



TO: GENERAL PUBLIC – FIRM UPDATE
FROM: MONTAGUE LAW
DATE: DECEMBER 9, 2023
RE: SEC IMPLEMENTS RULE 10C-1A FOR ENHANCED REPORTING IN SECURITIES LENDING MARKET

Question Presented

What is the impact and implications of the newly introduced SEC Rule 10c-1a under the Securities Exchange Act of 1934 on securities lending transactions?

Answer

SEC Rule 10c-1a requires certain persons to report securities loan information to FINRA, which will make some of that information publicly available. The rule is intended to increase transparency and efficiency in the securities lending market.

Analysis

SEC Rule 10c-1a, which was adopted in October 2023, imposes new reporting requirements on "covered persons" who engage in securities lending transactions. The rule defines "covered persons" broadly, and includes any person who agrees to a "covered securities loan" on behalf of themselves or another person. The rule also specifies the information that must be reported, which includes the amount of securities loaned, key economic terms of the loan, and the loan's date and tenor.

The rule requires covered persons to report this information to FINRA by the end of the day on which the loan is effected or modified. FINRA is then required to make certain information publicly available within 90 days of the reporting date. The rule is intended to increase transparency and efficiency in the securities lending market by providing market participants with timely access to pricing and other material information.

The impact of the rule on investment companies that engage in securities lending transactions will depend on the structure of the securities lending program. If the

investment company uses a custodian bank or another provider as the securities lending agent, the lending agent will have the reporting obligation.

Cases (6)

[United States Sec. & Exch. Comm'n v. W. Int'l Sec., 2:22-cv-04119-ODW \(AFMx\) \(C.D. Cal. Mar. 13, 2023\)](#)

This case is not directly relevant to the research request, as it does not mention SEC Rule 10c-1a. However, it does provide background information on Regulation Best Interest, which is a rule under the Securities Exchange Act of 1934, and may therefore be useful for understanding the broader regulatory framework.

"BACKGROUND This matter concerns alleged violations by Western and five of its registered representatives of Regulation Best Interest, Rule 15l-1(a) of the Securities Exchange Act of 1934, 17 C.F.R. § 240.15l-1(a), in connection with offering L Bonds to Western's retail investor clients. (Compl. ¶ 6, ECF No. 1.)"

"A. Regulation Best Interest In 2010, Congress, by way of the Dodd-Frank Wall Street Reform and Consumer Protection Act, directed the SEC to investigate and adopt new rules regarding the appropriate standard of conduct to govern the relationship between broker-dealers and their customers."

"On June 5, 2019, as a result of these efforts, the SEC adopted Regulation Best Interest. 17 C.F.R. § 240.15l-1; XY Plan., 963 F.3d at 249-50 (2d Cir. 2020) (discussing history of Regulation Best Interest). Regulation Best Interest establishes a standard of conduct for broker-dealers and associated persons when they recommend securities transactions or investment strategies to retail customers."

"Id. The “best interest” standard is therefore more stringent than the previously applicable “suitability” standard, which required broker-dealers to “have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer.”"

[Hunichen v. Atonomi LLC, No. C19-0615-RAJ-SKV \(W.D. Wash. Apr. 6, 2023\)](#)

This case does not appear to be directly relevant to the research request, as it does not mention SEC Rule 10c-1a or securities lending transactions. However, it does discuss the sale of unregistered securities, which may provide some background information or a useful analogy.

"The Court, by Order dated August 8, 2022, certified this matter as a class action and defined the class as follows: “All persons who purchased ATMI tokens via a Series 1 or Series 2 SAFT with Atonomi, LLC in 2018. Excluded from the Class are Defendants and

persons or entities directly affiliated with any Defendant, and persons who affirmatively assented to the Atonomi 'Terms of Token Sale.'" Dkt. 246 at 2."

"See also 15 U.S.C. § 77e (prohibiting sale or delivery of unregistered securities). The WSSA imposes strict liability on any person who "offers or sells" unregistered, non-exempt securities. RCW 21.20.430(1). See also *In re Jensen-Ames, No.*"

[S.E.C. v. PHAN, 500 F.3d 895 \(9th Cir. 2007\)](#)

This case does not directly address the research request, as it does not mention SEC Rule 10c-1a. However, it does discuss other SEC rules and regulations related to securities transactions, which may provide useful background information or analogies.

"Section 4(1) of the 1933 Act, however, shields any "transactions by any person other than an issuer, underwriter, or dealer," thus exempting from Section 5 ordinary resales of stock between independent parties. 15 U.S.C. § 77d(1); see also *SEC v. Murphy*, 626 F.2d 633, 648 (9th Cir. 1980) ("Section 4(1) was designed to exempt routine trading transactions with respect to securities already issued. . . ."); *Loss, supra*, at 591 (explaining that § 4(1) exempts an unregistered resale of blue-chip stock between friends from violating § 5). Section 5 provides: (a) Sale or delivery after sale of unregistered securities Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly — (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or (2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale. . . . (c) Necessity of filing registration statement It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security. . . . 15 U.S.C. § 77e. In *Cavanagh*, the Second Circuit faced circumstances quite similar to those here and held that the defendant violated Section 5 through a resale of shares even if the initial distribution of those shares was validly registered using an S-8 form."

"Given the focus of Section 5 on whether the "the registration statement is in effect" or "has been filed," 15 U.S.C. § 77e(a), (c) (emphases added), and the defendants' summary judgment evidence that the stock was issued originally with a bona fide compensatory purpose as required by the S-8 form, on this summary judgment record there is a material dispute of fact concerning whether Hartcourt's initial distribution of the stock to

Wu violated the statute because the transaction from the outset was for purposes not authorized by an S-8 registration."

"The (assumed for purposes of summary judgment) initial legitimacy of Hartcourt's S-8 registration form is thus irrelevant to Phan's liability under Section 5, as Wu ultimately resold her shares to raise capital for Hartcourt at the company's behest."

[Sec. & Exch. Comm'n v. Ripple Labs, 20 Civ. 10832 \(AT\) \(SN\) \(S.D.N.Y. Mar. 11, 2022\)](#)

This case does not directly address the research request, as it does not mention SEC Rule 10c-1a. However, it does discuss the SEC's enforcement of securities laws, which may provide some background information on the SEC's regulatory approach.

"20 Civ. 10832 (AT) (SN) 03-11-2022 SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. RIPPLE LABS, INC., BRADLEY GARLINGHOUSE, and CHRISTIAN A. LARSEN, Defendants. ANALISA TORRES UNITED STATES DISTRICT JUDGE ORDER ANALISA TORRES UNITED STATES DISTRICT JUDGE Plaintiff, the Securities and Exchange Commission (the "SEC"), brings this action against Defendants Ripple Labs, Inc. ("Ripple"), and two of its senior leaders, Bradley Garlinghouse and Christian A. Larsen, alleging that Defendants engaged in the unlawful offer and sale of securities in violation of Section 5 of the Securities Act of 1933 ("Section 5" of the "Securities Act"), 15 U.S.C. §§ 77e(a) and (c)."

"The SEC alleges that, from 2013 to the filing of this action in 2020, Ripple violated Section 5 by selling XRP-which the SEC claims is an "investment contract" for which registration is required-without filing a registration statement. See Amend. Compl. ¶¶ 4, 9, 60, 230-31, 241-42, 289-94, 392-93. The SEC contends that Ripple and its executives promoted XRP as an investment into a common enterprise that would increase in value and price based on Ripple's efforts."

"For the purposes of these motions, the Individual Defendants do not contest that the SEC's allegations plausibly show that Ripple's sale of XRP violated Section 5. See Larsen Mem. at 1-2, ECF No. 106; Garlinghouse Mem. at 2, ECF No. 111."

[In re D'Addario, 75 F.4th 86 \(2d Cir. 2023\)](#)

"To be sure, the Majority is correct that the Silver Knot/Wise Metals scheme "does not allege that David made misrepresentations about the value of securities or that he was not authorized to transact in securities on behalf of the [E]state." Id. But these are not the only ways for a securities transaction to be fraudulent. Securities fraud need not involve a misrepresentation about a security's value. See 17 C.F.R. § 240.10b-5(a), (c); Zandford, 535 U.S. at 820, 122 S.Ct. 1899; Frohling, 851 F.3d at 136. And, as Zandford illustrates, a

fiduciary who is generally authorized to trade securities on another's behalf can nonetheless commit securities fraud by engaging in unauthorized securities transactions for the fiduciary's own benefit."

[Laborers' Local 265 Pension Fund v. iShares Trust, 769 F.3d 399 \(6th Cir. 2014\)](#)

"An affiliate of the investment advisor for iShares mutual fund functions as a middleman between iShares and those who seek to borrow iShares's securities holdings, charging a fee of 35% for all net revenue received by iShares from such lending activity."

"Securities lending promotes market efficiency and liquidity by making securities readily available to a variety of borrowers, including short-sellers. The Second Circuit has described the practice as follows: Securities lending is an important and significant business that describes the market practice whereby securities are temporarily transferred by one party (the lender) to another (the borrower). The borrower is obliged to return the securities to the lender, either on demand, or at the end of any agreed term. For the period of the loan the lender is secured by acceptable assets delivered by the borrower to the lender as collateral."

Statute (1)

[Section 78j - Manipulative and deceptive devices, 15 U.S.C. § 78j](#)

15 U.S.C. § 78j is relevant to the research request because it prohibits certain manipulative and deceptive devices in connection with securities transactions, and specifically addresses the loan or borrowing of securities. However, the authority does not mention SEC Rule 10c-1a specifically, so it is not clear whether the rule falls within the scope of the statute.

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange- (a) (1) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security other than a government security, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. (2) Paragraph (1) of this subsection shall not apply to security futures products. (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement 1 any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. (c) (1) To effect, accept, or facilitate

a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. (2) Nothing in paragraph (1) may be construed to limit the authority of the appropriate Federal banking agency (as defined in section 1813(q) of title 12), the National Credit Union Administration, or any other Federal department or agency having a responsibility under Federal law to prescribe rules or regulations restricting transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk."

"STATUTORY NOTES AND RELATED SUBSIDIARIES EFFECTIVE DATE OF 2010 AMENDMENT Amendment by sections 929L(2) and 984(a) of Pub."

"L. 111-203, title IX, §984(b), July 21, 2010, 124 Stat. 1933, provided that: "Not later than 2 years after the date of enactment of this Act [July 21, 2010], the Commission shall promulgate rules that are designed to increase the transparency of information available to brokers, dealers, and investors, with respect to the loan or borrowing of securities." [For definitions of terms used in section 984(b) of Pub."

Analyses (5)

[SEC adopts rules requiring the reporting of securities loans and the disclosure of short sales](#)

This analysis is highly relevant to the research request, as it discusses the newly introduced SEC Rule 10c-1a in detail, including its requirements, compliance deadlines, and implications for securities lending transactions.

"On October 13, 2023, the Securities and Exchange Commission (SEC) adopted new Rule 10c-1a under the Securities Exchange Act of 1934, as amended (1934 Act), requiring certain persons to report securities loan information to the Financial Industry Regulatory Authority (FINRA) and requiring FINRA to make publicly available certain securities loan information that it receives. The SEC also adopted new Rule 13f-2 under the 1934 Act and related Form SHO requiring institutional investment managers that meet or exceed certain prescribed thresholds to report on Form SHO certain short position and short activity data for equity securities."

"Reporting of Securities Loans – Rule 10c-1a Rule 10c-1a requires “covered persons” to report certain securities loan information regarding “reportable securities” to a “registered national securities association” (RNSA), in the format and manner required by the RNSA and within the time periods set forth in Rule 10c-1a (Rule 10c-1a Information)."

"Any covered person who agrees to a "covered securities loan" on behalf of them self or another person is required to report Rule 10c-1a information to FINRA."

"Covered persons or reporting agents, as applicable, are required to provide the information set forth in Rule 10c-1a(c) through (e), if applicable, to FINRA by the end of the day on which a covered securities loan is effected or modified."

[SEC Adopts Rules on Short Sales and Securities Lending](#)

This analysis is highly relevant to the research request, as it discusses the impact of SEC Rule 10c-1a on securities lending transactions in detail, including the new reporting requirements and the scope of persons required to report.

"Securities Lending Reporting The SEC has adopted Exchange Act Rule 10c-1a, which requires certain "covered persons" to report specified information about securities loans to a registered national securities association (RNSA) in the format and manner required by the RNSA, and within specified time periods. The RNSA would then make certain information reported to it available to the public on the SEC's Electronic Data Gathering, Analysis, and Retrieval System (EDGAR). The scope of persons required to report under Rule 10c-1a includes any "covered person" who agrees to a "covered securities loan.""

"The practical impact of the final rule on investment companies that engage in securities lending transactions depends on the structure of the securities lending program. Where an investment company uses its custodian bank or another provider as the securities lending agent (which is, by far, the most common structure), the lending agent will have the reporting obligation."

[SEC Adopts New Securities Lending Reporting Rule](#)

This analysis is highly relevant to the research request, as it discusses the new SEC Rule 10c-1a in detail, including the rule's purpose, the securities it covers, who is required to report, and the timeframe for reporting.

"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 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."

"RNSAs are required to propose rules to implement the Securities Lending Rule within four months of the effective date and must be approved by the SEC."

[SEC Adopts Securities Lending Reporting Rules](#)

This analysis is relevant to the research request because it discusses the requirements and implications of SEC Rule 10c-1a, which the research request specifically asks about. However, as an analysis written by another lawyer, it only has persuasive value and is not a binding legal authority.

"On October 13, 2023, the US Securities and Exchange Commission (SEC) adopted Rule 10c-1a requiring the reporting and dissemination of certain details regarding securities lending transactions. New Rule 10c-1a under the Securities Exchange Act of 1934 requires generally that specified information about securities loans be reported to the Financial Industry Regulatory Authority Inc. (FINRA) in accordance with rules that FINRA will eventually adopt for these purposes; and FINRA make publicly available certain information about these transactions within certain timeframes and keep confidential certain information it receives. Who Must Report? Rule 10c-1a will require any "covered person" who agrees to a "covered securities loan" to provide specified information to FINRA."

"Rule 10c-1a will become effective 60 days following the date of publication of the adopting release in the Federal Register. The compliance dates for Rule 10c-1a require that FINRA propose rules to implement Rule 10c-1a within four months of the final rule's effective date and that FINRA's rules become effective no later than 12 months after the effective date of Rule 10c-1a; covered persons report the information required by Rule 10c-1a to FINRA starting on the first business day 24 months after the effective date of Rule 10c-1a (the reporting date); and FINRA make specified information publicly available within 90 calendar days of the reporting date."

[SEC Adopts Rule Amendments Requiring Increased Disclosure of Short Selling and Securities Lending Activities of Institutional Market Participants](#)

This analysis is relevant to the research request because it discusses the requirements of new SEC Rule 10c-1a, which mandates reporting of certain securities lending transactions. However, the analysis does not specifically address the impact or implications of the rule.

"New Rule 10c-1a will require securities lending market participants who act as agent or principal in making a loan of certain equity and debt securities to report specified terms of, and data related to, the loan. Most significantly, the data will include the amount of securities loaned, key economic terms of the loan (including rates, fees, rebates, and type and amount of collateral posted), as well as the loan's date and tenor."