

Securities Lending and Borrowing Rules

Classification	Rules	Type	PDF
Version	2.0	Owner	Dubai Clear
No. of Pages	7	Date of Issue	20/05/2022
Disclaimer: <p>The information provided in this document (“Information”) is provided by way of general information and comment only. While reasonable care has been taken in producing this Information, changes in circumstances may occur at any time and may impact on the accuracy of the Information. Dubai Clear L.L.C. and/or its affiliates, officers or employees, are not responsible and do not give any warranty or representation as to the accuracy, reliability, timeliness or completeness of the Information now or in the future. Dubai Clear L.L.C. and/ or its affiliates, officers or employees shall not be liable for any loss suffered, directly or indirectly by any person acting in reliance upon the Information contained herein.</p> <p>The Information does not constitute professional advice or provision of any kind of services and should not be relied upon as such. No part of the Information provided is to be construed as a solicitation to make any financial investment. Information, including forecast financial information and examples should not be considered as a recommendation in relation to holding, purchasing or selling securities or other instruments. The information does not take into account any investor’s individual investment objectives, financial position and particular investment needs. As such, before making any decision, investors should conduct their own due diligence and consult their financial advisors. The performance of trading securities or instruments is not guaranteed and past performance is not an indication of future performance. Unless otherwise stated, Dubai Clear L.L.C. owns copyright in the Information contained herein. The Information may not otherwise be reproduced and must not be distributed or transmitted to any other person or used in any way without the express approval of Dubai Clear L.L.C. This information is subject to the Dubai Clear website.</p>			

Securities Lending and Borrowing Rules

1. Definitions

In these Rules, the following words and expressions shall have the meanings set forth opposite each of them, unless the context otherwise requires:

Agent Lender	means an entity managing lending securities for a Lender.
Borrower	means the Clearing Entity, brokerage company or any investor having an investor number in DFM, who is willing to borrow securities from the Lender according to these Rules and Clearing Entity's procedures;
Central Clearing [or the Clearing Entity]	means Dubai Clear which is the legal person licensed to represent the counterparty for all trades (novation) in the market in consideration for a specific commission while ensuring the execution of all trades concluded in the market and determining the net rights and liabilities and determining their legal status arising from the trading operations;
Custodian	means an entity licensed by SCA to practice safe custody business in the UAE.
DFM	means Dubai Financial Market or any other name as may be updated;
Lender	means the Clearing Entity, brokerage company or any investor having an investor number in DFM who is willing to lend Securities to the Borrower according to these Rules and Clearing Entity's procedures;
Lender's Representative or Borrower's Representative	means any Custodian or brokerage company, who represent their clients of Qualified Investors in completing a Securities' Lending and Borrowing transaction; and
Market Maker	means a legal entity approved by DFM to carry out the business of market making;
Local Lending Agent	means a UAE entity approved by the Clearing Entity to carry out securities lending transactions for its own account, or for its clients according to these Rules and Clearing Entity's procedures;
Professional Investor	means an investor who meets the conditions of Article 5, Chapter 2, Section 3 of SCA's Decision No. 13 of 2021 on the Regulations Manual on Financial Activities and includes the Federal Government, the Local Governments, governmental agencies and authorities, corporations owned by any of them, any international agencies and organizations, or an entity licensed to carry out business activities including investment, financial institutions, domestic or foreign investment fund, etc.

Securities Lending and Borrowing Rules

Rules	means the Securities Lending and Borrowing rules issued by the Clearing Entity.
SCA	means the Securities and Commodities Authority of the UAE or any other name as may be updated;
Securities	means the shares, priority rights, debt securities, bonds, investment fund units, depository certificates, covered warrants, derivatives contracts and any other instrument that the Authority considers as a Security;
Securities Lending and Borrowing	means a contract under which securities are temporarily transferred by a party (the "Lender") to another party (the "Borrower") requiring the Borrower to return the same upon request of the Lender at any time within the agreed term or upon the expiry thereof unless otherwise is agreed upon by the parties;
Trading Broker	means an entity licensed by SCA to conduct financial activity regarding the brokerage in the securities trading transactions through receiving and entering purchase and sell orders of the securities to execute the same in the market without clearing and settlement;
Trading and Clearing Broker	means an entity licensed by SCA to conduct financial activity regarding the brokerage in the securities trading transactions through receiving and entering purchase and sell orders of the securities to execute the same in the market and making the clearing and settlement transactions related thereto;
Trustee	means a legal entity licensed by SCA to carry out the business of securities trust;
UAE	means United Arab Emirates.

2. General Provisions

- 2.1. All Securities Lending and Borrowing process in the UAE shall be implemented in accordance with these Rules and procedures issued by the Clearing Entity from time to time.
- 2.2. All Lenders and Borrowers must be registered with the Clearing Entity through the Lending or Borrowing Representatives in accordance with the procedures issued from time to time.
- 2.3. All Securities lending and borrowing transactions shall be registered with the Clearing Entity by the Lender and the Borrower through the Lender's Representative and the Borrower's Representative for settlement of loaned Securities.

Securities Lending and Borrowing Rules

- 2.4. Where a brokerage company (ie. either a Trading Broker or Trading and Clearing Broker) intends to conduct Securities Lending and Borrowing activities, the brokerage company must be registered with the Clearing Entity in accordance with the procedures issued from time to time.
- 2.5. Notwithstanding Rule 2.3 above, Securities may be lent through a brokerage company as follows:
 - 2.5.1. When lending to its clients for the clients' own accounts provided that it shall comply with the condition as set out in Rule 3; and
 - 2.5.2. When carrying out Securities Lending and Borrowing transactions for the purpose of settlement of its clients' trading under Delivery versus Payment procedures (DVP).
- 2.6. A Borrower may not transfer, pledge, charge, and lien or otherwise dispose its Securities unless by selling them publically.
- 2.7. Brokerage Companies may onward lend their Securities to their own clients only subject to Rules 4, 6 and 7. For the avoidance of doubt, the clients need not be registered with the Clearing Entity as Borrowers under this onward lending scheme.
- 2.8. The Clearing Entity may lend or borrow Securities according to the procedures and policies established thereby in this regard.
- 2.9. The Clearing Entity may determine the Securities that should not be lent from time to time in its procedures or circulars.
- 2.10. The Clearing Entity shall determine the purposes of Securities borrowings.
- 2.11. Securities Lending and Borrowing shall not result in exceeding the foreigners' ownership percentage.

3. Local Lending Agents

- 3.1. Local Lending Agents must register with DFM through the Clearing Entity and receive confirmation in writing before commencing lending activity.
- 3.2. Applicant shall be in one of the following forms:
 - 3.2.1. A Trustee licensed by SCA;
 - 3.2.2. A brokerage company licensed by SCA, and a member of the Clearing Entity;
 - 3.2.3. Market Maker or Liquidity Provider;
 - 3.2.4. Local bank, foreign bank branch;
 - 3.2.5. Investment companies licensed by the Central Bank;
 - 3.2.6. Companies licensed by SCA to practice the activity of safe custody and management of investment funds;

Securities Lending and Borrowing Rules

- 3.2.7. Any other entities as may be approved by the Clearing Entity from time to time.
- 3.3. The applicant shall submit its application to the Clearing Entity in accordance with the procedures issued from time to time together with a declaration of the following information:
- 3.3.1. Availability of the technical and administrative capacities and capabilities required to implement the tasks, and the management of the accounts related thereto;
- 3.3.2. Availability of a system including backups for recording Securities Lending and Borrowing transactions and updating clients on Securities Lending and Borrowing transactions in a timely manner;
- 3.3.3. Applicant shall not have committed a material violation to the solvency standards or the Account Separation Regulations as approved by SCA during the six months preceding the approval application date.
- 3.4. The applicant shall pay any applicable approval fees determined by the Clearing Entity.
- 3.5. Rule 3 is not applicable to Lenders or Agent Lenders lending Securities outside of the UAE.
- 3.6. Registration with the Clearing Entity and approval to commence activities:
- 3.6.1. The Clearing Entity shall issue its decision approving or rejecting the application within 30 days from submitting the application which meets the requirements set out in these Rules. The Clearing Entity may require any further clarifications, information or documents as it deems necessary to grant its approval. The Clearing Entity will state its reasons and justifications for any rejections.
- 3.6.2. Approval shall be valid for 1 year ending at the end of December of every year. However, the first approval shall be valid from its date until the end of December of the same year.
- 3.6.3. Approval shall be renewed by an application to be submitted to the Clearing Entity prior to its expiry subject to the continuous compliance with these Rules and paying any applicable annual approval renewal fees determined by the Clearing Entity.
- 3.6.4. The Local Lending Agent shall procure the SCA portal registration and renewal thereof according to the requirements of SCA within five working days from the date of the Clearing Entity's approval.

4. Obligations of Local Lending Agents

The Local Lending Agent shall:

- 4.1. Limit the Securities Lending and Borrowing transactions to the Securities defined by the Clearing Entity only and for the purposes thereof;

Securities Lending and Borrowing Rules

- 4.2. Ensure the client is registered with the Clearing Entity as a Lender and/or Borrower unless the client is borrowing securities from the Local Lending Agent as part of an onward lending scheme by the brokerage company;
- 4.3. Enter into a Securities Lending and Borrowing agreement with each client willing to use this mechanism according to any applicable requirements in this regard;
- 4.4. Ensure that the Securities Lending and Borrowing agreement and all the procedures related thereto are in compliance with the applicable Laws and Regulation, and the procedures applicable to the Clearing Entity;
- 4.5. Open an account for the client with the Clearing Entity to implement the Securities Lending and Borrowing transactions;
- 4.6. Observe any undertaking or confirmation to lend securities whether by itself or by its clients;
- 4.7. Ensure that the Lender has a sufficient quantity of Securities subject of the Securities Lending and Borrowing transaction to complete the lending process;
- 4.8. Ensure that the Borrower has the necessary Collateral to complete the recall/return of loaned Securities under these Rules;
- 4.9. Issue a confirmation to notify the client with the transactions carried out on the same day;
- 4.10. Record its clients' lending and borrowing transactions, the instructions coming therefrom, the size of implemented transactions, submitted Collaterals and all the commissions and fees;
- 4.11. Send regular reports to the client whenever requested by the client showing the implemented lending and borrowing transactions and any changes to the Collateral value;
- 4.12. Keep the records in relation with Securities Lending and Borrowing transactions for at least 10 years, and keep a backup of the said records for the same period, such records to include all the agreements, instructions and otherwise;
- 4.13. Exercise due care in the performance of its functions.

5. Lender Representative and Borrower Representative

Lending and Borrowing Representatives shall:

- 5.1. Facilitate settlement of Securities Lending and Borrowing transactions implemented by any of its clients according to the procedures of the Clearing Entity issued from time to time;
- 5.2. Obtain an authorization from the client for representation;
- 5.3. Keep the records in relation with Securities Lending and Borrowing transactions for at least 10 years, and keep a backup of the said records for the same period, such records to include all the authorizations, agreements and instructions.

6. Securities Lending and Borrowing Agreement

- 6.1. A Securities Lending and Borrowing Agreement shall be entered into by the Lender and Borrower according to the international securities lending and borrowing agreement form such as GMSLA, OSLA or USMSLA including for a Brokerage Companies' onward lending program.
- 6.2. If the Lender and Borrower are Qualified Investors, then the Securities Lending and Borrowing Agreement shall be entered into according to the international securities lending and borrowing agreement form such as GMSLA, OSLA or USMSLA.
- 6.3. The Lender shall be entitled to all the material rights related to the loaned Securities unless otherwise is agreed upon in the agreement entered into by the Lender and the Borrower.
- 6.4. Each of the Lender and the Borrower shall inform the Clearing Entity any Securities Lending and Borrowing transaction through their Lending/Borrowing Representatives and shall provide SCA, DFM or the Clearing Entity with any reports, information or documents immediately or within the timeframe fixed by any of them.

7. Collateral

- 7.1. Rule 7 is applicable only to the Local Lending Agent and/or Brokerage Companies onward lending Securities to its non-Qualified Investor client from its own account, or in its capacity as a Local Lending Agent.
- 7.2. Collateral provided for borrowing Securities should be accordance with the collateral requirements issued by DFM for regulated short selling.

Securities Lending and Borrowing Rules

8. Clearing Entity's Procedures

- 8.1. The Clearing Entity shall issue procedures governing the operations of the Securities Lending and Borrowing Rules including the creation of loans, maintenance, recalls, returns and corporate actions for loans.
- 8.2. The Lender, Borrower, Local Lending Agent and Lending/Borrowing Representatives shall comply with the Clearing Entity's procedures as may be issued from time to time.
- 8.3. The Clearing Entity may cancel any Securities Lending and Borrowing transactions and recover the loaned Securities in case of failure to observe these Rules or any procedures applicable thereto, upon discovering any falsification, fraud or manipulation, or according to a final judgment or judicial orders. In case of insufficiency of the Securities, the Clearing Entity may determine the necessary action on a case by case basis.

9. Fees and Commissions

The Clearing Entity shall determine the applicable fees and commissions accrued on Securities Lending and Borrowing transactions including the method of settlement of such fees and commissions and any waivers where necessary.

10. Penalties

In case of a breach of these Rules, the Clearing Entity may:

- 10.1. Send a warning to the Local Lending Agent, the brokerage company, the Lender Representative or the Borrower Representative as the case may be;
- 10.2. Withhold or cancel the approval given to the Lending Agent or prevent the brokerage company from lending Securities to its clients;
- 10.3. Suspend or prevent the brokerage company or Custodian from acting as Lender Representative or Borrower Representative;
- 10.4. Impose a fine on the brokerage company not exceeding the maximum penalty established in the SCA Law;
- 10.5. Impose other penalties and fines according to the procedures as may be issued by the Clearing Entity from time to time;
- 10.6. Refer any breaches to SCA.

*** End ***