

January 7, 2022

VIA ELECTRONIC MAIL ONLY – rule-comments@sec.gov

Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

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

Dear Ms. Countryman:

Charles Schwab & Co., Inc. appreciates the opportunity to comment on the U.S. Securities and Exchange Commission's release on proposed Rule 10c-1 under the Securities Exchange Act of 1934, which would, for the first time, require the reporting and public disclosure of securities lending transactions and certain market related information.¹

Schwab and its affiliate, TD Ameritrade, Inc. service over 30 million brokerage accounts containing assets of nearly \$8 trillion. Schwab is one of the largest broker-dealers in the United States and provides services to both retail clients and clients of independent Registered Independent Advisors for which Schwab provides custodial, operational and trading support. In the aggregate, Schwab and TD Ameritrade clients have tens of billions of dollars in outstanding margin balances, and place hundreds of thousands of short sale orders on a daily basis. Schwab is also one of the largest lenders of hard-to-borrow securities in the United States.

Schwab has been a large and active participant in the securities lending market for over three decades. Schwab has also maintained a fully paid securities lending program since 2005, which currently has approximately 25,000 active clients and \$40 billion in long market value. In addition, TD Ameritrade has recently launched its own fully paid securities lending program.

Unlike prime brokers that primarily service hedge funds and other institutional clients, Schwab's retail client base provides Schwab with a unique perspective concerning the securities lending markets. Schwab asks the Commission to consider important differences between retail clients and institutional clients in the final Rule.

As a threshold matter, Schwab has been a proponent of enhanced market transparency for decades and remains so today. However, Schwab has a couple of operational concerns with the proposed Rule and requests that the final Rule address these operational issues. Schwab agrees with other industry commenters regarding some possible negative consequences of the Rule, including:

- *Short positions should be excluded from securities lending reporting, since these transactions are already reported under the FINRA Short-Interest Reporting Rule and the Consolidated Audit Trail Rule, and would result in the double counting of short sales.* Retail clients often short and cover securities multiple times in a trading day, but end the day in a flat position.

¹ *Reporting of Securities Loans*, Release No. 34-93613 (Nov. 18, 2021), 86 FR 69802 (Dec. 8, 2021).

This trading activity is already being reported and asking firms to report this activity again under the proposed Rule is redundant, would result in the double counting of those transactions, and may lead to confusion. Accordingly, short sale trading activity should be excluded from the final Rule.

- *The proposed 15-minute reporting window will not enhance market transparency.* The proposed 15-minute reporting window would, in addition to creating a significant operational burden on firms, sometimes result in the reporting of inaccurate and incomplete information. Some loans are not finalized until end of the trading day, and fails are also often unreconciled until the end of the trading day. Schwab respectfully disagrees with the observation in the proposed Rule that a 15-minute “reporting frequency would be unlikely to present technical challenges”. A daily reporting cycle will provide more accurate and meaningful data, while still providing the enhanced transparency sought in the proposed Rule. Schwab recommends that the final Rule reflect a daily reporting cycle.

In addition to these operational concerns, a retail client has increased confidentiality concerns compared to an institutional client. While the Rule proposal states that the identity of the parties to a loan will be “Confidential Data Elements”, in the event of a data breach there is more risk to individuals having their personal non-public information exposed in the public eye compared to an institution. Schwab suggests that the final Rule include masking or further redacting to better protect the individual’s personal non-public information.

Schwab joins the other industry commenters in asking the Commission to ensure that firms are provided with sufficient time to develop and implement the operational capabilities needed to comply with any final Rule. Firms have had to dedicate resources to comply with recent rule changes. Upcoming regulatory initiatives, including the anticipated shortening of the United States settlement cycle should take priority, and the cumulative burden on resources should be taken into account when determining the implementation date of the Rule. Schwab respectfully requests that the Commission provide firms with adequate time to address implementation of the final Rule.

Finally, in order to lessen the reporting and financial burdens on firms, Schwab recommends that the Commission consider leveraging the existing Depository Trust Company infrastructure for reporting information, since the vast majority of “institution to institution” stock loan activity flows through the DTCC today. Given the significant costs to firms of implementing the proposed Rule, utilizing the existing DTCC infrastructure could provide the dual benefit of a faster implementation while reducing costs. Schwab suggests that the Commission begin a feasibility study on this concept.

Schwab appreciates the opportunity to comment on the Proposing Release and thanks the Commission for its consideration of the issues raised in this letter. Please feel free to contact me at [REDACTED] or by phone at [REDACTED] with any questions or concerns.

Sincerely,

Richard Karoly

Richard Karoly
Managing Director, Legal
Charles Schwab & Co., Inc.