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Recent Developments in the Securities Lending and Repo Markets

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Securities lending, repurchase agreements (repos) and reverse repurchase agreements (reverse repos) all of which involve the movement of cash by one party and securities by the other party, are important and versatile transactions for mutual funds. They allow funds to earn an additional return on both their portfolio of securities and excess cash, and can also be used for borrowing purposes. For money market funds, repurchase agreements have become an increasingly important investment, as amendments to Rule 2a-7 under the Investment Company Act of 1940, as amended (the Investment Company Act), have forced money market funds into even higher quality and shorter-term investments.

These transactions have always been subject to certain requirements under the Investment Company Act, including provisions governing custody of fund assets, restrictions on affiliated transactions and limitations on borrowing and leverage. Nevertheless, with a few exceptions, securities lending, repos and reverse repos have largely operated under the radar screen as these transactions were viewed as low risk due to a number of factors (for example, full collateralization, daily marking-to-market, the use of large well-known counterparties) as well as there being no history of losses arising from these transactions.

All of this changed during the financial crisis when the fall of Lehman Brothers set

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in motion a chain of events that resulted in a number of funds experiencing losses from these transactions, most notably losses arising from the investment of cash collateral received in securities lending transactions. In addition, the financial crisis crystallized the importance of risk management by funds and fund managers and oversight of this process by fund boards.

As a result of these events, securities lending and repos have received increased scrutiny on a number of fronts. These transactions are considered part of the "shadow banking system" and, accordingly, are viewed as a potential source of systemic risk to the financial system. They are subject to future rule-making pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act)[1] while the Federal Reserve Bank of New York is leading a regulatory reform initiative with respect to "tri-party repos," the type of repos utilized by most mutual funds.[2]

While funds had generally looked at securities lending and repos narrowly as a means to achieve certain financial solutions, it has become increasing difficult to ignore the broader role that these transactions play in the securities financing market and the inter-connection between mutual funds, which generally act as liquidity providers to banks, broker-dealers and hedge funds, and other participants in the securities financing market. As this market is subject to increased regulation and potentially changing structures, it is important that fund managers, as key players in this market, take a proactive role in these efforts to maximize the likelihood that the changes that occur are helpful to fund managers and investors and do not offload additional risks or unnecessary regulatory burdens on funds. This article examines the mechanics of, and legal issues relating to, these transactions and provides an update on the post-financial crisis changes and regulatory issues in the securities lending and repo markets.

I. Overview of Securities Lending, Repos and Reverse Repos

A. Mechanics of Securities Lending

Securities lending is used to generate incremental revenues from portfolio assets by raising cash to be invested or loaning securities for a fee. Mutual funds maintain a significant presence in the securities lending market as a way to earn incremental revenues and bolster performance.

In a securities lending transaction, a beneficial owner of securities lends those securities to a borrower in exchange for collateral for return either on demand or on a specific, agreed upon date. Through guidance from the Securities and Exchange Commission (the SEC), industry practice dictates posting collateral of 102 percent of the current market value of domestic securities, and 105 percent of the current market value of foreign securities.[3] Collateral levels are designed to cover market repurchase risk in the event of borrower insolvency. Most often, cash is provided for collateral, although certain high quality instruments, such as government securities and letters of credit may also be used.[4]

The loaned securities are valued daily, or marked to market, to ensure that they are fully collateralized. The cash collateral is invested and a pre-negotiated portion of the interest earned on the cash collateral is usually paid to the borrower as a rebate (that is, the borrower is being compensated for lending cash to the securities lender).

A lending agent typically arranges the transaction and negotiates the terms with the borrower. The lending agent is often the fund's custodian as large custodial banks are among the major players in the securities lending market. However, the lending agent could also be a third-party agent that specializes in securities lending, a custodial bank that does not act as the fund's custodian, or the lender itself acting as its own agent in an internal lending program.[5] A third party lending agent will pool a lender's securities with those of other clients, and will allocate loans made among clients using an algorithm.[6] In addition to arranging the loan, a lending agent can add ease and efficiency to the transaction, by offering a larger inventory of securities attractive to a borrower, having the operational abilities to manage a high volume of requests, and having knowledge of market dynamics.[7] For its services, the lending agent typically shares the return from securities lending revenues with the lender.

In most securities lending transactions, the borrower is a broker-dealer or bank usually seeking a specific security and borrowing through its prime brokerage division or proprietary trading desk.[8] There are many reasons global banks and broker-dealers, the most common borrowers, borrow securities, including: operational needs, such as preventing sell fails and covering shorts; financing inventory and managing balance sheets; various arbitrage opportunities; and various hedging strategies.[9]

Once a lender receives cash collateral for its securities, it usually invests the collateral in overnight repos or in money market funds. Many funds previously invested cash collateral in unregistered funds to earn a higher return on the cash collateral investment, but the losses from these investments after the fall of Lehman Brothers (and/or gates imposed by the managers of these funds to prevent investors from redeeming) have made the use of these unregistered funds much less common.

Securities loans are generally categorized as either general collateral loans, where the lender primarily looks to the return on the cash collateral investment as the primary or sole source of its return, or "specials," where the lender earns a premium for the securities loan in excess of the cash collateral reinvestment rate due to the high demand for the loan. Given the extremely low returns on money market funds and similar investments, there has been greater emphasis on lending specials than on general collateral lending.[10]

While the lender transfers legal title and the associated rights and privileges to the borrower (most notably the right to vote the securities) in a securities lending transaction, the lender retains the right to economic benefits of the securities, including interest, dividends, maturities, and other distributions.[11]

Securities lending transactions are treated as "securities contracts" under the Bankruptcy Code and are therefore outside the provisions of the automatic stay.[12]

Risks associated with securities lending include counterparty risk, or risk that the borrower defaults and fails to return the securities; reinvestment risk, where the cash collateral incurs losses during the term of the loan; and operational risk (for example, missed record dates, incorrect tax reporting, failure to mark collateral to market).[13] Many securities lending agents offer indemnification for counterparty risk, but not reinvestment risk.

B. Regulatory Issues in Securities Lending

Most of the regulatory requirements for securities lending transactions were laid out by the SEC in no-action letters dating from the 1970s. From this body of no-action letters, guidelines for securities lending programs have emerged. This guidance confirms that a fund is permitted to lend securities, but the fund's policies must permit securities lending and the fund's disclosure documents must accurately describe the program and its risks.[14] In addition, cash collateral should be invested consistently with the lending fund's investment policies.[15] A fund exercises control over the cash collateral and securities purchased with that cash; so as fund assets, such securities are subject to the fund's usual valuation procedures.[16] A board must approve and oversee securities lending programs; it may delegate its advisory duties but must retain its fiduciary duties.[17] Loans must be collateralized not less than 100 percent of the market value of the securities loaned, and to ensure proper collateralization, loans should be marked-to-market daily.[18] Through the mark-to-market process, a borrower may be required to add collateral whenever the price of the security rises.[19]

Other requirements include that such loans provide that the fund may terminate the loan at any time; the fund receives a reasonable return for making such loans, any dividends, interest or other distributions on the loaned securities, as well as any increase in the market value of the securities; the fund is not required to pay any service, placement, or other fees in connection with the loan; and the fund should retain its voting rights (or recall securities on loan) with respect to material matters.[20] In recognition of the leveraging aspect of securities loans, SEC guidance provides that a fund may not loan securities with a value in excess of one-third its total asset value, including collateral received from such loans.[21] In addition, it is considered a best practice to address the fund's securities lending program as part of its Rule 38a-1 compliance program and subject to the oversight of the fund's chief compliance officer.[22]

In situations where a fund wishes to utilize the services of an affiliated person in connection with a securities lending program, such as an affiliated lending agent or borrower, exemptive relief from the SEC is required.[23] Relief had been required to invest cash collateral in an investment vehicle managed by an affiliated person, but with the adoption of Rule 12d1-1, this relief is no longer required for investments in affiliated money market funds. The SEC has imposed a moratorium on issuing exemptive orders to permit these types of affiliated securities lending transactions for the past few years following a sweep exam of fund securities lending programs.

C. Mechanics of Repurchase Agreements

A repurchase agreement, or repo, is a two-part transaction involving the sale of securities, or portfolio of securities, coupled with an agreement to repurchase the securities.[24] In the opening leg of the transaction, the lender/purchaser provides cash to the borrower/seller and receives securities in return.[25] The borrower/seller's securities are discounted (known as a haircut) so that the amount of cash received is less than the value of securities given. In the closing leg, the seller/borrower repurchases the securities by paying cash to the purchaser/lender.[26] Typically, one of the counterparties in a repo transaction is a securities dealer.[27] Repos have different attributes. The master repurchase agreement treats the arrangement as a sale; repos are treated as secured financings for some purposes and security holdings for other purposes.[28] In addition, repos receive special treatment in bankruptcy as either repurchase agreements or securities contracts and, like securities loans, are excluded from the automatic stay provisions.[29] This special treatment allows a repo lender access to the collateral in the event of a borrower default rather than be treated as a secured lender. Repos are often used by broker-dealers to finance their inventory of securities for a short period of time and allow funds to earn interest on uninvested cash.[30]

The US repo market is segmented into bilateral and tri-party repo markets. The transactions in the bilateral market involve two parties, the cash provider and the collateral provider. In a bilateral transaction, the payment of cash and delivery of securities in the opening leg is simultaneous and may create some operational difficulties, such as making sure that the cash provider receives the collateral; the collateral is adequate; and the correct margin has been applied. Often a borrower will pay more for specials, the specific securities it may require.[31] Specials have become prevalent in the bilateral market, where a cash provider, likely a broker-dealer, needs a specific security for a short-selling transaction and will get a lower interest rate on the repo to obtain that specific security.[32] The biggest players in the specials segment of the market include hedge funds and dealers, or parties that engage in short selling.[33] The Federal Reserve Bank of New York has estimated that the specials segment of the repo market is almost $1 trillion in size as of May 2012.[34]

In a tri-party repo transaction, a clearing bank third-party facilitates settlement of the repo.[35] Currently, there are only two banks in the United States that offer such services for tri-party repos by settling repo transactions on their own balance sheets: Bank of New York Mellon (BNY) and JP Morgan Chase (JPM).[36] Clearing banks transfer securities from the dealer's to the cash investor's securities account, and transfer cash from the cash investor's to the dealer's cash account in the opening leg of the repo transaction, and transfer the assets in reverse in the closing leg.[37] Mutual funds are far more likely to engage in tri-party repurchase agreements. Because a bank (either BNY or JPM) holds the securities for the funds, the custody requirements of Section 17(f) of the Investment Company Act are more easily met than in a bilateral repo transaction.

Unlike the bilateral repo market, with its significant presence of specials, the tri-party repo market is accessed for large-scale, short-term financing for a dealer's securities inventories. As such, the tri-party repo market is a general collateral market, where parties look to obtain certain classes of collateral (for example, governments, agencies, corporates, etc.), not specific securities.[38] The practical result is that the tri-party repo market is the largest source of secured funding for US dealers, according to the Federal Reserve

Bank of New York.[39] As of June 2012, US Treasury securities and US agency obligations accounted for approximately 85 percent of the collateral in the US tri-party repo market.[40]

D. Regulatory Issues with Repurchase Agreements

Since most repurchase agreement counterparties are "securities related issuers," repurchase agreements are subject to the provisions of Section 12(d)(3) and Rule 12d3-1 of the Investment Company Act which, ordinarily would limit a fund's exposure to any non-affiliated repo counterparty to not more than five percent of a fund's total assets. Nevertheless, pursuant to Rule 5b-3, a fund may "look-through" the repurchase agreement to the underlying collateral (that is, treat the fund as if it is directly holding the collateral for compliance testing purposes) if the following requirements are met: (i) the value of the collateral is at least equal to the resale price; (ii) the fund has perfected its security interest in the collateral; (iii) the collateral is maintained with an eligible custodian; (iv) the collateral consists of cash, government securities, securities with the highest rating category of a nationally recognized statistical rating organization (or the equivalent as determined by the fund's board; and (v) upon the event of insolvency, the repo would qualify for the automatic stay provisions of the Bankruptcy Code. For money market funds, Rule 2a-7 was amended in 2010 to further limit the look-through provisions of Rule 5b-3 to repos collateralized only by cash or government securities.

As noted, repos have become increasingly important transactions for money market funds.[41] As amended, Rule 2a-7 imposes daily and weekly liquidity requirements which can be met by investing in repos. In addition, because of the collateralization and the short-term nature of repos, funds can use repos as a means to obtain exposure to certain assets in a more controlled fashion. For example, during the present European debt crisis, many money market funds have limited their holdings of securities issued by European banks to repos collateralized by such debt securities.[42]

As with securities lending, some funds engage in repos (and reverse repos) with affiliated persons of the funds pursuant to exemptive orders.

E. Reverse Repurchase Agreements

A reverse repo is exactly the same transaction as a repo except that from the fund's standpoint, the fund is now the borrower/seller. In a reverse repo, a fund will agree to sell and repurchase a security it owns.[43] A reverse repo is viewed as a collateralized borrowing, as a fund will incur the liability and use its security as collateral; the fund's total assets and liabilities will increase by the amount of the reverse repo, while net assets will remain flat.[44] Reverse repos allow a fund to invest borrowed cash at a reverse repo rate, which is generally a higher rate than the cost to borrow, and allow portfolio managers to maintain liquidity by raising cash instead of selling securities.[45] The SEC has long recognized the leverage effects of reverse repos and requires funds to "cover" the repurchase obligation by maintaining liquid assets in an amount equal to the repurchase price.[46] The amount of the collateral held on behalf of the purchaser/lender may not be used in meeting this "cover" requirement, as this would defeat the anti-leveraging effect of this requirement.

While a securities lending transaction is generally viewed as a loan by a fund, the flow of funds is identical to a reverse repo as in both cases a fund is receiving cash and delivering securities. In fact, some funds do engage in securities lending as a way to borrow cash. Some mutual fund lending agents have programs that are designed for this purpose.

II. Securities Lending and Repos After the Financial Crisis

A. The Role of Securities Lending and Repos in the So-Called Shadow Banking System

The financial crisis of 2007-2008 brought into focus shadow banking activities such as securities lending and repos, where credit is provided to finance a variety of activities outside of the regulated banking system, and the systemic risks arising from these activities. Below is a brief overview of how these issues are starting to play out in several different areas: the markets themselves, the Dodd-Frank Act reforms and the efforts by the New York Fed to address tri-party repos. While there has already been a great deal of post-financial crisis regulatory activity in certain areas, such as the regulation of derivatives, efforts to address the systemic risks in the securities lending and repo markets are still in their nascent. However, many participants, including funds, have already made important adjustments in the way that they conduct these transactions.

B. Changes to Fund Securities Lending Practices

Once thought to be a relatively low risk option to generate additional income, funds began to reevaluate the use of securities lending programs in the wake of the US financial crisis in 2008-2009.[47] Counterparty risk and concentration risk were pushed to the forefront in the wake of Lehman Brothers' failure, when excessive exposure to a single counterparty caused losses for a number of funds.[48] The Lehman bankruptcy disrupted the securities lending unwind process when it failed to return the securities it borrowed and some lenders sustained losses on the liquidation of the collateral.[49] The Lehman bankruptcy also adversely affected lenders where pools of collateral invested in Lehman-related commercial paper and asset-backed commercial paper experienced losses due to the steep decline in value of such securities, and in some instances, custodial banks restricted lenders from withdrawing cash from securities lending pools for fear of liquidity risk.[50] Such losses from collateral reinvestment caused some funds to move out of securities lending and into overnight repos. In addition, lack of general market liquidity and increased volatility of short-term securities created valuation risk for collateral investments.[51]

As a result of these events, a number of funds discontinued securities lending in the wake of the financial crisis.[52] While securities lending programs have regained popularity with funds, it is often done at a lower volume with an emphasis on lending "specials" and with lower risk cash collateral investment, such as overnight repos or money market funds. Even when unregistered funds are used, they are often managed in conformance with Rule 2a-7 to minimize risks.

C. The Dodd-Frank Act and Other Reforms

Neither repos nor securities lending were a primary focus of the reforms in the Dodd-Frank Act. Nevertheless, there are a number of provisions in the Dodd-Frank Act that could potentially impact the securities lending and repo markets, either through direct regulation or by impacting certain activities or market participants, such as short sellers, that participate in the securities lending and repo markets. Certain provisions of the Dodd-Frank Act explicitly affect securities lending and repurchase agreement transactions by including these transactions in lists defining credit exposure. These provisions include Section 610, which adds to the statutory definition of loans and extensions of credit "any credit exposure to a person arising from derivative transaction agreements, repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions,"[53] and Section 614, which amends Section 22(h)(9)(D)(i) of the Federal Reserve Act,[54] a section that defines the ways in which a member bank may extend credit to a person, to include credit exposure arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and a person.[55] As recently as June 2012, the Office of the Comptroller of the Currency proposed an interim final rule and request for comments to implement Section 610 and alternative methods for calculating credit exposure.[56]

Section 984(a) of the Dodd-Frank Act includes provisions that apply certain anti-manipulation provisions in Section 10 of the Securities Exchange Act of 1934 to securities lending activities while Section 984(b) requires the SEC to adopt rules that increase transparency of information available to brokers, dealers and investors in the securities lending market. In addition, Section 929 of the Dodd Frank Act imposes requirements on broker-dealers with respect to providing additional customer disclosures regarding short sales and the borrowing of securities.

Other provisions of the Dodd-Frank Act may affect these transactions as well. The "Volcker Rule," could limit lending agents from sponsoring unregistered cash collateral reinvestment pools. In addition, the Dodd-Frank Act provides the Federal Deposit Insurance Corporation (FDIC) with "orderly liquidation authority" whereby the FDIC may be appointed as receiver of a "covered financial company." This could have implications where a securities lending or repo counterparty becomes subject to these provisions.[57] In addition to the Dodd-Frank Act, securities lending could also be impacted by international regulators such as the Financial Stability Board (FSB), which has been focusing on the systemic risks from securities lending and repos. The FSB has created a working group and has issued several publications on these topics.

D. Reforming the Tri-Party Repo Market

The tri-party repo market is considered by many to be a huge source of potential systemic risk in the financial system, due mostly to the daily morning "unwind" of repos, when the two clearing banks return collateral to the dealer-borrowers and cash to the cash providers.[58] Until the transaction is "rewound" in the afternoon, the clearing banks will lend intraday to dealers on a secured basis.[59] The unwind process allows a dealer to access its securities during the day to settle sales.[60] The Federal Reserve Bank of New York estimates that clearing banks' exposure to a single dealer can routinely exceed $100 billion.[61] This massive exposure has piqued the Federal Reserve Bank of New York's concern. In February 2012, a task force on Tri-Party Repo Infrastructure published a report indicating that additional time would be required to reduce the heavy market reliance on intraday credit extension between clearing banks and broker-dealers, prompting the Federal Reserve Bank of New York to announce it would intensify its supervisory efforts of this segment of the repo market.[62] Various initiatives and pilot projects are currently underway to try to reduce the risk borne by the two repo clearing banks.

At this point, it is not clear how these reforms will ultimately play out. While a reduction in the systemic risk to the financial system would certainly benefit all of the participants, including mutual funds, there are concerns that reforms to the tri-party repo market may simply shift the risk currently faced by the clearing banks to the overnight repo lenders. In addition, it is possible that while these reforms may end up being well designed and beneficial to all of the respective participants, the structure of these reforms might require no action or exemptive relief in areas such as custody or affiliated transactions to permit funds to continue to participate in these markets. While the SEC has shown flexibility to provide relief necessary to permit new market structures and settlement arrangements,[63] it is important for fund managers to be proactive and plan ahead to address these issues in ways that protect their own interests as well as those of fund shareholders. In fact, many of the larger fund groups are already working behind the scenes to shape these solutions in an advantageous manner.

Conclusion

Mutual funds have been important players in both the securities lending and repo markets. While funds have been engaging in these transactions for many years and these transactions have provided a number of important benefits to fund investors, there has been increased consideration on how these transactions fit into a much larger securities financing market that includes many inter-connected and disparate participants as well as the risks arising from this market. Moreover, there have been a number of regulatory initiatives intended to address these risks. These initiatives include, but are not limited to the SEC and include both domestic and international initiatives. While it is too early to know exactly how these initiatives will play out, most are focused on adding transparency and reducing systemic risk, which will be easier to do in theory than in practice. As a result, fund managers will need to be vigilant and proactive to safeguard the benefits from these transactions and guard against proposed solutions that may not be beneficial to funds and their investors.

Notes

1. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

2. Katy Burne, "Work Still Needed to Reduce Repo Market Risks: Fed Official," *Wall Street Journal MarketBeat Blog,* Nov. 16, 2012, *http://blogs.wsj.com/marketbeat/2012/11/16/work-still-needed-to-reduce-repo-market-risks-fed-official*.

3. State Street Bank and Trust Co., SEC No-Action Letter (pub. avail. Jan 29, 1972) (stating that a fund must receive at least 100 percent cash collateral from the borrower); Investment Company Institute, *Securities Lending For Mutual Funds*, at 6 (1998).

4. Securities Lending 101, *eSecLending.com, http://www.eseclending.com/resources/securities_lending_101.php.*

5. *Id.*; *Securities Lending For Mutual Funds, supra* n.3, at 3.

6. Mutual Fund Directors Forum, *Practical Guidance for Fund Directors on the Oversight of Securities Lending,* at 4 (2012).

7. *Securities Lending For Mutual Funds, supra* n.3, at 4.

8. Securities Lending 101*, supra* n.4.

9. Securities Lending 101, *supra* n.4; *Securities Lending For Mutual Funds*, *supra* n.3, at 2.

10. *See, e.g*., Low Rates Crimp Securities Lending, FTSE Global Markets (Oct. 2011)

11. *Securities Lending For Mutual Funds, supra* n.3, at 11.

12. *See* 11 U.S.C. 741(7)(A) (defining a securities contract); 11 U.S.C. 101(22A) (defining financial participant); 11 U.S.C. 362 (automatic stay provision); 11 U.S.C. 555 (safe harbor protecting securities contracts from the Bankruptcy Code's automatic stay provision). *See also Treatment of Repurchase Agreements and Refunded Securities as an Acquisition of the Underlying Securities*, SEC Release No. IC-24050 (Sept. 23, 1999); Shmuel Vasser, "Derivatives in Bankruptcy," 60 *Bus. Law*. 1507, 1511-13 (2005).

13. *Practical Guidance for Fund Directors on the Oversight of Securities Lending, supra* n.6, at 6 (2012); BlackRock Viewpoint, *Securities Lending Balancing Risks and Rewards* (May 2012).

14. *Practical Guidance for Fund Directors on the Oversight of Securities Lending, supra* n. 6, at 7.

15. Norwest Bank Minnesota, N.A., SEC No-Action Letter (pub. avail. May 25, 1995).

16. Division of Investment Management, Generic Comment Letter of Chief Financial Officers (Nov. 7, 1997).

17. Salomon Brothers, SEC No-Action Letter (pub. avail. May 4, 1975); *Practical Guidance for Fund Directors on the Oversight of Securities Lending*, *supra* n.6, at 7 (2012).

18. State Street Bank and Trust Co., *supra* n.3.

19. *Id.*

20. *Id.*

21. Salomon Brothers, *supra* n.17; *Practical Guidance for Fund Directors on the Oversight of Securities Lending, supra* n.6, at 8.

22. Independent Directors Council, *Board Oversight of Certain Service Providers Task Force Report* (June 2007); Stephen Bier, Fran Pollack-Matz, Alan Rosenblat and Brian Vargo, "Overview of Fund Securities Lending Programs," 124 *Banking L.J.* 654 (2007).

23. The use of an affiliated lending agent requires exemptive relief under Section 17(d) and Rule 17d-1 and 17(e)(1) if the fund and lending agent share the returns from the lending program which is the method usually used by agents. An affiliate that borrows from a fund requires relief from the prohibitions of Section 17(a)(3) which prohibits an affiliated person from borrowing from a fund.

24. Adam Copeland *et al.*, "Key Mechanics of the U.S. Tri-Party Repo Market," *FRBNY Economic Policy Review*, at 18 (2012), available at *http://www.newyorkfed.org/research/epr/12v18n3/1210cope.pdf*.

25. *Id.*

26. *Id.*

27. *Id.*

28. Investment Company Institute, SEC No-Action Letter (pub. avail. June 15, 1999).

29. *See* 11 U.S.C. 101(46) (defining repo participant); 11 U.S.C. 101(47) (defining repurchase agreement); 11 U.S.C. 362 (automatic stay provision); 11 U.S.C. 559 (safe harbor protecting repurchase agreements from the Bankruptcy Code's automatic stay provision). *See* SEC Release No. IC-24050, *supra* n.12; Derivatives in Bankruptcy, *supra* n.12.

30. *See* Harvey E. Bines & Steve Thel, *Investment Management Law and Regulation*, §8.05(B)(4) (2d ed. 2004).

31. *Securities Lending For Mutual Funds, supra* n.3, at 4.

32. Key Mechanics of the U.S. Tri-Party Repo Market, *supra* n.24, at 19.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 20.

39. *Id.*

40. *Id.*

41. Fitch: "US Money Market Funds Grow Tri Party Repos; Sharpens Focus on Collateral and Contingency Plans," (Oct. 4, 2012).

42. Kristen Grind, "Money Funds Buck Euro-Zone Retreat," *Wall Street Journal (July 1, 2012).*

43. Russell E. Long, Standard & Poor's, "Reverse Repurchase Agreements and Securities Lending Criteria,: at 2 (2000).

44. *Id.*

45. *Id.*

46. *Securities Trading Practices of Registered Investment Companies: General Statement of Policy,* SEC Release No. IC-10666 (Apr. 18, 1979).

47. Neal M. Epstein & Henry Shilling, Moody's Investors Service, "Additional Securities Lending Disclosures, Oversight and Controls are Credit Positive for Bond Funds," at 2 (2011).

48. PriceWaterhouseCoopers, "Recent Developments in Securities Lending: Are Funds' Lending Programs at Risk?," at 2 (2009).

49. Additional Securities Lending Disclosures, Oversight and Controls are Credit Positive for Bond Funds, *supra* n.47, at 2 (2011).

50. *Id.*

51. Recent Developments in Securities Lending: Are Funds' Lending Programs at Risk?, *supra* n.48, at 1.

52. Financial Stability Board, Securities Lending and Repos: Market Overview and Financial Stability Issues, at 23 (2012).

53. Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1611-12 (2010); 77 Fed. Reg. 37265 (June 21, 2012).

54. 12 U.S.C. 375b(9)(D)(i).

55. Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1614 (2010).

56. 77 Fed. Reg. 37267-73 (June 21, 2012).

57. *See generally* BNY Mellon, Regulatory Change in Securities Lending: An Update For Clients (Thought Leadership Series Quarter 3 2011).

58. Key Mechanics of the U.S. Tri-Party Repo Market, *supra* n.24, at 22; Alexander Yavorsky & Robert Young, Moody's Investors Service, "Tri-Party Repo Market Remains a Systemic Risk Pending Implementation of Industry Reforms," at 2 (2010).

59. "Tri-Party Repo Market Remains a Systemic Risk Pending Implementation of Industry Reforms," *supra* n.58, at 2 (2010).

60. *Id.*

61. Key Mechanics of the U.S. Tri-Party Repo Market, *supra* n.24, at 22.

62. Federal Reserve Bank of New York, "Update on Tri-Party Repo Infrastructure Reform" (July 18, 2012), available at *http://www.newyorkfed.org/newsevents/statements/2012/0718 2012.html*.

63. ICE Trust U.S. LLC, SEC No Action Letter (pub. avail. Mar. 1 2011) (SEC provided no action relief under its custody rules to permit certain custody arrangements for the central clearing of credit default swaps).