

May 24, 2024

Ms. Vanessa Countryman
Secretary
US Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATETM)) (File No. SR-FINRA-2024-007)

Dear Ms. Countryman:

The Investment Company Institute (ICI), the Canadian Securities Lending Association (CASLA), the International Securities Lending Association (ISLA), the Securities Lending Council of the Risk Management Association (“RMA Council”), the Securities Industry and Financial Markets Association (SIFMA), and SIFMA’s Asset Management Group (SIFMA AMG) (collectively, “Associations”)¹ are writing to request that the Securities and Exchange Commission (the SEC or “Commission”) provide additional time for review of, and public comment on, the Financial Industry Regulatory Authority’s (FINRA) proposed rules that would require reporting of securities loans and provide for the public dissemination of securities loan information.² The new FINRA rule series (“SLATE rules”) are intended to implement requirements of Rule 10c-1a under the Securities Exchange Act of 1934 (“Exchange Act”), which requires reporting and public dissemination of information on securities loans,³ and would impose certain additional requirements.

The Associations represent a broad range of market participants located within the United States and in other countries that will be directly affected by Rule 10c-1a and the proposed SLATE rules, including securities lenders, securities borrowers, securities lending agents, and broker-dealers. Given the significant implications of the new securities loan reporting obligations under these rules,

¹ For a description of the Associations, please see Appendix.

² See *Notice of Filing of a Proposed Rule Change To Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATETM))*, 89 Fed. Reg. 38,203 (May 7, 2024) available at <https://www.govinfo.gov/content/pkg/FR-2024-05-07/pdf/2024-09847.pdf> (“FINRA Proposing Release”).

³ *Reporting of Securities Loans*, Securities Exchange Act Release No. 98737 (October 13, 2023), 88 Fed. Reg. 75644 (November 3, 2023) (“Rule 10c-1a Adopting Release”).

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the several instances in which FINRA appears to have materially deviated from the requirements of Rule 10c-1a, and the proposed public dissemination of loan data received from market participants, it is critical that the Associations have a meaningful opportunity to provide public comment on FINRA's proposed SLATE rules.

We appreciate that FINRA is required to promulgate rules pursuant to Rule 10c-1a(f) and that FINRA must propose those rules by May 2, 2024, which it has done.⁴ Given, however, that FINRA did not solicit public comment prior to filing the proposed rules and the Commission set a comment deadline of 21 days after publication in the Federal Register, interested market participants have been afforded less than a month to review this important proposal and submit comments, which is not enough time to provide meaningful feedback.⁵

While the Associations are still reviewing FINRA's proposed SLATE rules with our members, we have identified significant areas of concerns that the Commission should consider. First, FINRA's proposed SLATE rules would impose requirements on market participants that go beyond the Commission's requirements under Rule 10c-1a. For example, FINRA's proposed rules include the requirement to report additional data elements that are not required by Rule 10c-1a and, critically, would appear to require end-of-day reporting of intraday changes to a securities loan that the SEC determined were not reportable under Rule 10c-1a.⁶ It is not clear that FINRA has adequately analyzed the costs and benefits of these deviations from Rule 10c-1a.

Second, FINRA states that it intends to separately submit to the SEC a proposed rule change to establish covered securities loan reporting fees and securities loan data products and associated

⁴ See *id.* at 75691. Rule 10c-1a(f) requires that “[a]n RNSA shall implement rules regarding the format and manner of its collection of information described in paragraphs (c) through (e) of this section and make publicly available such information in accordance with rules promulgated pursuant to [Section 19(b) of the Exchange Act and Rule 19b-4 thereunder].” At this time, FINRA is the only RNSA.

⁵ The Commission published notice of FINRA's proposed rules on May 1, 2024, and the notice was published in the Federal Register on May 7, 2024, with a deadline of May 28, 2024 for public comment. FINRA Proposing Release at 38217. This deadline is consistent with the Commission's compliance dates set out in the Rule 10c-1a Adopting Release, which provided that an RNSA must propose rules pursuant to final Rule 10c-1a(f) within four months of the effective date of final Rule 10c-1a. Given that the effective date of Rule 10c-1a was January 2, 2024, FINRA was required to propose rules by May 2, 2024. Based on the timeline set by the Commission, market participants will have had only 27 days to review and comment on the proposal.

We further note that: (i) FINRA's proposed rules are required to go into effect no later than January 2, 2025 (12 months after the January 2, 2024 compliance date); (ii) covered persons must begin reporting to FINRA the information required by Rule 10c-1a and FINRA's final SLATE rules on January 2, 2026 (the first business day 24 months after the effective date of Rule 10c-1a); and (iii) FINRA must begin to make information publicly available in accordance with Rule 10c-1a and FINRA's final SLATE rules by April 2, 2026 (within 90 calendar days of the January 2, 2026 reporting date for covered persons). See Rule 10c-1a Adopting Release at 75691.

⁶ In response to numerous commenters' concerns regarding reporting of intraday activity, the SEC adopted an end of day reporting requirement in Rule 10c-1a and noted in the Rule 10c-1a Adopting Release that, “[a]s modified, the final rule's end-of day reporting requirement will help prevent an excessive number of incomplete or slightly modified reports that otherwise would occur throughout the day yet without providing any incremental value”. FINRA's proposal appears to run counter to the SEC's policy decision in Rule 10c-1a to not require reporting of such intraday activity.

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fees.⁷ Without knowing the proposed reporting fees, market participants and the Commission are not able to adequately assess the costs and benefits of FINRA's current proposal. Further, the proposed SLATE rules would require data elements and reporting obligations in addition to those required under Rule 10c-1a, significantly increasing the complexity and, therefore, cost of market participants' reporting obligations. It is difficult to meaningfully assess the implications of these increased costs, including for the economics of lenders' securities lending programs, without considering the proposed costs of SLATE reporting. Similarly, knowing FINRA's proposed fees for securities loan data products is necessary to understand how FINRA plans to package and sell covered persons' data and to identify potential confidentiality concerns.

Finally, it is important to recognize that the SEC currently is subject to a legal challenge to Rule 10c-1a.⁸ Given that FINRA's proposed SLATE rules would implement and add to the requirements of Rule 10c-1a, it is especially important for the Commission to ensure it takes the time necessary to closely review FINRA's proposed rules and obtain fulsome public feedback.

Accordingly, we request that the Commission extend the 45-day review period for an additional 45 days so that it can continue to review FINRA's proposal and consider any additional comments submitted by stakeholders during this time. We also welcome the Commission, if appropriate after the longer review period, to institute proceedings to determine whether to approve or disapprove the proposed rule change, which could provide market participants further opportunity to comment on whether the proposal is consistent with Section 15A(b)(6) of the Exchange Act.⁹

If you have any questions, please feel free to contact the undersigned.

Regards,

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⁷ FINRA Proposing Release at 38206. FINRA states, however, that it will make certain data available on its website free of charge for personal, non-commercial purposes only. For example, the publicly available data would include next day loan-level data for initial covered securities loans and loan modifications (except for the loan amount), loan amount for initial covered securities loans and loan modifications on a 20-day delay, and aggregate loan activity and distribution of loan rates.

⁸ See *Nat'l Ass'n of Private Fund Managers, et al. v. SEC*, Case No. 23-60626 (5th Cir., Dec. 2023).

⁹ Section 15A(b)(6) of the Exchange Act requires that FINRA rules, among other things, promote just and equitable principles of trade and, in general, protect investors and the public interest.

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Appendix

The [Investment Company Institute](#) (ICI) is the leading association representing regulated investment funds. ICI's mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors all in other jurisdictions. Its members manage \$35.1 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional \$9.1 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to certain collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London, and carries out its international work through [ICI Global](#).

The [Canadian Securities Lending Association](#) (CASLA) is an association of firms that engage as principal or agent in the lending or borrowing of securities. Our membership includes, among others, dealer members of the Canadian Investment Regulatory Organization (CIRO), financial institutions and service providers. CASLA seeks to enhance the public's understanding of securities lending and the role it plays in Canada's financial markets. CASLA works with Canadian regulators, self-regulatory organizations and other market participants to ensure the long-term viability of the Canadian securities lending industry and the adoption of best practices.

The [International Securities Lending Association](#) (ISLA) is a leading non-profit industry association, representing the common interests of securities lending and financing market participants across Europe, Middle East and Africa. Its geographically diverse membership of over 180 firms includes institutional investors, asset managers, custodial banks, prime brokers and service providers. Working closely with the industry, as well as national, regional, and global regulators and policy makers, ISLA advocates for, amongst other things, the importance of securities lending to the broader financial services industry. It supports, maintains, and obtains legal opinions for the [Global Master Securities Lending Agreement \(GMSLA\)](#), covering both the Title Transfer and Securities Interest over Collateral variants.

The [RMA Council](#) acts as a liaison for RMA member institutions involved in agency lending functions within the securities lending industry by providing products and services, including hosting several forums, conferences and training programs annually and sharing aggregate composite securities lending market data free of charge.

[SIFMA](#) is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C.,

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is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

SIFMA's Asset Management Group (SIFMA AMG) brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed \$45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. For more information, visit <http://www.sifma.org/amg>.