



January 7, 2022

BY EMAIL

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549-1090
Rule-comments@sec.gov

Re: Release No 34-93613; File No. S7-18-21 (Reporting of Securities Loans)

Dear Ms. Countryman:

The Options Clearing Corporation (“OCC”) appreciates the opportunity to comment on the U.S. Securities and Exchange Commission’s (the “SEC” or “Commission”) release proposing Rule 10c-1 under the Securities Exchange Act of 1934 (“Exchange Act”). Proposed Exchange Act Rule 10c-1 would require the first regulatory reporting regime in the U.S. for securities lending transactions.¹ In the Proposing Release, the Commission describes registered clearing agency services that OCC provides to certain segments of the U.S. stock loan market and also poses several questions specifically regarding OCC. This letter responds to those questions regarding OCC and provides OCC’s comments on the Proposing Release.

I. EXECUTIVE SUMMARY

OCC is generally supportive of the Commission’s policy goals of responding to Section 984 of the Dodd-Frank Wall Street Reform and Consumer Protection Act² through the Proposing Release to supplement publicly available information regarding securities lending, improve the information available to regulators, close data gaps in the market, minimize information asymmetries between market participants, and provide investors and other market participants with access to pricing and other material information regarding securities lending transactions in a timely manner.³ However, OCC urges the Commission that the important but limited central counterparty services that OCC provides to a segment of the stock loan market should not subject OCC to the substantial costs that would be inflicted on OCC and its members if Exchange Act Rule 10c-1 is

¹ Exchange Act Release No. 93613 (November 18, 2021), 86 FR 69802 (December 8, 2021) (“Proposing Release”).

² Pub. L. 111-203, § 984, 124 Stat. 1376 (2010).

³ Proposing Release at 69804 (describing the intended objectives of proposed Rule 10c-1).

adopted as proposed. For the reasons detailed in this letter, OCC should not be considered a Lending Agent (as defined below) that has reporting obligations and the novation of a stock loan contract by OCC for purposes of its clearance function should not subject OCC or its clearing members to duplicative reporting requirements with respect to the two positions that result from the novation of the original contract. OCC does not have access to much of the information from lending clearing members that the Commission seeks to have reported and costly and significant changes to OCC's programs would have to be made and approved by the Commission for OCC to have the information contemplated under Rule 10c-1 and be able to report it within the proposed time frames. Moreover, if stock loan information that is created simply through OCC's central counterparty novation function is required to be reported, as the proposal appears to contemplate, the proposed rule would require the reporting of redundant information that is not useful and, indeed, could be misleading. The related costs and fees associated with such duplicate reporting would disincentivize the use of and the protections afforded by of central clearing.

II. ABOUT OCC

Founded in 1973, OCC is the world's largest equity derivatives clearing organization. OCC is authorized to clear security options and stock loan contracts subject to the jurisdiction of the Commission, and commodity futures and commodity options subject to the jurisdiction of the Commodity Futures Trading Commission ("CFTC"). OCC is registered with the Commission as a clearing agency pursuant to Section 17A of the Exchange Act,⁴ is registered with the CFTC as a derivatives clearing organization ("DCO") pursuant to Section 5b of the Commodity Exchange Act,⁵ and is designated by the Financial Stability Oversight Council as a systemically important financial market utility ("SIFMU"). OCC clears all standardized options listed on the sixteen U.S. national securities exchanges that trade options and, in its capacity as a DCO, clears CFTC-regulated futures products for two U.S. futures exchanges.

III. OCC'S STOCK LOAN PROGRAMS

As a clearing agency registered with the Commission, OCC currently operates two stock loan programs: the Stock Loan/Hedge Program ("Hedge Program") and the Market Loan Program (collectively with "Hedge Program," the "Stock Loan Programs"). The Hedge Program launched in 1993.⁶ The Market Loan Program launched in 2009.⁷

All clearing member participants in OCC's Stock Loan Programs are SEC registered broker-dealers, and OCC does not provide clearing services to agent lender banks, which represent a substantial portion of today's stock loan market. In both Stock Loan Programs, OCC provides central counterparty novation and guaranteed settlement services to the participating lending and borrowing clearing members. Cash collateral is required from borrowing clearing members and is marked to market each day. OCC also collects margin assets and clearing fund contributions from

⁴ 15 U.S.C. § 78q-1.

⁵ 7 U.S.C. § 7a-1.

⁶ Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39264 (July 22, 1993) (SR-OCC-92-34).

⁷ Exchange Act Release No. 59294 (January 23, 2009), 74 FR 5958 (February 3, 2009) (SR-OCC-2008-20).

clearing members to guarantee settlement obligations. The importance of these central counterparty services is that OCC provides robust and uniform risk management to the stock loans that it clears and settles, which, in turn, advances the Exchange Act goal of promoting a national system for the prompt and accurate clearance and settlement of transactions in securities.⁸

A. Hedge Program

Under the Hedge Program, OCC guarantees the return of loaned securities against payment of cash collateral. To initiate a Hedge loan, the lending clearing member and borrowing clearing member agree on terms of a stock loan transaction without OCC's involvement. The lending clearing member instructs The Depository Trust Company ("DTC") to transfer a specified number of shares of eligible stock by book-entry to the borrowing clearing member's DTC account. The transfer instructions identify the borrowing clearing member and specify the amount of cash collateral to be received (either 100% or 102% of the market value of the stock), and the borrowing clearing member transfers the cash to the DTC account of the lending clearing member. Once the transfer of the loaned stock and the cash collateral are complete, DTC transmits a report to OCC showing a completed stock loan.

If OCC affirmatively accepts the transaction, OCC novates the original stock loan transaction by generally extinguishing it and replacing it on identical terms such that OCC becomes the borrower to the lending clearing member and the lender to the borrowing clearing member. The terms that are preserved from the original contract are the identity of the security that was lent/borrowed, the number of shares lent/borrowed and the identity of the borrowing clearing member and lending clearing member. Terms that are negotiated between the original lender and borrower that are not inconsistent with OCC's By-Laws and Rules are also permitted to remain in effect between those clearing member parties provided that they impose no additional obligations on OCC (e.g., a specified term on the loan for return of the shares). The resulting clearing member loan and borrow positions in the relevant stock on OCC's books and records are increased and decreased based on the recall and return activity of the applicable lending clearing member and borrowing clearing member – which remain paired over the life of the loan. OCC does not maintain each stock loan as a distinct contract (e.g., stock loan contract No. 123456, effected at W time on X day for Y shares, rebate of Z). Rather, the loan and borrow positions in the particular stock are maintained as fungible positions that do not preserve the original contract details other than the number of shares loaned/borrowed and the clearing member identities. OCC does not have those original details.

To adjust the amount of collateral for changes in the market value of the loaned stock, the lending clearing member or borrowing clearing member, as applicable, must make a daily mark-to-market payment to OCC that OCC, in turn makes to the corresponding borrowing or lending clearing member. This ensures that the stock loan position remains properly collateralized by cash at the percentage thresholds described above. These payments are netted by OCC and effected through its cash settlement system. Although not subject to OCC's guarantee, lending clearing members remain entitled to all dividends and distributions while a stock loan remains open. Cash dividends or distributions are paid by the borrowing clearing member directly to the lending clearing member, away from OCC. Non-cash dividends and distributions are collected by OCC from the borrowing clearing member and delivered to the lending clearing member upon termination of the

⁸ 7 U.S.C. § 78q-1(a)(2).

stock loan. The borrowing clearing member or, in the case of a negative rate, the lending clearing member, may also be entitled under the original contract to rebate payments related to interest earned on the cash collateral. Like cash dividends or distributions, OCC's guarantee does not extend to such rebate payments, which must be managed by the borrowing clearing member and lending clearing member away from OCC.

B. Market Loan Program

In the Market Loan Program, stock loans are initiated on a loan market either (i) via the anonymous matching of bids and offers or (ii) as agreed upon directly by two clearing members. These stock loans are then submitted to OCC by the loan market.⁹ As under the Hedge Program, OCC guarantees the return of loaned securities against payment of cash collateral. Unlike the Hedge Program, OCC's guarantee extends to rebate payments and cash dividends or distributions, limited by the amount of additional margin OCC collects to cover such payments in reliance on information provided by the loan market.

Market loans are initiated when the loan market sends a matched transaction to OCC, and if the transaction passes OCC's validations OCC in turn sends two separate but linked settlement instructions to DTC to effect the movement of stock and cash collateral between the accounts of the relevant clearing members. Upon completion of the settlement instructions, DTC provides OCC with a report showing completed transactions. If OCC affirmatively accepts a transaction, OCC novates the original stock loan transaction as described above regarding the Hedge Program to produce new loan and borrow positions on identical terms between it and the lending and borrowing clearing members.

Post novation by OCC, the design of the Market Loan Program is substantially similar to the Hedge Program. As in the Hedge Program, the loan and borrow positions in the particular stock are maintained as fungible positions that do not preserve many of the original contract details – other than the number of shares lent/borrowed and the clearing member identities. Certain design differences from the Hedge Program, however, include OCC's responsibilities regarding dividends and rebates. Rather than being delivered directly from the borrowing clearing member to the lending clearing member, cash dividends and distributions are primarily made in the form of dividend equivalent payments through the dividend service of DTC, or through OCC's cash settlement system if a particular dividend is not tracked by DTC's service. As instructed by the loan market that has the operative rebate details set by the clearing members, OCC also collects and pays the rebates between the relevant clearing members on a monthly basis.

IV. **SUMMARY OF PROPOSED RULE 10c-1**

As proposed, Rule 10c-1 would require any "person"¹⁰ who loans a "security"¹¹ on behalf of itself or another person to report to a registered national securities association ("RNSA") certain

⁹ Currently, Automated Equity Finance Markets Inc., a wholly owned subsidiary of Equilend Clearing LLC and a registered Alternative Trading System, is the only loan market.

¹⁰ 15 U.S.C. § 3(a)(9).

¹¹ 15 U.S.C. § 3(a)(10).

terms of the loan and any modifications thereto as well as certain information regarding securities that the person has on loan and has available to lend.¹²

A. Transaction Data Elements

The lender of securities would be required to provide to the RNSA (within 15 minutes after the securities loan is effected) the following transaction terms for public dissemination:

- (1) Legal name of the security issuer, and the legal entity identifier (“LEI”) of the issuer, if the issuer has an active LEI;
- (2) Ticker symbol, ISIN, CUSIP, or FIGI of the security, if assigned, or other identifier;
- (3) Date the loan was effected;
- (4) Time the loan was effected;
- (5) Name of the platform or venue where effected (for a loan effected on platform or venue);
- (6) Amount of the security loaned;
- (7) Securities lending fee or rate or any other fee or charges (for a loan not collateralized by cash);
- (8) Collateral type used to secure the loan of securities;
- (9) Rebate rate or any other fee or charges (for a loan collateralized by cash);
- (10) Percentage of collateral to value of loaned securities required to secure such loan;
- (11) Termination date of the loan (if applicable); and
- (12) Whether the borrower is a broker or dealer, a customer (if the person lending securities is a broker or dealer), a clearing agency, a bank, a custodian, or other person.¹³

B. Modification Data Elements

If one of the terms above is modified, the following information would have to be reported within 15 minutes of modification:

- (1) Date and time of the modification;
- (2) Description of the modification; and
- (3) Unique transaction identifier assigned to the original loan by the RNSA.¹⁴

C. Confidential Data Elements

The following terms would also have to be reported within 15 minutes after the loan is effected but would not be made publicly available by the RNSA:

- (1) Legal name of each party to the transaction, and, where applicable, CRD or IARD Number, market participant identification (“MPID”), if the party has an MPID, and the LEI of each party

¹² Proposed Rule 10c-1(a) - (e).

¹³ Proposed Rule 10c-1(b)(1) - (12).

¹⁴ Proposed Rule 10c-1(c)(1) - (3).

to the transaction, and whether such person is the lender, the borrower, or an intermediary between the lender and the borrower (if known);

(2) If the person lending securities is a broker or dealer and the borrower is its customer, whether the security is loaned from a broker's or dealer's securities inventory to a customer of such broker or dealer; and

(3) If known, whether the loan is being used to close out a fail to deliver pursuant to Rule 204 of Regulation SHO¹⁵ or to close out a fail to deliver outside of Regulation SHO.¹⁶

D. Securities Available to Loan and On Loan

A person that either was required to provide information to an RNSA under the proposed Rule or had an open securities loan about which it was required provide information to an RNSA under the proposed Rule would be required to provide the following information to the RNSA by the end of each business day:

(1) Legal name and LEI of the issuer, as applicable;

(2) Ticker symbol, CUSIP, ISIN, or other identifier;

(3) Total amount of each security that is not subject to legal or other restrictions that prevent it from being lent; and

(4) Total amount of each security that has been contractually booked and settled.¹⁷

E. Lending Agents and Reporting Agents

Proposed Rule 10c-1(a)(1)(i)(A) introduces the concept of a lending agent ("Lending Agent"). As proposed, a lending agent would be a "bank, clearing agency, broker, or dealer that acts as an intermediary to a loan of securities . . . on behalf of a person that owns the loaned securities (beneficial owner)[.]" Where a Lending Agent intermediates a stock loan of a beneficial owner lender, the Lending Agent would have the RNSA reporting responsibilities regarding the loan.¹⁸ For reasons explained below in Section IV., OCC urges the Commission that the definition of a Lending Agent should not include a clearing agency like OCC that provides risk management services for stock loans as a central counterparty and does not actively engage in lending activity on behalf of beneficial owners.

Proposed Rule 10c-1 also introduces the concept of a reporting agent ("Reporting Agent").¹⁹ A lender who has a reporting obligation, including a bank, clearing agency or broker or dealer that is a Lending Agent, would be permitted to enter a written agreement with a broker or dealer such that

¹⁵ 17 CFR § 242.204.

¹⁶ Proposed Rule 10c-1(d)(1) - (3).

¹⁷ Proposed Rule 10c-1(e)(1) - (3).

¹⁸ Proposed Rule 10c-1(a)(1)(i)(A)(I), (a)(1)(i)(B).

¹⁹ Proposed Rule 10c-1(a)(1)(ii).

the broker or dealer would instead report the required loan information to the RNSA within the required time frames.²⁰

F. Fees

The RNSA would be permitted to establish and collect reasonable fees from each person who provides data to the RNSA pursuant to proposed Rule 10c-1.²¹ The setting of those fees by the RNSA would be subject to Commission review and the public notice and public comment process under Section 19(b) of the Exchange Act and Commission Rule 19b-4 thereunder.²²

V. **OCC COMMENTS ON PROPOSED SEC RULE 10c-1**

A. A Clearing Agency Like OCC Should Not Be a Lending Agent Where It Provides Central Counterparty Services and Is Not Actively Involved In Lending Securities

1. Treating OCC as a Lending Agent Would be Inconsistent with the Policy Objectives Stated in the Proposing Release

The Proposing Release explains in relevant part that “[t]he Commission preliminarily believes it is appropriate to require lending agents to provide 10c-1 information to the RNSA on behalf of beneficial owners that employ lending agents, because lending agents are in the best position to know when securities have been loaned from the portfolios that the lending agent represents.”²³ The Proposing Release goes on to state that the proposed rule would require the Lending Agent intermediating the loan to be responsible for reporting to the RNSA because “a beneficial owner that makes available the securities in its portfolio for a lending agent to lend on its behalf is not directly involved with the lending of securities. Rather, it is the active steps taken by the lending agent that directly results in a loan of securities.”²⁴

It would not be appropriate for a clearing agency like OCC to be considered a Lending Agent that has reporting obligations because OCC is not actively involved with the lending of the securities. Rather, as the central counterparty under the Stock Loan Programs, OCC is passive and not in control of or have influence over the clearing members’ loan and borrow activity or return and recall activity. The original clearing member parties remain empowered to make these decisions. They also negotiate the relevant economic terms away from OCC, and therefore remain best positioned to know and report the information that is sought by the Commission under proposed Rule 10c-1.

²⁰ Proposed Rule 10c-1(a)(1)(ii)(A).

²¹ Proposed Rule 10c-1(h).

²² Id.

²³ Proposing Release at 69809.

²⁴ Id. At 69810 (emphasis added).

2. OCC Generally Does Not Have the Loan Information the Commission Seeks to Have Reported Pursuant to Proposed Rule 10c-1

As described above in Section III., terms of stock loan transactions submitted to OCC for clearance and settlement are negotiated entirely away from OCC by the broker-dealer clearing members and settle through DTC prior to OCC's acceptance of the stock loan transaction into the Stock Loan Programs. The information that OCC generally has access to at the time it accepts a stock loan for novation into the Stock Loan Programs is (i) the identity of the lending clearing member and borrowing clearing member, (ii) the security lent, (iii) the total number of shares transferred at DTC to settle the lending activity between the clearing members (which may be to settle more than just one original loan between them), (iv) the initial collateral amount, (v) the required cash collateral percentage (i.e., either 100% or 102%), and (vi) rounding precision (i.e., whether mark-to-market payments are rounded to the nearest penny, nickel, dime, quarter, or dollar).²⁵

Comparing the information on stock loan transactions that OCC has access to described above with the significant number of data elements that would be required to be reported under proposed Rule 10c-1 (described in Section IV. of this letter), it is clear that OCC does not have access to the majority of the information sought under proposed Rule 10c-1 under the current design of the Stock Loan Programs and therefore also could not report such information to an RNSA within the specified time frames. This is true regardless of consideration of whether OCC's reporting obligation would stem from its treatment under proposed Rule 10c-1 as a Lending Agent or as a lender itself due to its central counterparty novation function. Specifically, Occ does not know or maintain the information described below:

Transaction Reporting Data Elements (Section IV.A. above). Regarding the transaction data elements, OCC does not know or does not maintain: (i) the date the loan was effected (i.e., agreed upon by the counterparties); (ii) the time the loan was effected; (iii) the amount of the security loaned²⁶; (iv) the rebate rate²⁷ and any other fees or charges; and (v) any termination date of the loan (if a term loan). The borrower type for any loan that OCC would be required

²⁵ As part of OCC's ongoing transformation to modernize its technology and processes, OCC intends to implement programmatic enhancements to its stock loan programs that will be the subject of forthcoming self-regulatory organization rulemaking for Commission approval. See OCC Stock Loan Program Changes and Enhancements Guide, available at <https://www.theocc.com/Participant-Resources> (last modified August 26, 2021). As part of these planned enhancements, OCC would begin collecting the rebate rate for purposes of OCC's enhanced guarantee and processing of rebate payments. OCC would also include an optional term date field for the members' recordkeeping purposes following OCC's transition to contract-based (as opposed to position-based) recordkeeping. As discussed below, however, OCC would still lack most of the data elements required to be reported even after the planned enhancements are implemented.

²⁶ While each incoming transaction is associated with a specific quantity, as described above, each transaction increments or decrements stock loan or stock borrow positions aggregated for each loaned security, regardless of which pre-novation stock loan contract that quantity may be associated with.

²⁷ In the Hedge Program, the lending clearing member and borrowing clearing member set and know the rebate rate – not OCC. In the Market Loan Program, the loan market knows the rebate rate – not OCC.

to report would be the same (and the same as what the lending clearing member itself would report for pre-novated transactions) because all of OCC's clearing members participating in the stock loan program are broker-dealers.

Loan Modification Data Elements (Section IV.B. above). OCC does not know any of this information.

Confidential Data Elements (Section IV.C. above). OCC does not know the CRD, IARD, MPID or LEI of the lending and borrowing clearing members or whether the lending or borrowing clearing member are acting as intermediaries. OCC also does not know if the loan is being used to close out a fail to deliver (pursuant to SEC Regulation SHO or otherwise).

Securities Available to Loan and On Loan (Section IV.D. above). As described above, OCC is not actively involved in lending securities for lending clearing members or otherwise. Rather, as the central counterparty, OCC is passive and not in control of the loan and borrow activity of the clearing members. Because of this, regarding the information required to be provided by a Lending Agent under proposed Rule 10c-1(e)(1), OCC only knows the legal name of the issuer, the ticker symbol or CUSIP, the total amount of each security on loan by a lending clearing member, the collateralization rate, and the rounding precisions where OCC acts as a central counterparty intermediary to that lending clearing member (i.e., as the borrower for central clearing purposes). OCC does not know the total amount of each security that is not subject to legal or other restrictions that prevent it from being lent, the total amount of each security available to the Lending Agent to lend (since OCC does not lend on behalf of beneficial owners), or the total amount of each security on loan by the lending clearing member that has been contractually booked and settled (i.e., OCC has no visibility into the lending clearing members uncleared, OTC stock loans).

Because of these significant gaps between the information OCC currently maintains through its Stock Loan Programs and the information required to be reported under proposed Rule 10c-1, OCC urges the Commission that the proposal should be revised so that a clearing agency like OCC should not have any reporting obligations where the only intermediation it provides is to act as a central counterparty and the clearing agency is not actively involved in lending on behalf of a beneficial owner or for its own account outside of its central counterparty services. Revising the Stock Loan Programs to cause OCC to have all of the reportable information in a manner that would facilitate reporting by OCC under the time frames specified in proposed Rule 10c-1 would require significant operational changes by OCC, the preparation of related proposed rule changes and advance notice filings with the SEC, the review and publication of and ultimate disposition on such filings by the SEC, and likely significant operational changes by all OCC clearing members participating in the Stock Loan Programs. These operational and legal changes would impose on OCC (and likely clearing members participating in the Stock Loan Programs) substantial investments of time, human resources and capital costs to put OCC in a position to be able to comply with proposed Rule 10c-1. In turn, OCC would have to assess whether and how to pass on these costs to the users of its services, who in turn may pass on such costs to their customers.²⁸

²⁸ As a financial market utility, OCC typically refunds clearing fee revenue in excess of its operating costs and capital needs. Accordingly, increased operational costs resulting from compliance with proposed Rule 10c-1 ultimately would be borne by clearing members.

Rather than imposing these burdens this way, OCC believes that the broker-dealer lending and borrowing clearing members that participate in OCC's Stock Loan Programs are best positioned to know and report information under proposed Rule 10c-1 directly to the RNSA.

B. Loan Information Resulting from OCC's Novation Function as a Central Counterparty Should Not Be Required to Be Reported

As described in Section III., when OCC novates a stock loan for inclusion in either of the Stock Loan Programs, OCC becomes the borrower to the lending clearing member and the lender to the borrowing clearing member. The terms that are preserved from the original contract are the identity of the security being lent, the number of shares lent/borrowed, the identity of the borrowing clearing member and lending clearing member, the collateralization rate, and the rounding precision.

Because proposed Rule 10c-1(a)(1) requires reporting to an RNSA of the requisite information by "any person that loans a security on behalf of itself," it appears that Rule 10c-1 as proposed would obligate OCC to report information not only as a Lending Agent in connection with the original stock loan (between the lending and borrowing clearing members) but also regarding the new position that OCC creates to act as lender to the borrowing clearing member. OCC believes that the current drafting of proposed Rule 10c-1(a)(1) would then also place a reporting obligation on the lending clearing member for the new position that OCC creates post-novation as borrower to the lending clearing member.

As described in Section V.A immediately above, OCC does not have the majority of the information that would be required to be reported to an RNSA under proposed Rule 10c-1. Moreover, if OCC were required to report as a Lending Agent and then again following novation, reporting to the RNSA would be redundant and misleading since the positions that OCC creates through its novation function have terms that are identical to the terms of the original, settled loans between the lending clearing member and borrowing clearing member that OCC accepts into its Stock Loan Programs. These same concerns are also true regarding any reporting that would be required by the lending clearing member in connection with the novated loan position between it and OCC as the borrower to the lender.

Subjecting lending clearing members to the costs of duplicative reporting requirements for cleared stock loans novated by a central counterparty might drive lenders to forgo the robust and uniform risk management benefits such central counterparties offer, frustrating the Exchange Act's goal of promoting a national system for the prompt and accurate clearance and settlement of transactions in securities. Furthermore, if the RNSA assigns a unique identifier to each loan, as the proposal appears to require, then the RNSA might assign four unique identifiers for a single cleared stock loan transaction: the first by the lending clearing member for the pre-novated stock loan upon reaching agreement with the borrowing clearing member, the second by OCC with respect to the pre-novated loan as a "Lending Agent," the third by OCC for the post-novation contract between OCC (as the lender) and the borrowing clearing member, and the fourth by the lending clearing member for the post-novation contract between the lending clearing member and OCC (as the borrower). Such redundant reporting, if not accounted for, would give the public a grossly inaccurate picture of the volume of stock lending activity.

For these reasons, proposed Rule 10c-1 should be revised so that the phrase “loan a security” in Rule 10c-1(a)(1) does not include any positions that result from novation by OCC.

C. The SEC Already Has Authority Under the Exchange Act to Examine Any Time the Loan Information in OCC’s Books and Records

The Proposing Release states that “[t]he data elements provided to an RNSA under proposed Rule 10c-1 are also designed to provide the RNSA with data that could be used for important regulatory functions” and that “. . . the data elements are designed to provide regulators with information to understand: Whether market participants are building up risk; the strategies that broker-dealers use to source securities that are lent to their customers; and the loans that broker-dealers provide to their customers with fail to deliver positions.”

As described above, OCC does not have much of the information that the Commission seeks to have reported under proposed Rule 10c-1 that would further regulatory analysis of these issues. Moreover, regarding the more limited information that OCC does have in its books and records, Section 17(b) of the Exchange Act already gives the Commission broad authority to examine all records that OCC is required to make and keep under the Exchange Act. OCC believes that it is appropriate for the Commission to continue to rely on these examination powers to obtain information from OCC about its Stock Loan Programs to help facilitate regulatory analysis of these considerations, rather than imposing substantial costs on OCC and the markets its serves to build systems and a rulebook structure to allow OCC to comply with Rule 10c-1 as proposed. OCC also notes that due to OCC’s role as a central counterparty its books and records would provide the Commission with a relatively more centralized view of market activity of OCC clearing members than compared to books and records of individual broker-dealers and other stock loan market participants. OCC believes that at least with regard to loans that are centrally cleared through OCC’s Stock Loan Programs this fact mitigates the concerns that the Commission expressed in the Proposing Release regarding a current lack of centralized information regarding activities of market participants.²⁹

VI. RESPONSES TO SEC QUESTIONS REGARDING OCC

The SEC asked several questions in the Proposing Release regarding the interplay between OCC’s role in the stock loan market as a clearing agency and the requirements of proposed Rule 10c-1. This Section V. reproduces those questions in bold and in relevant part below, with OCC response.

3. Are there certain types or categories of Lenders that should be excluded from the requirements under proposed Rule 10c–1 to provide 10c–1 information to an RNSA? If so, please identify such Lender or Lenders, and explain why they should be excluded from the requirements under proposed Rule 10c–1. For example, should clearing agencies be excluded from the requirements under proposed Rule 10c–1 to provide Rule 10c–1 information to an RNSA? If so, why? How would such an exclusion impact the information available to the public and regulators?

²⁹ Proposing Release at 69803.

OCC Response. For the reasons described in Section V. above, clearing agencies like OCC that provide central counterparty services and are not actively involved with the lending of securities of beneficial owners or for their own account should not have reporting obligations to an RNSA – whether as a Lending Agent or as a lender due to clearing agency novation.

8. Should the Commission define what it means to “loan a security”? Should such a definition be included in the Rule?

OCC Response. Yes. As stated above, the definition should be revised to expressly exclude loan positions that result from the central counterparty novation function that a clearing agency like OCC provides to securities loans.

13. Should proposed Rule 10c–1 require that Lenders provide material information to an entity other than an RNSA? For example, should proposed Rule 10c–1 require the material terms of a securities lending transaction be provided directly to the Commission, a clearing agency, or some other entity?

OCC Response. No. OCC believes that FINRA is currently best positioned to serve in this role given FINRA’s experience and expertise to date in administering other trade reporting systems. In addition, OCC does not have existing operational and corresponding legal infrastructure to support this role for stock loans and believes that there would be substantial legal and operational costs and time necessary for OCC to come into compliance with any such requirement.

67. As currently drafted the proposed Rule would require that persons whose loans are processed through any of the lending programs such as those operated by the OCC comply with the requirement to provide 10c–1 information. Please discuss whether loans cleared through OCC, or similar processes, should be exempt from the proposed Rule’s requirement to provide 10c–1 information or whether such exemptions should be considered on a case-by-case basis pursuant to paragraph (i) of the proposed Rule.

OCC Response. For the reasons described in Section V. above, OCC urges the Commission that OCC should not have reporting obligations as a Lending Agent or as a lender related to its central counterparty novation functions. OCC believes that the lending clearing member and borrowing clearing member are best positioned to have and report the information contemplated under proposed Rule 10c-1, and that imposing an obligation on OCC in addition to the lending clearing member and borrowing clearing member could result in redundant and misleading information being reported to the RNSA. OCC believes that it is appropriate for the Commission to exclude from the reporting obligations of Rule 10c-1 loan positions that result due to clearing agency novation.

VI. CONCLUSION AND OCC REQUEST

OCC appreciates the opportunity to comment on SEC proposed Rule 10c-1. For the foregoing reasons, OCC believes that OCC should not have reporting obligations under proposed Rule 10c-1 – either as a Lending agent or as a lender in connection with OCC’s central counterparty novation function. OCC requests that the Commission revise proposed Rule 10c-1 accordingly so as

not to impose significant costs on OCC and lenders and borrowers in the stock loan market that would disincentivize their use of the safety and protection provided by OCC's clearance and settlement services.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. P. Kamnik', written over a horizontal line.

Joseph P. Kamnik
Chief Regulatory Counsel

Cc: The Hon. Gary Gensler, Chairman
The Hon. Hester M. Peirce, Commissioner
The Hon. Elad L. Roisman, Commissioner
The Hon. Allison Herren Lee, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
Division of Trading and Markets