



Creating a Global ESG Market Standard
for Owners, Lenders, Borrowers and
Impact Creators

January 7, 2021

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE, Washington, DC 20549

Re: File No. S7-18-21: Reporting of Securities Loans

Dear Ms. Countryman:

Thank you very much for giving me the opportunity to engage with the Securities and Exchange Commission in relation to The Proposed Rule: Reporting of Securities Loans.

Given the limited timeframe, I have not been able to analyse this rule to the degree I would have liked, or to engage with the Global PSSL stakeholder base for its input. However, the individuals I *have* spoken with on this matter expressed great interest in the parallels between this proposed Rule and our own Principle 3 (Transparency) and Principle 9 (Continuous Improvement - which encourages collaboration between market participants, regulators, international organisations and other stakeholders)¹. I personally welcome the SEC's willingness to increase transparency in the securities lending market and, together with Global PSSL, would like to help the Commission achieve its intended objectives.

My comments are limited to specific elements of the proposed Rule and I try not to replicate the comments that have already been posted on the SEC website.

Key preliminary questions views and suggestions

Urgent research and testing

Transparency operates at many levels and there are always limits to transparency that are dictated by various policy/confidentiality/legal reasons². In question 11, the Commission asks what else could be done to increase transparency in the securities lending market.

¹ Global Principles for Sustainable Securities Lending (Global PSSL) 2021 available at: < <https://gpssl.org/>>.

² Roy Zimmerhansl provided an excellent overview of the levels of transparency in the securities lending context in his '[Trading Transparency and the SEC Proposals](#)' podcast. I also draw on my earlier work on access



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Broadly speaking, I would like to encourage more engagement, peer-reviewed research and testing of the proposed rule (and alternatives) that should be conducted urgently.

First, the proposed rule focusses on the requirement to disclose certain material information. I suggest to assess the feasibility of the rule also through the lens of the proportionality test. In a nutshell, this means that the SEC should only mandate what is necessary to achieve the objectives of the rule³.

Second, transparency operates also at the level of interpretation that should be supported with a peer review. Global PSSSL provided its first transparency update in early November 2021⁴ and secured support from some international organisations to attend the peer review sessions before issuing subsequent transparency updates⁵. I would like to encourage more stakeholders to engage in transparency debates and participate in peer review sessions, also in the context of the Global PSSSL Principle 2 (Stakeholder involvement, inclusion and diversity)⁶. The Commission could help in facilitating such debates by organising a roundtable from time to time.

Third, many U.S. financial organisations have a profound impact on cross-border financial markets. Given the influence of U.S. securities lending market participants and regulators on global markets, it is important to assess the proposal in an international context. I would like to see more clarity of the roles and responsibilities of international organisations (e.g. the Financial Stability Board⁷), trade associations, impartial standard setting bodies around transparency in securities lending. Global PSSSL is keen to offer its expertise and access to innovative global stakeholders to assist the SEC in exploring the global context on a collaborative basis.

Fourth, improving overall governance around securities lending could lead to increased transparency in the U.S. and global markets. This can be done by taking a whole value-chain perspective that I discuss briefly below.

Competition – enhanced or limited?

The SEC has clearly stated the intended objectives of the proposed rule in the opening passages where it referred briefly to competition matters:

to information, decision-making and access to justice in environmental matters: a [PhD](#) and a report launched in the House of Lords and referred to [the United Nations Economic Commission for Europe](#).

³ Drawing on the proportionality principle e.g. in the Article 5 of the Treaty on European Union, Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT>.

⁴ Radek Stech, 'Sustainable finance principles and securities lending: a transparency update', Presentation delivered at the Securities Lending Committee of the Bank of England, 4th November 2021 (Global PSSSL 2021). Available at <https://gpssl.org/wp-content/uploads/2021/12/Global-PSSL-Bank-of-England-presentation-4th-November-2021.pdf>.

⁵ Ibid, at E. Moving forward (p.6).

⁶ Global PSSSL 2021 (supra note 1).

⁷ Edmon W. Blount provided some interesting comments on the international collaboration on behalf of the Center for the Study of Financial Market Evolution. Available at <https://www.sec.gov/comments/s7-18-21/s71821-20109658-264014.pdf>. See also a question on the extraterritorial effect of the proposed Rule posed by Christel Daems on behalf of the KBC Group. Available at <https://www.sec.gov/comments/s7-18-21/s71821-264890.htm>.



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“[T]he proposed rule would [...] lead to increased competition among providers of securities lending analytics services”.⁸

Yet, later in the document, under ‘indirect costs’, the Commission highlighted that

“[T]he proposed Rule may cause some smaller lending programs and broker-dealers to exit the market for lending services, potentially leading to slightly more consolidation in the lending program and broker-dealer space”⁹.

And, under the ‘competition’ section of the proposed Rule, the Commission admitted that it:

“preliminarily believes that the net impact of the proposal on competition is difficult to predict, in that some aspects would likely increase competition and some aspects would likely reduce competition”¹⁰.

Would it be possible to do more assessment of the consequences of the proposed Rule on market competition? Would it also be possible to declare the extent to which the intended objectives relate to increasing or decreasing competition between various key stakeholders shaping the securities lending market?

Unlocking the potential of the securities lending value chain

The Commission has given an excellent description of the broad roles and responsibilities of the key stakeholders in the securities lending market (e.g. beneficial owners, banks/agent lenders, prime brokers, and end users). However, there is still room to expand on the description and analysis of securities lending value chain on the U.S. market. I think that the broader stakeholder base, including small investors, would benefit from clarifying the specific roles and responsibilities of each market participant in increasing transparency.

Since transparency is at the heart of Global PSSSL, I’d like to draw your attention to our draft forward-looking recommendations that aim at helping various stakeholders appreciate their roles in the sustainable securities lending value chain and, in turn, reduce misunderstanding of those respective roles.¹¹ Combined with other Global PSSSL draft standards and recommendations¹², we learn and appreciate that the whole value chain, including smaller and larger players, may add value in increasing transparency on the market.

⁸ SEC File No. S7-18-21: Reporting of Securities Loans (The Proposed Rule), p. 10.

⁹ Ibid, p. 146.

¹⁰ Ibid, p. 149.

¹¹ Roelof van der Struik and Radek Stech, ‘Preparing securities lending for a sustainable world. Recommendations for a stronger, more engaging and more transparent value chain.’ Consultation paper. (Global PSSSL 2021). Available at: < <https://gpssl.org/wp-content/uploads/2021/07/Global-PSSL-draft-recommendations-transparent-value-chain-published-20-July-2021.pdf>>.

¹² Radek Stech and Roy Zimmerhansl, ‘Strengthening sustainable finance with an interconnected collateral for securities lending. A forward-looking market standard.’ Consultation paper. (Global PSSSL 2021). Available at: <<https://gpssl.org/wp-content/uploads/2021/07/Global-PSSL-draft-standard-on-collateral-published-on-29-July-1.pdf>>; Oluwatoyin Alake et al., ‘Gateways to success: ESG-driven securities lending and borrowing in emerging markets. A forward-looking market standard.’ Consultation paper. (Global PSSSL 2021). Available at:



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Analysis of the proposed rule through the lens of the value chain may prove beneficial when compared with an attempt to define securities lending (Commission Question 8). The approach through the value chain is more dynamic and more likely to be future proof. For example, the Commission referred to a “passive”¹³ beneficial owner in relation to the discussion of the market structure. Nevertheless, the sustainability agenda encourages more engagement on the side of the beneficial owners¹⁴ as well as hedge funds¹⁵ that may result in more proactive institutional investors in the near future.

Global PSSSL is keen to assist the Commission in unlocking the potential of the whole value chain, should the Commission decide to conduct more research and testing of the proposed rule.

About Global PSSSL

The Global PSSSL, a not-for-profit impartial initiative¹⁶, represents the most progressive and determined move towards bringing together the sustainable finance ambitions of market leaders with the tenets of sustainable securities lending. The overall objective is to create, maintain, and update voluntary principles and other relevant recommendations/guidance with a view to aligning securities lending with sustainable finance.

Global PSSSL is driven by a mix of industry knowledge, academic research, stakeholder feedback, and engagement with regulators. This approach ensures the principles and market standards we publish offer realistic solutions that provide good business practice with a strong focus on environmental, social and governance (ESG) considerations. The Principles have been diligently put together to help alleviate the concerns around empty voting, short selling and lack of transparency since 2018. There are nine principles: these include generalist ones that all organisations should implement (e.g. transparency, stakeholder involvement, inclusion and diversity, innovation and continuous

<<https://gpssl.org/wp-content/uploads/2021/09/Global-PSSSL-Emerging-Markets-Draft-Standard-14-September-2021.pdf>>; Global PSSSL ‘Minimum Voluntary ESG Standard. Short-Long Investment Dynamic: Short Activism.’ (Global PSSSL 2021). Available at: <<https://gpssl.org/wp-content/uploads/2021/03/Global-PSSSL-Market-standard-on-short-activism-30-March-as-introduced.pdf>>.

¹³ The Proposed Rule, p. 32.

¹⁴ Radek Stech, ‘Sustainable securities lending: A letter to asset owners.’ (Minerva Analytics, 29 October 2021). Available at: <<https://www.manifest.co.uk/sustainable-securities-lending-a-letter-to-asset-owners/>>. See also: Planet Tracker ‘How to Lend Shares Sustainably’ (Planet Tracker, 14 October 2021). Available at: <<https://planet-tracker.org/How-to-lend-shares-sustainably/>>.

¹⁵ Global PSSSL ‘Minimum Voluntary ESG Standard. Short-Long Investment Dynamic: Short Activism.’ (Global PSSSL 2021). Available at: <<https://gpssl.org/wp-content/uploads/2021/03/Global-PSSSL-Market-standard-on-short-activism-30-March-as-introduced.pdf>>. See also: Planet Tracker ‘Why Sustainable Investors Should Embrace Shorting.’ (Planet Tracker, 6 October 2021). Available at: <<https://planet-tracker.org/Why-sustainable-investors-should-embrace-shorting/>>.

¹⁶ Global PSSSL is hosted by the community interest company and, therefore, accountable to the [Office of the Regulator of Community Interest Companies](#). This unique underlying structure puts public interest, transparency and stakeholder engagement at the centre of everything we do. See our ‘Consolidated Terms and Conditions for Stakeholder Engagement’ available at <<https://gpssl.org/wp-content/uploads/2021/12/Global-PSSSL-consolidated-terms-Issue-1.0-23-December-2021.pdf>>.



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improvement). Then, specialist principles tackle more detailed issues such as collateral, tax, voting and short selling and are implemented by organisations wherever possible.

Transparency represents a generalist Global PSSSL principle hence it is at the heart of the sustainability agenda for securities lending. This principle should complement and add value to – but not replace – any regulatory binding requirements on disclosure of information.

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