



**ICGN**

International Corporate Governance Network

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# ICGN Guidance on Securities Lending

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# ICGN Guidance on Securities Lending



## Preamble

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The lending of securities is an important business activity for investors which can improve market liquidity and efficiency, reduce trading costs as well as the risk of failed trades and counterparties, and add significantly to the incremental return of investors. It can benefit an issuer insofar as it reduces risk and improves return the company's access to the market.

At the same time there is also the potential for abuse, particularly if a company's shares are lent to allow a temporary owner of the voting rights to vote in a way that does not reflect the company's long-term interest. Securities lending transactions for individuals not familiar with the process may be confusing; it is possible that lending may have adverse consequences relating to corporate governance practices. Such concerns should be addressed before the establishment of a securities lending program.

Corporate governance policies of investors, as lenders of securities, may also be undermined through the lack of coordination with lending activity. As much as possible, risk should be limited so that shareholders' voting intentions are not compromised through the misuse of the borrowing process. It is important that the lenders understand that whilst shares are on loan it is not possible to vote those shares.

The word 'lending' may mislead because the legal transaction is, in fact, not a loan, but an absolute transfer of title against an undertaking to return equivalent securities. Misconceptions as to its nature have led to the loss of shareholder votes in important proxy contests, as well as shares being voted by parties who have no equity capital at risk in the issuing company, and thus, no long-term interest in the company's prosperity. There are legitimate and sound reasons why investors may choose to use securities lending in their portfolio arrangements. When the opportunity presents itself, it is also reasonable for a party to borrow shares for a variety of purposes.

Throughout this document, the terms "shares" and "securities" are used interchangeably. Although the majority of corporate governance issues related to the voting and lending of securities tend to apply to companies' equity-share capital (i.e., shares), it is worth noting that the same principles also apply to debt issuance as well as equities.

This ICGN 'Guidance on Securities Lending' builds upon an earlier edition first published in 2005 then revised in 2007. Since that time, significant events across global markets have occurred relating to the practice of securities lending. There is an increased awareness of risks and abuses, which has led to the subsequent development of measures to improve controls. There is also a growing engagement between shareholders and companies.

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The ICGN Shareholder Responsibilities Committee has undertaken a comprehensive review of securities lending practices and any potential issues that have arisen since 2007 and particular changes from the previous guidance include:

- a greater focus on both the positive dimensions of securities lending, but also the potential for abuse;
- a greater emphasis on investor transparency and;
- an emphasis on the need for a clear policy framework.

This latest Guidance begins with broad principles relating to securities lending, and then translates these principles into good practices by individual parties involved with these transactions.

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# Part 1: ICGN Principles on Securities Lending

The main body of this Guidance builds from three major points relating to securities lending which are referenced in the ICGN Global Governance Principles:

- Institutional investors should disclose their approach to stock lending and voting in a clear policy which should clarify the types of circumstances when shares would be recalled to vote. The policy should be communicated to relevant agents in the chain of the vote execution, and, in respect of shares out on loan, to the agent lender.
- Institutional investors should recognise that if shares are lent out, they temporarily lose their voting rights for the duration of the loan because they are no longer the legal owner of those shares (unless contractual arrangements to the contrary are made). In order for the votes to be cast, lent stock must be recalled before the record date declared by the company. In order to preserve the integrity of the shareholders' meeting it is important that the shares never be borrowed or received as collateral for the primary purpose of voting them.
- The results of stock lending should be transparent to the beneficial owners of shares. The portion of the return from a position due to lending activity should be made known in the regular reports. Similarly, the percentage and number of shares of a given security which were not voted due to stock lending should also be reported to beneficiaries.

# Part 2:

## ICGN Guidance on securities lending

### 2.1 Duties

Responsible shareholders have a duty to ensure that the votes associated with their shareholdings are cast in a manner that reflects their stated policies and economic interests. While fiduciaries have a duty to maximise sustainable economic returns to their beneficiaries, they equally have a fiduciary duty to protect their long-term interests through voting and other stewardship actions which may preclude lending from time to time. Where beneficiaries have a commitment to good stewardship, lending should not be inconsistent with those stewardship duties, as defined by the general commitments of the primary lender to the trust, fund and/or the fund's beneficiaries. Securities lending, like other investment activities, gives rise to certain risks which must be managed. Fiduciaries have a duty to ensure that the specific parameters of a securities lending program are agreed to and implemented in accordance with the lender's wishes.

### 2.2 Accountability

Lending policy should be mandated by the beneficial owners of an institution's shares, whether the owners are another institution, corporate body or an assemblage of individuals. Beneficial owners should have a policy governing their securities lending activities. This will describe the types of securities that may be lent, together with the beneficial owners' policies concerning risk management, such as types of collateral that may be accepted, whether there be bounds upon what sort of risks might be run with collateral, and perhaps the counterparties to whom securities may be lent. All of this should be in accord with the beneficial owners' general governance policy undertakings.

### 2.3 Policies

Investors should have a clear policy with respect to lending, especially insofar as it involves voting and/or the refusal to lend under certain circumstances. A lending policy should clearly state, inter alia, the lender's policy with regard to the recall of lent shares for the purpose of voting them. All lending conducted by the institution, or on its behalf, should be pursued in accordance with this stated policy.

A clear policy is necessary, with as little ambiguity as possible, setting forth when shares shall be lent and when they shall be withheld from lending or recalled. This will ensure that the lending agent has no doubt about the lender's position with regard to voting and can take necessary action to comply with the policies.

Clear mechanisms should be set up to handle borderline situations. Neither the long-term economic interest in better governance nor the interest in maximising returns from a securities lending program should be allowed to exceed the parameters set for each by the stated policy of the primary lender in accord with the general governance commitments of that fund.

Such policy should be designed with the time horizon of the beneficiaries in mind, as well as their interest in sustainable returns over that time horizon. Most investors tend to have a deliberate long-term strategy when involved with securities lending.

## 2.4 Economic rights

All share lending activity should be based upon the realisation that share lending inherently entails transfer of title from the lender to the borrower for the duration of the loan. Most economic rights of the lender can be preserved through contractual agreements with the borrower. Those rights involving the issuer, however, such as the right to vote, or requiring one's continuity on the share register (such as the right to introduce certain resolutions),

cannot be preserved in this way. If an investor wishes to vote its lent shares or protect its legal interests as a registered shareholder, it must recall the shares, or in some cases, refrain from lending them.

## 2.5 Disclosure

The returns from lending should be disclosed separately from other investment returns when reporting to clients or beneficiaries to the extent possible under accounting rules. They should not be hidden under management fees and other costs. As lending has become an important source of revenue, it is sensible for investors to disclose this information to their clients or beneficiaries, as well as the extent to which investment returns and cost ratios are being driven by or ameliorated by the returns from lending.

## 2.6 Transparency

The lending process is often sub-contracted to an agent such as the lender's custodian or asset manager. It should be subject to the same visibility and safeguards as any other transaction conducted on an owner's or beneficiary's behalf in a securities account. This transparency should apply equally to investors, agents and issuers in the markets. Staff members or agents responsible for proxy voting and/or investment decisions should have full knowledge of whether and what percentage of shares has been lent. Beneficiaries should have access

to information to know what percentage of shares held in a reported position in a given portfolio company have actually been voted by their manager, as well as how they have been voted.

## 2.7 Voting

Consistency may be impeded when a lender, with a policy to recall shares to vote “on important issues,” is not able to discern what the issues to be voted upon will be in countries that permit a record date before the meeting agenda is published. Along with the securities lending policy, a clearly defined voting policy should be aligned with it.

It is unacceptable to borrow shares for the sole purpose of voting prior to a meeting. Lenders and their agents, therefore, should make their respective best endeavours to discourage such practice, although in many instances, this may be difficult to ascertain or monitor. Borrowers have every right to sell the shares they have acquired unless otherwise agreed to between the parties. Equally, the subsequent purchaser has every right to exercise the vote if the security is held on or before the record date. However, the exercise of votes by a borrower who has, by private contract, only a temporary interest in the shares,

can distort the result of general meetings, harm corporate governance and ultimately undermine any confidence in the market. Where such agreements are known to any of the parties to a loan or similar transaction (such as a sale and repurchase agreement) any such application should be censured.

ICGN affirms the principle that companies should know who controls the votes at their general meetings and that this transparency should benefit all market participants. Considering the availability of market instruments that separate economic ownership from control, ICGN is aware that many companies offer share classes or differential rights for certain shares which allow for significant divergence of voting power from declared economic ownership. ICGN, therefore, encourages the relevant market authorities to consider amending their holdings disclosure regimes to include the transfer of actual or contingent voting rights executed through the use of securities lending and derivatives.

# Part 3: Responsibilities of the parties to a lending transaction

Lending transactions involve not only lenders and borrowers but other parties such as agents, custodians, and (prime) brokers, asset managers and other market intermediaries. All of these parties have different responsibilities.

## 3.1 Primary lenders

### **Policy on voting and recall of loaned shares**

The fund, fund sponsor, or principal manager of a portfolio or fund from which shares are loaned (hereafter the primary lender) should be responsible for drafting and publishing a general policy that clearly sets forth the scope of lending activity, and under what circumstances, if any, this activity is to be subordinated to voting and to the lender's duties as a long-term shareholder.

### **Contractual arrangements**

Where the primary lender engages an agent, an agreement between the primary lender and agent should govern these policies, the attendant procedures, including the procedure for recalling shares and whatever penalties there are for non-compliance, and indicate the likelihood that shares may be recalled for voting purposes.

### **Disclosure within the lender's ownership chain**

The primary lender's trustees or directors should effectively communicate their policies and procedures to designated executives at the lending institution and at any agent organisations involved in the investment, lending, or voting of those shares, as well as with those responsible for corporate governance for the portfolio or fund in question. All changes in actual positions due to any lending activity should be made available at any time upon request to all those executives or management charged with investing or voting the shares.

### **Compliance**

The primary lender should be responsible for ensuring that its policies and procedures are practicable. They should fulfil the principles expressed herein and be properly administered no matter what the lender's structure and division of responsibilities among different business units or agent companies may be.

### **Dispute resolution**

The primary lender or its principal manager should establish and administer specific procedures to resolve disputes—internal and external—that may arise in connection with the implementation of its lending policy. A record

should be kept of each of these disputed cases and the decision should be communicated to all the designated parties within the lender's organisation.

### **External disclosure**

The revenues from lending activity should be disclosed separately to the portfolio's or the fund's beneficiaries. Lenders should also disclose the securities lending policies as they relate to voting (i.e., the Lending Policy Statement) and disclose the potential impacts of these policies to such beneficiaries.

## **3.2 Lending agents**

### **Contractual agreement**

The obligations of any agent charged with conducting lending activity on behalf of a primary lender are set out in a contract with the primary lender. It is important that primary lenders ensure contracts are worded so as to incorporate the maintenance of good practice, including, where appropriate, the terms and conditions of the Master Lending Agreement.

### **Best practices**

The agent should meet its contractual obligations as well as act in the best interest of the lender, including the fulfillment of the best securities lending practices as stated in this guidance.

## **3.3 Borrowers**

### **Recall of borrowed shares**

Borrowers should agree to return equivalent shares to those borrowed promptly upon the lender's request. This action should be accomplished whether the shares are in the borrower's possession, or more likely, must be purchased or borrowed in the market. All properly executed requests for recall must be treated as equally valid.

### **Non-voting of borrowed shares**

It is never good practice for borrowers to exercise voting rights with respect to shares they have borrowed, except in the special circumstances where they are acting pursuant to the lender's specific instructions. This limitation is not binding upon a subsequent bona fide purchaser of borrowed shares.

### **Terms of master agreement**

Borrowers should comply with all terms agreed to with the primary lender and lending agent.

### **Accountability and prevention of abuses**

When borrowing shares for a third party client, borrowers should use their best efforts to ensure that the principles on whose behalf they are acting understand that they are supposed to comply with good practice, as set forth in this Guidance.

### **Directed voting**

In those jurisdictions in which it is permitted that specifically-designated third parties cast votes, if the borrower is willing to be contractually bound, or to make an undertaking on a best efforts basis, it may be possible to direct the

borrower as to how to vote what were formerly one's shares. This will only occur when the identity of the new beneficial owner is known to the borrower, and the new beneficiary is not interested in voting the shares, or the borrower is in actual possession of the shares in question, or has similar shares which will not otherwise be voted by their beneficial owner. It would be worthwhile for lenders to check and see whether these conditions may be met, and if the mechanism is available to lenders, because this clearly would eliminate the problem of losing the vote on lent shares, or losing the income if the shares are recalled to vote them. It is to be noted that there may be various legal and/or practical problems with such an arrangement in many cases.

### 3.4 Issuers

Timely notice of shareholder meetings and other transactions. Issuers should publish and distribute a Notice of Meeting, Agenda and other disclosure documents in sufficient time for lenders and borrowers of shares to comply with their policies and practices as set forth in this guidance, including public notice of the agenda well before any significantly advanced record date.

#### **Separation of record dates for dividend payments and shareholder meetings**

To minimise the effect of share lending for dividend swaps upon shareholder participation and share voting, issuers should not set dividend record dates less than 30 days in advance of a shareholder meeting or record date (whichever is relevant for voting) nor less than 15 days after the shareholder meeting

(or record date). It is recommended that issuers consider this important departure from historic practice, which has been discussed in roundtables and other important fora, and to which no objection in principle has been made by various market regulators and issuers' organisations, or their counsel.

#### **Tabulation**

Issuers have a duty of care in their record keeping and administration of shareholder voting to identify and expose abuses in the voting of borrowed shares and to prevent double voting of shares in commingled and/or omnibus accounts.

# Part 4:

## Good practices for primary lenders, lending agents and borrowers

### 4.1 Voting and share lending

The voting right is normally inseparable from the share to which it attaches.

Except in the rare case in which some private treaty provides for the separation of voting rights from the share (and this is permitted by the issuer and by any applicable law), the primary lender of a share loses its voting rights for that share. Until and unless a recall is executed, and an equivalent share is delivered to the lender, the lender is disenfranchised with respect to that share if it wishes to vote.

Any subsequent bona fide purchaser of that share, whether its ownership come as a result of purchase of a share sold short by the borrower, or of delivery in lieu of a failed settlement, acquires the voting right together with all the other privileges of ownership. As far as the issuer is concerned, the share has changed hands.

With respect to ownership rights, the initial borrower is in a different position than any subsequent owner to whom the shares are sold, as the initial borrower knows that the shares were borrowed or pledged as collateral.

### 4.2 Improper borrowing and lending practices

The borrowing of shares for the primary purpose of exerting influence or gaining control of a company without sharing the risks of ownership is a violation of good practice. Similarly, the borrowing of shares in order to deliberately reduce or suppress the vote at a shareholders' meeting is not an acceptable practice.

The borrowing of shares for the purpose of exercising the right of the shareholder's vote is to be actively discouraged by all lenders. It should not be sanctioned or allowed.

The actual borrower of a share, for whatever purpose, should not vote that share without the express permission of the lender, and in accordance with the lender's instruction.

Similarly, the holder of a share used as collateral, should not vote that share, unless specifically given the exclusive right to do so by private treaty with the borrower who provided the collateral.

The lender's Master Lending Agreement should specify that shares are not



being lent for the principal purpose of voting those shares. In exceptional circumstances where the primary lender and borrower agree that the latter will exercise a voting right on behalf of the lender, this should be agreed in writing on a case by case basis, or through the existence of a Lender-Directed Voting Agreement, if such a right is legal in the jurisdiction involved.

No lender or lending agent should knowingly enter into a scheme in which it is making shares available to a borrower for the primary purpose of voting them, or of otherwise attempting to exert control upon the issuing company by means of the voting right attached to the borrowed shares.

#### 4.3 Lending policy, lending contracts, transparency and disclosure

A policy on lending, and the circumstances in which lending is to be considered subordinate to voting, should be a responsibility of the trustees or the directors of the fund or portfolio from which shares are to be lent.

A written statement of the lending policy should be communicated to any other entities up and down the chain of ownership which might have any reason to become involved with lending or voting decisions.

The lending policy statement should be made available to the ultimate beneficiaries of the portfolio or fund. This document should provide information under what

general circumstances shares on loan are likely to be recalled for voting purposes.

The lending contract should be negotiated with the full knowledge and active participation of the primary lender of the securities if the lending is to be made by an agent. Any subsequent changes to the contract or other departures from standard practice should be discussed beforehand with the primary lender or its manager responsible for the shares in question.

It is recommended that lenders rely upon a contract which protects their rights and provides full compensation or damages with respect to all corporate actions, as well as providing for recall of shares in the event of a vote in which the lender wishes to recall shares.

In the event of failure to deliver like shares when they have been recalled for the purpose of voting, the penalties should be the same as for failure to deliver for any other reason. Recall for the purpose of voting should be just as significant a justification as recall in order to sell or unwind a position.

#### 4.4 Communication of lending activity

It should be incumbent upon whomever is responsible for actual lending—whether it is a primary division manager, the primary manager’s custodian, or any other agent of the primary manager or the holding chain—to update the data on any lending activity and on attendant changes in the relevant portfolio. This data

should be available on request to all those personnel responsible for management of that portfolio, and to those responsible for voting decisions and for the implementation of corporate governance policy.

If responsibility for portfolio management and/or voting decisions has been delegated by the primary manager to another agent, not in the chain of control between the primary manager and the lending agent, a separate chain of communication should be set up. The lending agent should be required to directly inform this entity (or these entities) of lending activity and changes in the composition of the portfolio.

#### 4.5 Proxy material, record or blocking dates and decision dates

The following personnel are in need of information regarding meeting agendas and dates, the text of proposals, key decision dates, and parameters for any proxy vote or other corporate action which might trigger a recall:

- (a) The portfolio manager directly responsible for buy and sell decisions concerning the stock in question;
- (b) Whomever is responsible for proxy voting decisions regarding the same security;
- (c) The party responsible for implementing corporate governance policy; and
- (d) The principal manager of the fund involved if different from above.

Primary lenders should ensure that the proper mechanisms for timely dissemination of this information are in place, so that all of these key decision makers are informed sufficiently ahead of decision deadlines that they may make appropriate judgments in accordance with their particular mandates. This may require some sort of routine distribution of communications from the lending agent.

#### 4.6 Resolution of disputes involving recall

The Primary Lender's Policy Statement, as well as the primary lender's agreement with its lending agents should prescribe a formal mechanism to resolve any dispute arising from a difference of opinion as to whether a given share should be left out on loan or recalled.

Such a dispute-resolving mechanism should reference the viewpoint of investment managers, corporate governance staff and others involved in share lending.

Decisions should be made in accordance with the primary lender's stated lending policy, its corporate governance policy, and the explicit objectives of the fund. The object is to resolve the potential conflict between lending programme revenue maximisation and longer-term investment or sustainability/ stewardship goals.

The decisions of the resolving mechanism should be a matter of record to be communicated to those responsible for setting and enforcing corporate governance policy at the primary lender or its manager.

#### 4.7 Record dates

Record dates pose a special challenge to the lender of securities, as they may be significantly divorced in time from the date of the actual vote.

In those jurisdictions in which it has been the practice for the issuer to publish and distribute proxy material and the agenda of the shareholders' meeting only after the record date and only to shareholders of record on that date, it will be impossible for lenders to know whether they want to recall shares for voting in advance of the record date.

To circumvent this conundrum, issuers should promulgate the agenda for upcoming shareholders' meetings publicly (e.g., by posting on the company's website) sufficiently in advance of the record date so that lenders may have time to recall shares should they decide to do so.

In the absence of such provision by issuers, lending institutions in those jurisdictions can only make reasonable efforts to learn whether an upcoming shareholder vote is likely to be important under their own voting guidelines, so that they can consider recalling the relevant shares in advance of the record date.

Absent resources for such information gathering, it may be impossible for lenders to pursue a policy of recalling lent shares 'in the event of an important or controversial vote'.

When the record date or its functional equivalent is near in time to the shareholders' meeting and the agenda has already been distributed some time before, this problem does not arise.

#### 4.8 Dividend dates

Another common use of lending is for dividend swaps. For this strategy to be employed, the share must be lent over a dividend record date. Obviously, the lender loses the vote over that period, which may coincide with the meeting date, or the record date for voting in a record date jurisdiction.

Lending institutions should be aware of this hidden consequence of such a lending transaction.

Issuers are also urged to separate dividend record dates sufficiently from voting record dates or whatever other dates are set for eligibility to vote (e.g., reconciliation date, the date of the meeting, etc.) so that transactions of this type do not reduce the valid shareholder vote or disqualify the proper beneficial owner entitled to vote.

## 4.9 Lending policy and risk

Securities lending involves certain risks that should be managed appropriately. By lending shares, a portfolio's risk characteristics may be changed significantly. Normally, the standard contracts and practices in use successfully counter that possibility, but exceptions may exist.

Where the primary lender uses a lending agent, it should agree to a lending policy with the agent that sets out in detail how the program is to be run and how risks are to be managed. Where cash collateral is received by the lender, the cash should be reinvested to generate a return. The primary lender's policy and its agreement with the lending agent should detail how these risks are to be managed.

## 4.10 Disclosure of lending activity

As a general matter, lending activity is not reported to outside parties or to individual fund beneficiaries, except where provided for by contract or by law. It is suggested that lending activity be transparently made available to beneficiaries as described above.

The net income obtained from lending should be separately accounted for in regular reports to beneficiaries, and should not be 'hidden' within the costs of custody, transfer, and other administrative costs. It should be regarded as part of the fund's investment returns.

## Annex 1: Definitions

### **Mechanics of lending:**

A stock or securities loan is any transaction in which the owner of a share or his or her authorised agent transfers control and use of the security to a counterparty, the borrower, who must return a similar security at a future date and compensate the lender for the economic rights received during the loan period. Normally there is further agreement with the borrower to be made whole for the equivalent of any distributions made to the shareholders in the interim. Although legally different, a stock loan somewhat resembles a sale and repurchase agreement. Unlike a sale and repurchase agreement, however, the borrower usually deposits collateral with the lender normally greater than 100% of the value of the lent securities. Also, unlike a sale and repurchase, the rights of the lender with respect to this collateral may be greatly limited.

Collateral for the loan may be either in cash or securities, or a combination of the two. The collateral is normally remunerated under the terms of the loan. Its main purpose is to reduce risk and is adjusted on at least a daily basis to compensate for fluctuations in the market price of the security lent. It is also used for financing purposes. It is sometimes the case that the return the lender expects to obtain from the collateral for the duration of the loan is the lender's margin of profit on the transaction. In these cases, the use put to the collateral may alter the risk characteristics of the portfolio from which shares have been lent.

Recall of securities on loan can normally be initiated by the original lender at any time, on varying terms and within a time frame depending upon the lending contract. 'Recall' is also normally a misnomer, as most of the time equivalent shares to those loaned will have to be purchased in the market to satisfy the recall. At the same time, the borrower's collateral must be returned. Thus, the whole lending transaction is unwound upon recall.

### **Parties to a lending transaction:**

The lender of a security is the party, whether the beneficial owner, its agent, or a whole hierarchy of agents appointed to exercise control over beneficial owners' investments, which surrenders control of the share in exchange for specific agreements to be made whole at some (usually indefinite) future date. The primary lender of this same security is the beneficial owner of that security authorising the lending of it, or the most senior agent of those individuals who are collectively beneficial owners of that security. The lending agent is a party other than the beneficial owner or primary lender which is charged with effecting loans on behalf of the primary lender.

The ownership chain is the totality of the structure (which may be very complex, especially in the case of cross-border investments) of the fiduciaries, trustees, principal managers, sub-managers, custodians, sub-custodians, nominees, proxy agents, and other entities ultimately responsible for the management, administration, custody, voting, and lending of an ultimate beneficiary's securities, and responsible, directly or indirectly,

to that ultimate beneficiary. Not all of these agents are necessarily a part of the same hierarchy; e.g., there may be separate chains for custody and for portfolio management, both reporting to a principal manager or fund higher up in the chain. The principal manager is that party highest in the ownership chain which is authorised to make portfolio management decisions on behalf of the beneficial owner(s). Often the principal manager is authorised to make voting decisions and sometimes to set governance policy as well. The principal manager may or may not be the same as the primary lender.

The principal manager is that party highest in the ownership chain which is authorised to make portfolio management decisions on behalf of the beneficial owner(s). Often the principal manager is authorised to make voting decisions and sometimes to set governance policy as well. The principal manager may or may not be the same as the primary lender.

The borrower of the security is the party entering into the agreement which takes receipt of the borrowed stock. The borrower may be a principal borrowing for its own account, or be acting on behalf of a client; more often it is the latter.

The registered owner or owner of record is the shareowner whose name appears on the books of the company as entitled to vote shares and to receive dividends. When a share has been sold short in the market, or has been tendered in lieu of a fail, the new bona fide purchaser becomes the owner of record, in place of the lender. Thus, during the period of a loan, the lender will not be the owner of record, and cannot vote those shares.

### **Uses of lending:**

Risk mitigation was the original use of securities lending, transferred from the borrowers as collateral for financing facilities from the government. As a transfer of securities against collateral, it has evolved to support a number of different purposes.

Short selling is the practice by which a borrower of stock hopes to profit from a decline in the price per share by selling borrowed shares in the market, and repurchasing equivalent shares subsequently for delivery back to the lender at a lower price. Short selling may also be employed as part of a hedging strategy, in which the seller is merely trying to protect itself against the risk of loss from a share price decline. In either case, an essential part of this strategy is the borrowing of shares.

A failed trade is the industry term for the situation in which a securities intermediary cannot deliver securities to the counter-party purchaser in a valid trade. This is another common reason for borrowing shares.

Dividend swaps are employed when an investor cannot take advantage of tax benefits which may accrue to another, or cannot use investment opportunities (such as a scrip dividend alternative) more valuable to another investor, and decides to lend the shares to a borrower for whom the dividend is more valuable. Thus, both share in the benefit.

Rehypothecation is the practice in which a securities market intermediary uses liquid securities in a special blocked account in order to meet a regulatory requirement with respect to the ratio of securities held as a percentage of the total obligations of that intermediary.

## Annex 2: Acknowledgements

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## Annex 3: About ICGN

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Established in 1995, ICGN Members include investor's responsible for assets under management of US\$26 trillion. ICGN's mission is to promote effective standards of corporate governance and investor stewardship to advance efficient markets and sustainable economies world-wide. This sets the tone for our work programme which is centered around:

- Influencing policy by providing a reliable source of investor-led opinion and experience around governance and stewardship;
- Connecting peers at global events to provide a forum for dialogue between companies, investors and other stakeholders; and
- Informing debate through knowledge and education to enhance the professionalism of corporate governance and investor stewardship.

For more information, contact the ICGN Secretariat by telephone: +44 (0) 207 612 7011, email: [secretariat@icgn.org](mailto:secretariat@icgn.org) or visit [www.icgn.org](http://www.icgn.org).

# Annex 3: ICGN Principles & Guidance

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## Principles

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Global Stewardship Principles (2016)

Global Governance Principles (2015)

## Guidance

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Anti-corruption Practices (2012)

Corporate Risk Oversight (2015)

Diversity on Boards (2016)

Executive Remuneration (2016)

Gender Diversity on Boards (2013)

Integrated Business Reporting (2015)

Model Mandate: Contract Terms between Asset Owners and Managers (2012)

Non-executive Director Remuneration (2016)

Political Lobbying and Donations (2012)

Securities Lending (2016)







**ICGN**

International Corporate Governance Network

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