May 28, 2024
Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Submitted online via: www.sec.gov

Dear Ms. Countryman:

EquiLend is supportive of the SEC and FINRA's efforts to bring more transparency to the securities lending markets, along with FINRA's general approach to reporting securities lending transactions pursuant to Proposed Rule 6500. However, there are some elements of Proposed Rule 6500 and its interaction with Rule 10c-1a that require additional clarification, particularly as to the role and responsibilities of Reporting Agents and Service Bureaus, as well as in respect of a number of the data elements required to be reported under Proposed Rule 6500 that are not expressly addressed in Rule 10c-1a itself.

"REPORTING AGENTS AND SERVICE BUREAUS"

Rule 10c-1a specifically allows for Covered Persons to use the services of a Reporting Agent in order to comply with its obligations. Under the Rule, Reporting Agents must be either regulated broker dealers or registered clearing agencies. FINRA's proposed rules introduce the concept of a Service Bureau that we understand can provide the same service as a Reporting Agent without the oversight or regulatory responsibility of a Reporting Agent. We believe that the SEC set out its rationale clearly as to why Reporting Agents should be regulated and we therefore believe the option to provide the same service in an unregulated capacity should not be permissible. In fact it would be hard to understand why a third party service provider would act as a Reporting Agent if the option to act as an unregulated service bureau were possible.

"ADDITIONAL DATA REQUIREMENTS"

The SEC has given FINRA authority to collect specific information relating to covered securities lending transactions described in SEC Rule 10c-1(a). We are concerned that under Proposed Rule 6500, FINRA is requesting to receive certain additional data elements over and above those specified in Rule 10c-1a, and that these additional requirements may serve to increase the cost and complexity of reporting without sufficient regard for their benefits. We therefore believe that the information to be reported to FINRA via the SLATE system should be limited to those elements specifically required by 10c-1a.

EQUILEND

EquiLend has provided more detailed support for our views on these points in the attached addendum and I hope our comments are helpful. My team and I are at your disposal to discuss any matters raised if it would be of help.

Yours truly,

DocuSigned by:
Brian P. Lamb
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Brian P. Lamb

CEO EquiLend Holdings LLC

ADDENDUM to EquiLend's Comment Letter of May 28, 2024

Reporting of Securities Loans – FINRA Proposed Rule 6500 Series - SLATE (File Number SR-FINRA-2024-007) – COMMENT LETTER

EquiLend Holdings LLC, on behalf of itself and its regulated U.S. operating subsidiary, EquiLend LLC, a Securities Exchange Commission (**"SEC"**) regulated securities lending alternative trading system (**"ATS"**) and FINRA-member registered broker-dealer (together, **"EquiLend"**), respectfully submits the following comment letter pertaining to the proposed new FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™) (**"Proposed Rule 6500"**), formulated pursuant to requirements contained in SEC Rule 10c-1a (**"Rule 10c-1a"**) pertaining to the reporting of securities loans and the public dissemination of certain securities loan data through FINRA's proposed SLATE reporting platform.

"REPORTING AGENTS"

As pertains to the "reporting agent" requirements contained in Rule 10c-1a and incorporated into Proposed Rule 6500, we are particularly concerned that the SEC and FINRA's failure to expressly and unambiguously enumerate the specific activities that will attribute to a third-party agent the formal status of a "reporting agent", and therefore the requirement that such agent to be either a registered FINRA-member broker-dealer or qualified clearing firm, will enable unregistered, unregulated entities to provide Covered Securities Loan and Covered Securities Loan Modification data management, transmission and reporting services to Covered Persons that are wholly analogous to those of a qualified "reporting agent" as defined in Rule 10c-1a without otherwise meeting Rule 10c-1a's express regulatory / registration qualification tests. This ambiguity opens the door to unregistered and unregulated third-party service providers (aka "Service Bureaus") engaging in direct connectivity, Covered Securities Loan and Covered Securities Loan Modification data management, transmission and reporting services facing the proposed SLATE reporting platform in a manner inconsistent with the letter, spirit and public policy rationale behind the SEC's requirement, as fulsomely expressed in both Rule 10c-1a and through the public comment response framework, that such third-party agents be in the formal status of a regulated / registered FINRA-member broker dealer or qualified clearing firm.

Permitting third party self-described "Service Bureaus" to disregard the broker dealer / clearing firm qualification requirements in the provision of "reporting agent" type services will result in significant burden shifting that disadvantages the Covered Person and that would place these unregulated / unregistered agents outside the direct regulatory oversight of both the SEC and FINRA, as such agents would not ostensibly be registered with the SEC nor otherwise subject to FINRA member rules and enforcement mechanisms as are FINRA-member firms.

This circumvention of Rule 10c-1a and Proposed Rule 6500 will also likely increase the costs of compliance for the Covered Person as it will solely harbor the burden of all Rule 10c-1a associated liability where such liabilities would otherwise be apportioned between the Covered Person and its

regulated / registered "reporting agent", this notwithstanding that the "Service Bureau" will receive the asymmetrical economic benefits from standing outside the formal "reporting agent" qualification and liability regime. SEC and FINRA would also presumptively assume higher enforcement costs facing "Service Bureaus" in contrast to the more efficient and economical oversight and enforcement mechanisms otherwise attending the oversight and enforcement of regulated / registered "reporting agents", as such enforcement would ostensibly need to be pursued through civil remedies rather than through SEC and FINRA-member ordinary course regulatory, administrative and enforcement channels.

Significantly, both Rule 10c-1a and Proposed Rule 6500 are in agreement as to the permissible use by Covered Persons of qualified "reporting agents" who meet the FINRA-member registered broker-dealer or clearing firm standard. Alternatively, the provision of such services by an unregulated / unregistered "Service Bureau" agent would by definition be *ultra vires*. The intent behind requiring that third-party vendor agents qualify as either as a FINRA-member broker-dealer or clearing firm is stipulated in Rule 10c-1a(a)(2) which "permits a covered person to rely on a reporting agent to fulfill its reporting obligations under Rule 10c-1a", and further clarifies that "[a] "reporting agent" is also required to enter into a written agreement with an RNSA that permits the reporting agent to provide SEA Rule 10c-1a information to an RNSA on behalf of a covered person and to provide an RNSA with a list naming each covered person on whose behalf the reporting agent is providing SEA Rule 10c-1a information (and provide an RNSA with any updates to the list of such persons by the end of the day such list changes)".

There is no ambiguity in either Rule 10c-1a or Proposed Rule 6500 as to the parties that are authorized to report Covered Securities Loan and Covered Securities Loan Modification data to the RNSA, those being either the Covered Person itself or their contractually retained and qualified regulated "reporting agent", with "reporting agents" assuming liability for untimely and inaccurate reporting of Covered Securities Loan and Covered Securities Loan Modification data. The ambiguity in each of Rule 10c-1a and Proposed Rule 6500 as pertains to activities undertaken by a third-party vendor that will de facto trigger "reporting agent" status, and the associated liability prescriptions attendant thereto, opens the door to unregulated / unregistered third-party vendors breaching these obligations without any ascribed direct regulatory oversight or enforcement liability exposure facing the SEC or FINRA and without implicating any fiduciary standards that would otherwise benefit the Covered Person under the broker dealer – customer relationship, both as to the obligation, responsibility and risk associated with the delivery of Covered Securities Loan and Covered Securities Loan Modification data and the accurate and timely delivery of the same to the RNSA.

"SERVICE BUREAUS"

At present there is uncertainty / ambiguity in the marketplace around what it means in operational effect to act as a third-party "Service Bureau" vendor in the provision of Rule 10c-1a and Proposed Rule 6500 reporting services, including as to the extent to which an unregulated / unregistered third-party agent can claim exempt status in the provision of Covered Securities Loan and Covered Securities Loan Modification data management, transmission and reporting services without triggering the formal "reporting agent" qualification requirements. We understand that a number of unregulated / unregistered third-party vendors are promoting Covered Securities Loan and Covered Securities Loan Modification data management, transmission and reporting "support" services to Covered Persons

under the guise of the "Service Bureau" model, asserting that the provision of these data management, transmission and reporting services, including the provision of technical interconnectivity infrastructure services that enable automated reporting facing FINRA's proposed SLATE reporting platform, are outside the reach of the SEC and FINRA under both Rule 10c-1a and Proposed Rule 6500.

"Service Bureaus" provide data management and reporting services that have historically accommodated direct reporting on behalf of a market participants to FINRA reporting platforms that are analogous to SLATE but where there is no requirement that the third-party "Service Bureau" agent be a FINRA member broker-dealer (or qualified clearing firm), for example under the CAT and TRACE reporting systems. We understand that certain unregulated entities that are not FINRA-member broker-dealers are promoting the "Service Bureau" model as a substitute for retaining a FINRA-member broker-dealer or qualified clearing firm in a formal "reporting agent" capacity based on the legacy "Service Bureau" model. These services, as we understand it, may extend to the "Service Bureau" providing direct electronic connectivity to SLATE for the transmission of Covered Securities Loan and Covered Securities Loan Modification data without any mechanism requiring that the Covered Person expressly validate the data and expressly authorize each unique individualized direct data transmission to the SLATE platform.

Significantly, many of these types of "Service Bureau" arrangements are not entirely "passive" technology support services. Rather, they are wholly or in part analogous to "reporting agent" activities that are expressly captured under Rule 10c-1a and Proposed Rule 6500, including as to the active management of Covered Securities Loan and Covered Securities Loan Modification data for reporting purposes and the provision of direct electronic connectivity with the SLATE reporting platform, but would otherwise eschew compliance with the express provisions of Rule 10c-1a mandating that "reporting agents" be SEC and FINRA regulated broker dealers or clearing firms subject to direct SEC / FINRA oversight and enforcement mechanisms.

The "Service Bureau" model permits unregulated / unregistered third party agents to stand in the shoes of market participants directly subject to reporting requirements facing FINRA, including as pertains to mandated CAT and TRACE reporting. Under this model, in respect of which FINRA has formulated template "transparency services agreements" both for "participants" subject to direct reporting and as applicable to "Service Bureau/Executing Broker" transparency agreements that assume reporting responsibility for the participant, under which "Service Bureau" is defined to mean "*an entity which is not itself a Participant that provides Participant with network access and connections to the Service*", meaning the applicable reporting platform (e.g., CAT or TRACE). Under these formal written agreements, "Service Bureaus" in operative effect act as "reporting agents" of the market participant by managing, transmitting and reporting data on their behalf, including, without limitation, through direct affirmative self-administered transmission / reporting services or through the provision of direct transmission technologies actively administered by the "Service Bureau". In fact, FINRA mandates that a non-FINRA member third-party reporting intermediary such as a "Service Bureau" or other third-party vendor execute a FINRA "Transparency Services Service Bureau Access Authorization" as a qualifying pre-condition before such third-party is permitted to transmit trade reports through TRACE (see FINRA TRACE FAQ at https://www.finra.org/filing-reporting/trace/faq).

Significantly, neither CAT nor TRACE presently mandate that a third-party vendor that is acting as a market participant's agent for the purposes of reporting be a FINRA-member broker-dealer or qualified

clearing firm. This stands in stark contrast to the express mandate under Rule 10c-1a and as incorporated into Proposed Rule 6500 that "reporting agents" be either a FINRA-member broker-dealer subject to the full panoply of FINRA rules, member requirements and fiduciary obligations facing its clients under the securities laws, or otherwise a qualified regulated clearing firm. Permitting third-party vendors to act in a capacity and provide services that are wholly or in part analogous to those ascribed to a "reporting agent" under Rule 10c-1a and Proposed Rule 6500 without mandating compliance with the unambiguous FINRA-member broker-dealer and/or clearing firm qualification requirements defeats the SEC's published rationale for requiring such agents to be regulated / registered entities and is antithetical to the express language and stated intent of the regulated entity qualification criteria baked into both the Rule 10c-1a and Proposed Rule 6500 agency regimes.

Rule 10c-1a and proposed Rule 6500's silence around the permissible activities of so-called "Service Bureaus" demands further clarification and an express set of qualification criteria that distinguishes such permissible activities from those that are inherent in the formal "reporting agent" / Covered Person agency relationship.

If the SEC and FINRA permit unregulated third party vendor agents that are not designated as Covered Persons and/or "reporting agents" to deliver Covered Securities Loan and Covered Securities Loan Modification data into the SLATE reporting platform, then there is no logical basis to mandate that any unaffiliated vendor of a Covered Person acting in a "reporting agent" capacity be a regulated FINRA-member broker-dealer or qualified clearing firm. The logical question then is "for what reason would any vendor want to assume formal "reporting agent" risk when they can simply self-assert that they operate as a third-party vendor under the "Service Bureau" model and avoid any liability facing the SEC / FINRA or their Covered Person client? This result is inconsistent with SEC's consistent position regarding the use of "reporting agents" to report Covered Securities Loan and Covered Securities Loan Modification data and provides a back door through which a "Service Bureau" can escape SEC and FINRA oversight and liability as a "reporting agent".

"ADDITIONAL DATA REQUIREMENTS"

The SEC has given FINRA authority to collect specific information relating to covered securities lending transactions described in SEC Rule 10c-1(a). We are concerned that under Proposed Rule 6500, FINRA is requesting to receive certain additional data elements over and above those specified in Rule 10c-1a.

Specifically, the following fields (specified as non-confidential and confidential) are additional to the requirements of Rule 10c-1a:-

- the expected settlement date of the covered securities loan
- any additional cash fees or charges associated with the trade outside of the fee/rebate rate.
- Additional modifiers and indicators, specified as:
    - loans associated with exclusive arrangements,
    - loans to affiliates,
    - unsettled loans (to be publicly disseminated at the loan level),

- loans with rate or fee adjustments (including billing adjustments, corporate action adjustment, or basket of securities rate).

On a practical level we are concerned that these additional requirements include complex fields and indicators, some of which may not currently be captured by market participants at the trade level. To include these additional data elements would ultimately require significant time and cost to implement in the trading systems and the downstream systems used for collecting this data, posing additional burdens on the covered persons who are required to comply with this regulation. This additional complexity and burden could not have been contemplated in the cost benefit analysis undertaken by the SEC in their analysis of the impact of Rule 10c-1A.

In addition to the cost and complexity of including the additional data elements we would point out that as per the SEC Adopting release to Rule 10c-1a "An 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 15 U.S.C. 78s(b) ("section 19(b)") and § 240.19b-4 ("Rule 19b-4") of the Exchange Act." We believe that the mandate provided to FINRA by the SEC extends to the collection of data items and elements specifically covered in the text of Rule 10c-1a and that Proposed Rule 6500 should be limited to specifying the format and manner in which such information is collected.

While EquiLend understands that these indicators may allow FINRA a better understanding of the data being supplied, we believe that the SEC should have mandated these fields in its original proposal for Rule 10c-1a, along with the appropriate cost benefit analysis associated of doing so, thereby allowing industry participants the ability to comment on these fields before the final rule was issued.

We therefore request that the additional data and information requirements specified in Proposed Rule 6500 which are not specifically mentioned in Rule 10c-1a be removed.

"FINRA SLATE FEES"

Lastly, it is important to note that the fees and fee structure associated with registering and reporting securities lending information to FINRA have yet to be defined, nor have the fees associated with the disseminated outbound data to commercial users been divulged. The cost of the service may help determine how the industry participants build and define their securities lending business and their Rule 10c-1a service. The entire understanding of the requirement, and the associated comment period to allow for changes, should not be concluded until all the pieces required to understand the complexity of this regulation are revealed and understood.