



3 December 2021

RE: File Number S7-18-21

Let me begin by clarifying an error in the factsheet posted to the SEC website. It states that securities loans are “transactions that are vital to fair, orderly, and efficient markets.” This is simply not true. Securities lending enables the multiplication of shares in circulation. When brokers lend the shares being held for retail investors, for example, it is equivalent to replacing the bought and paid for shares with an IOU. Securities lending ignores the investor’s right to vote in matters of corporate governance and to receive tax-qualified dividends. Further, a fail-to-deliver (FTD) that is “closed” with a borrowed share is not really closed – it leaves open that IOU with the lender. Therefore, securities lending harms market efficiency by inflating the number of shares in circulation, which hampers true price discovery by artificially increasing supply.

I can think of no other industry in which anything of value is lent without a due date for its return. Why is securities lending different? Of course, none of this would be an issue if broker-dealers and banks kept track of whose shares they were lending. Nothing in this proposed rule fixes the problem that voting rights and payments in lieu of dividends continue to be allocated in processes that are completely opaque to investors.

It seems likely that the Proposed Rule will increase the cost and reporting burden of borrowing securities, regardless of the reason for taking the loan (e.g., to cover short sales, to close a fail-to-deliver, to access voting rights, etc.). An unintended consequence could be to tilt the broker’s cost/benefit analysis in favor of fails to deliver.

The subject proposed rule enables and perpetuates on-going systemic problems. Real reform for securities lending must include:

- (1) Notifying the public about **who** is borrowing and lending shares (not just which company’s shares are being borrowed or lent).
- (2) Notifying retail investors with “street name” shares that **their shares** are being lent, (because (a) they don't get to vote and (b) they don't get tax-qualified dividends). SEC must adopt a more consistent interest in regulating, monitoring, and enforcing rules that require brokers to keep accurate records of ownership.

(3) Sharing any revenue earned from lending shares held for retail investors with those retail investors.

(4) Eliminating "Onward Lending" completely (public companies and transfer agents have opposed this for decades, even pointing to it as a source of phantom shares and over-voting in matters of corporate governance).

(5) Requiring every loan to have a due date (not just "if applicable"). When securities loans without due dates are tolerated, the loan may be allowed to remain unsettled indefinitely.

The Dodd-Frank Act directed the SEC to seek transparency for brokers, dealers, **and investors**. But the retail investor has been given short shrift with this Proposed Rule. The disclosure of lending inventory and near-real-time position reporting will only make it possible for broker-dealers to discriminate against companies who are already bearing an onslaught of phantom shares in capital markets.

Sincerely,
Susanne Trimbath, PhD
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