



5 February 2023

HSBC Bank USA, N.A.
452 Fifth Avenue
New York, NY 10018

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100F Street NE
Washington, DC 20549-1090

Re: (1) Proposed Rule 10c-1, Release No. 34-93613; File No. S7-18-21 (Proposed Rule 10c-1);¹ (2) Proposed Rule 10B-1, Release No. 34-93784; File No. S7-32-10 (Proposed Rule 10B-1);² and (3) Proposed Rule 13f-2, Release No. 34-94313; File No. S7-08-22 (Proposed Rule 13f-2).³

Dear Ms. Countryman:

HSBC Bank USA, N.A. (**HBUS**), on behalf of itself and its affiliates worldwide (collectively, **HSBC**), is submitting an addendum to our 24 January 2023 comment letter (the **Comment Letter**)⁴ on the above-captioned rule proposals (the **Proposed Rules**) in order to respond to certain questions discussed with the staff of the Securities and Exchange Commission (the **Commission**) during our meeting on 26 January 2023. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Comment Letter.

I. Proposed Rule 10c-1

Commission staff asked if limiting reporting to U.S. lenders would create an incentive for U.S. asset managers to borrow securities from non-U.S. lenders, to avoid their transactions being reported.

We would expect the depth and liquidity of the U.S. market to act as a disincentive for U.S. asset managers to avoid U.S. lenders altogether, and we cannot envision any incentive for U.S. asset managers to prefer non-U.S. lenders that are themselves subject to similar reporting requirements in their home jurisdictions. As a result, we recommend that the Commission, at a minimum, includes a carve-out from Proposed Rule 10c-1 (or allows for substituted compliance with respect to the rule) for loans by EU or UK lenders that are subject to reporting under the EU or UK Securities Financing Transaction Regulations.

¹ 86 Fed. Reg. 69802 (Dec. 8, 2021).

² 87 Fed. Reg. 6652 (Feb. 4, 2022).

³ 87 Fed. Reg. 14950 (Mar. 16, 2022).

⁴ Available at <https://www.sec.gov/comments/s7-18-21/s71821.htm>, <https://www.sec.gov/comments/s7-32-10/s73210.htm>, and <https://www.sec.gov/comments/s7-08-22/s70822.htm>.

If the final rule requires reporting by non-U.S. lenders, we recommend that such reporting is: (i) limited to specific loans to U.S. borrowers (and does not include reporting of all of the securities the non-U.S. lender has available to lend); and (ii) excludes loans of non-U.S. securities.

II. Proposed Rule 10B-1

Commission staff asked if firms that currently aggregate positions across independently-managed business units for Section 13 beneficial ownership reporting purposes would still find it challenging to aggregate positions under Proposed Rule 10B-1.⁵

We consider it likely that aggregating across independently-managed business units for Rule 10B-1 would still be challenging for those firms. Compared to Proposed Rule 10B-1 reporting, Section 13 beneficial ownership reporting relates to a more limited product set and—importantly—mandates a significantly less aggressive reporting timeline.⁶ Accordingly, it would be important for timelines for reporting under Rule 10B-1 to be aligned to the timelines for Section 13 beneficial ownership reporting.

We also discussed with Commission staff the benefit of refining Proposed Rule 10B-1's first cross-border trigger—a security-based swap (**SBS**) reportable under Rule 908(a) of Regulation SBSR—to only apply to the counterparty that actually reports under Rule 908(a), at least in the case of an SBS involving at least one non-U.S. counterparty (e.g., for an SBS between a non-U.S. SBS dealer and a non-U.S. person, only the non-U.S. SBS dealer would be captured). We believe this would be a very helpful clarification and should reduce the incentive for non-U.S. persons to avoid trading with Commission-registered non-U.S. SBS dealers. However, if the Commission adopts this approach, we recommend that the Commission also incorporate any applicable relief from SBSR reporting—e.g., the time-limited relief provided in the preamble to the Commission's Guidance on the Cross-Border Application of Certain Security-Based Swap Requirements.⁷

III. Proposed Rule 13f-2

Commission staff asked if there is an alternative to a market making exemption that would help address the concerns raised in our Comment Letter.

Our strong preference would be for Rule 13f-2 to include a class exemption for market making—this approach would be consistent with the EU and UK Short Selling Regulations (as well as with IOSCO's principles on the regulation of short selling). In raising this question, we understood the Commission staff was concerned with potentially open risk resulting from market making in options. However, short exposure from market making in options would be hedged with long exposure in the relevant cash securities—with the overall market making desk

⁵ As discussed on page 10 of our Comment Letter.

⁶ For example, at present, a Schedule 13G filer generally only is required to report within 45 days of the end of the calendar year in which its beneficial ownership of a class of covered equity securities is more than 5% (or within 10 days of the first calendar month in which the position is above 10%).

⁷ 85 Fed Reg. 6270 (Feb. 4, 2020), 6346-6349.

continually managing its exposure within risk limits. Firms—like HSBC—that are subject to the Volcker Rule are also required to ensure that their market maker inventory does not exceed, on an ongoing basis, reasonably expected near-term customer demand.

Adjusting Rule 13f-2's reporting threshold calculation to be on a net basis (rather than gross) would be welcome—and would likely result in market making positions rarely or never needing to actually be reported (and so address the issue that reporting such hedged positions could distort overall reporting, by obscuring unhedged directional positions). However, without a class exemption, market makers would still need to bear the cost of implementing systems, policies, and procedures to comply with the proposed rule, simply to demonstrate that they have no reportable positions.

* * *

Thank you for considering HSBC's comments on the Proposed Rules. If you have any additional questions, please let us know.

Sincerely,



Mark A. Steffensen
Senior Executive Vice President and
General Counsel for HSBC North American
Holdings Inc. and HSBC Bank USA, N.A.