dissemination, the definition of "securities loan" and "available to lend" data.

\* \* \*

Thank you for considering these comments. Should you have any questions, please do not hesitate to contact Blazej Blasikiewicz, Director of Legal, International & Public Affairs at [REDACTED] or [REDACTED].

Respectfully submitted,

Yours sincerely,



Wim Mijs  
Chief Executive Officer  
European Banking Federation