July 16, 2024

Via Electronic Submission

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

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

Dear Sir or Madam:

The International Securities Lending Association Americas ("ISLA Americas")[1] appreciates the opportunity to submit this letter to the Securities and Exchange Commission (the "Commission" or "SEC") on behalf of its members, which include securities lending agents, beneficial owners, institutional investors and other market practitioners. This letter addresses the Financial Industry Regulatory Authority, Inc.'s ("FINRA") Notice of Filing of a Proposed Rule Change to Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine

[1] Incorporated in May 2024, ISLA Americas is a non-profit industry association, presently representing the common interests of securities lending agents, beneficial owners, institutional investors and other market practitioners in the Americas region. The founding membership of ISLA Americas transitioned over from the Risk Management Association ("RMA"), which previously served as the industry association representing agent and direct lending organizations in the United States.

ISLA Americas works with the industry, as well as national, regional, and global regulators and policy makers, to advocate for, amongst other things, the importance of securities lending to the broader and well-functioning capital markets. Through its annual Securities Finance Conference, ISLA Americas brings together securities lending and financing market participants to collaborate and shape the future of the industry.

ISLA Americas is an affiliate entity of the long-established International Securities Lending Association (ISLA EMEA) – the leading trade association for securities financing market participants across Europe, the Middle East, and Africa. Its geographically diverse membership of over 180 firms includes institutional investors, asset managers, custodial banks, prime brokers and service providers. ISLA Americas, together with ISLA EMEA serves the broader membership across regions, where a collective "ISLA" can produce a more cohesive output, reflecting multi-jurisdictional operating models and the need for one global advocacy voice.

(SLATE™)) (the "Proposed Rule Change").[2] The proposed FINRA Rule 6500 Series and the related SLATE Participant Reporting Specifications (the "SLATE Participant Reporting Specs")[3] are intended to implement the requirements of Rule 10c-1a under the Securities and Exchange Act of 1934 (the "Exchange Act"), which requires reporting and public dissemination of information related to securities lending transactions and certain other information.[4]

ISLA Americas supports the Commission's efforts to increase transparency in the securities lending market and appreciates that, notwithstanding its desire to move the Proposed Rule Change promptly forward, on June 10, 2024, the Commission extended the date by which it would approve, disapprove or institute proceedings to determine whether to disapprove the Proposed Rule Change to August 5, 2024 (the Comment Expiration Date).[5] This extension was requested in comment letters submitted by many industry associations, including the joint trade association extension letter submitted by The Investment Company Institute ("ICI"), the Canadian Securities Lending Association ("CASLA"), the ISLA, the Securities Lending Council of the Risk Management Association, the Securities Industry and Financial Markets Association ("SIFMA"), and SIFMA's Asset Management Group on May 24, 2024.[6]

Initially, our members were concerned that they did not have adequate time to evaluate the Proposed Rule Change to provide the Commission with meaningful, well-considered feedback given the short 21-day comment period, which also coincided with the implementation of the shortened settlement cycle to T+1 in the US. The fact that draft SLATE Participant Reporting Specifications were not published by FINRA until May 21, just four business days prior to the comment period deadline, further limited the ability of market participants to evaluate the Proposed Rule Change and provide well-considered comments that would be useful to the Commission and FINRA as part of thoughtful and reasoned rulemaking. As of the date of this comment letter, fees that FINRA will charge in connection with SLATE are still pending publication. We value the Commission's commitment to consider this, and other comment letters submitted after May 28, 2024, and before August 5, 2024, the Comment Expiration Date.

I. Framework of Agency Securities Lending

A. In General

Agency securities lending is a well-established, safe and sound activity that supports global capital markets activities and facilitates trade settlement. By effectively increasing the supply of securities available for these and other market activities, securities lending improves market

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2 Exchange Act Release No. 100046, SR-FINRA-2024-007 (May 1, 2024), 89 FR 38203 (May 7, 2024) (Notice of Filing of a Proposed Rule Change to Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™))).

3 *See* also https://www.finra.org/sites/default/files/2024-05/slate-participant-specification.pdf.

4 *Reporting of Securities Loans*, Securities Exchange Act Release No. 98737 (October 13, 2023), 88 Fed. Reg. 75644 (November 3, 2023) *(the "Adopting Release").*

5 *See* Exchange Act Release No. 34-100305, SR-FINRA-2024-007, 89 FR 50644 (June 10, 2024)(Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATETM)) (the "*SEC Extension Letter*").

6 *See* https://www.sec.gov/comments/SR-FINRA-2024-007/SRFINRA2024007-477911-1366774.pdf (the "*Industry Association Comment Letter*").

liquidity, enhances price discovery, and promotes settlement efficiency.[7] Securities lenders largely consist of buy-side entities such as public and private pension funds, mutual funds, ERISA plans, endowment funds of not-for-profit institutions, insurance companies, investment funds, retail investors and other similar entities or funds into which such entities invest. The incremental revenues earned by securities lenders often enhance performance of the underlying investment fund and offset fund expenses that would otherwise be borne by the shareholders of the fund. Borrowers in securities lending transactions largely consist of broker-dealers, banks and other financial institutions.

Lending agents act as intermediaries in securities lending programs by facilitating loans on behalf of beneficial owners to qualified borrowers and using their expertise in the lending market to obtain competitive pricing for their beneficial owner clients. Securities are generally lent pursuant to a (i) securities lending authorization agreement between a beneficial owner and a lending agent, and (ii) securities borrowing agreement between a borrower and a lending agent (acting in an agency capacity on behalf of the beneficial owners as principals). Under these agreements, beneficial owners receive cash or securities collateral (generally, through their lending agent) from borrowers in an amount that exceeds the value of the loaned securities, usually by 2% to 5% depending upon the creditworthiness of the borrower, and the characteristics of the loaned securities and collateral. The loaned securities and collateral are then marked-to-market daily to ensure that the collateral consistently meets the requisite value.

As the Proposing Release noted, the margin for securities lending transactions is typically low. Because lending agents often provide beneficial owners with a guaranty against loss due to collateral insufficiency in the event of borrower default, agency lending by regulated banks that must adhere to Basel standards is capital intensive. Accordingly, securities lending generally requires economies of scale to be profitable, and even marginal increases in cost may drive supply-side liquidity out of the market and negatively impact beneficial owner lending utilization, unless it can be offset with increased fees. In any event, the revenues of beneficial owners will be negatively impacted by any additional costs that may be passed along by lending agents.

[7] Beneficial owners use agency securities lending services provided by Lending Agents in order to obtain additional incremental revenues in respect of their portfolios of fully paid for securities. Agency securities lending activities developed initially as an outgrowth of Lending Agents' custody and related activities, and have long been regulated, examined, and treated by regulators as traditional banking services. See, e.g., Securities Lending, Federal Financial Institutions Examination Council, Supervisory Policy (1985) (addressing appropriate regulatory guidelines for the growing securities lending industry); Letter from J. Virgil Mattingly, General Counsel, Board, William F. Kroener, General Counsel, Federal Deposit Insurance Corporation, and Julie L. Williams, General Counsel, Office of the Comptroller of the Currency ("OCC"), to the Securities and Exchange Commission (Dec. 10, 2002) (indicating that interagency guidelines "ensure that banks conduct their securities lending activities in a safe and sound manner and consistent with sound business practices, investor protection considerations and applicable law"); Bank of England, Securities Lending and Repo Committee, Securities Borrowing and Lending Code of Guidance (July 2009) (describing how securities lending transactions are regulated both under UK regulations and EU directives), available at http://www.bankofengland.co.uk/markets/Documents/gilts/stockborrowing.pdf; Directive 2004/39/EC, of the European Parliament and of the Council of 21 April 2004 on Markets in Financial Instruments, available at http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:145:0001:0044:EN:PDF.

B. Agency Lending Transactions

During the course of the trading day, a borrower may offer to borrow securities in specified amounts at certain prices versus detailed collateral sets. These offers are made to a general pool of preapproved lenders. When the lending agent receives an offer to borrow securities, it will confirm to the borrower whether sufficient quantity of the requested securities exists within the pool of preapproved lenders. The lending agent cannot immediately accept the offer on behalf of any one lender because it does not know who will own the requested securities at settlement or even if there will be sufficient securities within the pool to accept the original offer. This is because during the trading day, lenders in the preapproved pool engage in a myriad of investment transactions, including long sales of securities, delivering securities to close out option positions, and pledging securities as collateral for other investment transactions. As the lending agent is being notified of activity affecting the pool of available securities, it is continuously prepositioning lenders within its system who might be available to accept the offer at settlement. If sufficient securities remain just prior to settlement, then the lending agent selects the specific lenders from the preapproved pool, accepts the offer on their behalf, and commences settlement of the securities loan. At that instant, just prior to settlement (transfer by the borrower of the collateral and by the lender of the loaned securities), when offer and acceptance have been completed, a legal contract (the securities loan) arises between the lender and the borrower. If, prior to settlement, there are insufficient securities to allow acceptance to occur, the lending agent will notify the borrower that the offer cannot be accepted. The borrower may then make a new offer to borrow a lesser quantity of securities that may then lead to a loan or may cancel the offer. Since a legally binding contract between the borrower and the lender arises just prior to settlement, there is no need to report the intra-day offers and negotiations that occur prior to the time at which both offer, and acceptance has occurred.

II. Executive Summary

SEC Rule 10c-1a(f) instructs a registered national securities association ("RNSA") to "implement rules regarding the format and manner of its collection of information described in paragraphs (c) through (e)."[8] We respectfully note that some of the reporting requirements under the Proposed Rule Change seem to exceed the authority granted to FINRA under Rule 10c-1a and are significantly more complicated and burdensome than the defined reporting requirements in paragraphs (c) through (e) of the final rule.[9] The referenced paragraphs in Rule 10c-1a require reporting of twelve unique data elements plus three confidential data elements for new loan activity and up to fifteen data elements for loan modifications. In contrast, the Proposed Rule Change includes 44 reportable data elements for new loan activity and 34 data elements for loan modifications (45 data elements are required for modifications to loans not previously reported). The Proposed Rule Change also introduces new activity types and requires twelve data elements to be reported for cancelation events, 48 data elements to be reported for correction events and nine data elements to be reported for delete events. We think the significant increase in reportable fields and complexity of the Proposed Rule Change warrant a proper cost-benefit

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[8] *See* Adopting Release, 88 FR 75644 at 76682.
[9] *See* Adopting Release, 88 FR 75644 at 75648.

analysis as required under Federal agency rulemaking. Considering proposed RNSA fees and costs have not yet been published, any cost-benefit analysis is impossible.

More specifically, we have concerns with the following aspects of the Proposed Rule Change, each of which will be addressed in more detail in Section III of this letter:

- "Time Effected" and Reporting of Intraday Activity
- Use of Reporting Agents
- Costs
- Unsettled Loan Flags
- Reporting of Fees, Rebates, Fees and Fees or Charges
- Data Validation
- Affiliate Indicator
- LEI of Security Issuer
- Duty to Report/Identifying Reportable Securities
- Public Reporting and Dissemination of Data
- SLATE Hours
- Event Types & Data Validation.

We appreciate the Commission's willingness to review our comments during the extra time it has granted for its own review of the Proposed Rule Change.

III. **Specific Concerns and Recommendations**

A. "Time Effected" and Reporting of Intraday Activity

"Time Effected"
Among the non-confidential data elements that a covered person must report to FINRA are the date and the time the covered securities loan was "*effected*." In response to industry comments seeking clarification on what it means for a loan to be "*effected*", the SEC Adopting Release gave the following explanation:

> "Further, in paragraph (a) of the final rule, the term "*loans a security*" is replaced with the phrase "*agrees to a covered securities loan*" in its reporting requirement for covered persons. In response to commenters' request for clarification as to whether a loan should be reported before or after it is settled, the term "*agrees to*" clarifies that covered

> securities loans are required to be reported after the parties agree to the loan, which is before settlement."[10]

Unfortunately, we do not believe this explanation clearly defines when a securities loan is "*effected*." Even the discussion in the related footnote articulates the differences in commenters' views about when a securities loan is effected.[11] One commenter argues that "the Commission and FINRA rules have long required reporting of securities orders, modification, and trades, not just settled transactions, because all of that information is relevant to understanding the markets."[12] And, in the same footnote, the Commission discusses another commenter's request for clarity as to when a loan can be considered "*effected*" for purposes of reporting, and stating that "in the marketplace, a securities loan is not considered '*effected*' by the parties until the loan has been contractually booked and settled."[13]

Our recommended interpretation for time "effected" and "agrees to a covered securities loan" is prior to loan settlement but only once all contractual terms, including the identity of the lender, are agreed.

For example, a lending agent's trading desk typically communicates with borrowers throughout the trading day to determine what securities can be loaned based on the borrower's interest and the lending agent's supply/lender securities inventory. These discussions can take many turns throughout the day as both borrower demand and lender supply change. Until all contractual terms of a securities loan (including the final details related to the identity of the lender) are agreed between the lending agent as agent for the lender and the borrower, the trading desk will view the borrower's offer discussions as a "*potential loan*" – not an actual loan. The lending agent will book that securities loan into its trading system only when all contractual terms (including assignment to the securities loan of the identity of the actual lender) are agreed. Only when the securities loan is booked into the lending agent's trading system, will the lending agent view it to be "*effected*" – an actual securities loan pending settlement.

Reporting <u>*potential*</u> activity (loans that have not yet been "*effected*" and without assignment/confirmation of the lender of the securities) will be of even less value; may negatively impact FINRA's loan analytics; would be difficult to track operationally; and may result in incorrect, incomplete, or over-reporting.

This analysis applies equally to securities loans that have been settled and need to be reallocated. If a lender sells the securities while they are on loan to a borrower, the lending agent can either recall the loan or reallocate the loan to a different lender who has those securities available for loan. As stated both above in this comment letter and below, until the reallocation is finalized, there is no utility to requiring a covered person to report *potential* loan modifications.

Intraday Activity

In adopting final Rule 10c-1a, the Commission amended the timing for the reporting of loan data elements (the material terms of a covered securities loan) and loan modification data from 15-

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[10] *See* Adopting Release, 88 FR 75644 at 75666.
[11] https://www.federalregister.gov/d/2023-23052/p-569.
[12] *See* Adopting Release, 88 FR 75644, footnote 358. HMA Letter, at 9.
[13] Id, (emphasis added).

minute reporting to end-of-day reporting to address commenters' concerns that 15-minute reporting would be unworkable, costly and overly burdensome. In electing to eliminate the 15-minute reporting requirement as originally proposed, the Commission acknowledged that the final terms of a securities loan may not be agreed by the parties until the end of the day.[14] For example, the Commission clearly acknowledged that the "identity of the lender or lenders is a material term of a covered securities loan"[15] and that this term may not be agreed until the end of the day.[16]

Accordingly, for reporting purposes, we would urge the Commission to disregard the intraday activities, including the various offers and prepositioning, that occur prior to the time on a trading day when all of the terms of a securities loan are fully agreed (including assignment of the final lender). This intraday activity provides no benefit to the public or anyone else; it can be misleading; and it imposes a significant burden and cost on covered persons, including lending agents who derive the least amount of economic gain from the transaction chain.

We believe the Commission agreed to extend the reporting period to the end of the day due, in large part, to the numerous comment letters the Commission received voicing concerns over the originally proposed 15-minute, intraday reporting requirement. The Commission noted "most of the comments received by the Commission from larger institutional market participants strongly opposed the proposed rule's requirement that the specified data elements be reported to an RNSA within 15 minutes after a loan is effected"[17] and that commenters stated that "requiring transaction-by-transaction reporting, particularly on a 15-minute/intraday basis, would result in significant unintended negative consequences, including the public dissemination of incomplete or misleading information, which could adversely impact the securities/lending markets." The Commission further noted that an 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."[18] We understood the Commission to be saying that a securities loan, and any subsequent modification to such loan, is not required to be reported until the end of the day when the terms have been finally agreed to by the parties. Anything that takes place before that time was considered by the Commission to be incomplete and lacking utility.

In other words, the Commission not only eliminated the requirement to report every 15-minutes but also acknowledged that the terms of securities loans may not be finalized/fully agreed until the end of the day and that reporting is only required with respect to those final terms. The

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14 *See*, e.g., Adopting Release, 88 FR 75644 at 75680 - 75681 (stating in relevant part: ". . . in modifying the final rule to include an end-of-day reporting requirement, rather than requiring frequent intraday reporting, the Commission understands the frequency with which parties to a securities loan may agree to some of the basic terms initially, but that some or many of the securities loan terms may not be agreed to (or may be updated throughout the day and, thus, not finalized) until the end of the day").

15 *See* Adopting Release at 75664.

16 *See* Adopting Release at 75681 (stating, in relevant part "Nonetheless, whether or not a loan has been effected is a legal/factual question and a delay in settlement (or if one of the agreed to loan terms is modified the next day) does not impact the initial requirement to report all loans (and modifications) within the required timeframes under the final rule.").

17 *See* Adopting Release, 88 FR 75644 at 75679.

18 Id. at 75680.

Proposed Rule Change, however, requires all intraday changes to be reported as "*Loan Modifications*," which we believe is inconsistent with the Commission's intent to eliminate the submission of "*incomplete*" data that lacks "*any utility*" and directly contradicts Rule 10c-1a as adopted. FINRA's interpretation of Rule 10c-1a and inclusion of intraday activity as required reporting would be misleading to the public and inconsistent with the intent of the Commissioners who voted to adopt the final rule.

Intraday reporting requirements are also costly and burdensome. As discussed above, given the Commission's stated views as to the lack of regulatory value in intraday loan modifications, it is difficult to see how the benefits of such reporting could possibly outweigh the costs.[19] For example, under the Proposed Rule Change, if a single loan of a security were to be reallocated 100 times intraday, a covered person would be required to report each such reallocation. Loan reallocations can occur for a number of reasons including that the original intended underlying lender sold its position in the loaned security. The lending agent is typically not aware of the plans a beneficial owner has for a particular security. As long as that security is included on the lender's list of securities available for loan, the lending agent will include that security in its inventory for loan negotiation. If the lender sells the security or plans to sell the security that is the subject of the loan, it would not have been possible for the lending agent to come to agreement on terms with the borrower. This is not an uncommon event in agency securities lending. Reporting 100 modifications on a single day in respect of a single loan represents a reporting requirement "*without providing any incremental value*" and would be misleading to the public. In this example, the 100 reallocations provide no insight into borrower demand or market dynamics. The reallocations are purely a reaction to the underlying lender's sell activity. The only reallocation that would provide a regulator or the market with relevant information is the end-of-day on-loan position once all terms of the loan are agreed, including the identity of the replacement lender. While the regulatory value of certain data elements may remain in contention, we believe the costs and complexity of reporting these intraday loan modifications greatly undermines any purported utility. Further, and as discussed in more detail later in this comment letter, a number of the data elements that were added in the Proposed Rule Change do not appear to add any value from a regulatory reporting standpoint -- irrespective of the timing of reporting of such data elements. Without a clearer rationale of their regulatory value in light of the concerns raised by the industry, a requirement to also then report these elements on an intraday basis would seem unnecessary, burdensome, and costly.

If other securities lending industry participants, such as prime brokers, engage in intraday activities that could be reported as lifecycle events, perhaps FINRA and the Commission would consider the inclusion of a flag that identifies a party as a lending agent, in which case, such intraday lifecycle events would not need to be reported.

B. Use of Reporting Agents

The increased complexity of compliance with Rule 10c-1a introduced by the Proposed Rule Change discussed in this comment letter increases the likelihood that a covered person must rely on a reporting agent to comply with its reporting obligations. While we appreciate the Commission's flexibility to allow for the use of reporting agents to assist with reporting

19 Id. at 75680.

obligations, the increased reliance on third-party vendors for compliance with regulatory reporting requirements raises concerns around costs and data security.

We are concerned that the increased complexity that FINRA has introduced with its Proposed Rule Change by significantly increasing the number of reportable data fields, requiring the reporting of all intraday activity, and imposing a data validation process has created commercial opportunities for data service providers at the expense of market participants, and ultimately end investors. FINRA notes in the Proposed Rule Change that the 8pm EST end-of-day deadline was determined in part to align with current deadline data providers use today, as it helps reduce costs. While aligning these deadlines may help reduce costs for reporting agents/data providers, we do not feel there is a cost savings to covered persons, which should be considered by the Commission in its evaluation of the Proposed Rule Change. It is also worth noting that the market best practice regarding the newly imposed T+1 settlement cycle in the U.S. is that a lender has until 11:59pm EST to issue a recall to a borrower for next day settlement. This timing is obviously past 8:00 pm EST and may result in submissions that get postponed ~ 24 hours, until the next end-of-day submissions.

Increased reliance on reporting agents also raises data security concerns. With the expansion of the number of reportable fields from fifteen to over forty under the Proposed Rule Change, covered persons utilizing a reporting agent would be required to share with a third party very sensitive transaction level details, including the identity of each party to the transaction. It should be noted that information required under the Proposed Rule Change is broader than the anonymized information that securities lending market participants provide to third party securities lending data providers today. Should this data become exposed by a data security incident, we have significant concerns that lenders would choose to restrict lending, which could negatively impact lendable supply and market liquidity.

Further, in the 10c-1 proposal, the Commission stated that a person required to provide Rule 10c-1 information may enter into a written agreement with a broker or a dealer that agrees to provide the Rule 10c-1 information to an RNSA. Based on two factors: (1) a written agreement with a broker or a dealer; and (2) timely access to Rule 10c-1 data, the reporting obligation would pass from the covered person to the reporting agent. The Commission's logic for this approach was that by entering into such agreements, the reporting burden of the Rule that is placed on lenders and lending agents would be eased, both operationally and economically, for members and non-members of the RNSA.

Commenters broadly supported this approach, as was evidenced by the fact that this section of the final rule generally remained unchanged except for the addition of registered clearing agencies as reporting agents (given that registered clearing agencies are subject to the Commission's direct oversight and examination functions).[20]

Based on commenters' examples of reporting regimes, such as the consolidated audit trail NMS Plan ("CAT"), FINRA's Trade Reporting and Compliance Engine ("TRACE"), and the Municipal Securities Rulemaking Board's Real-Time Transaction Reporting System ("RTRS"), that permit brokers or dealers to use non-brokers or dealers as reporting agents, the Commission

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[20] *See* Adopting Release at 75647.

clarified in the final rule that the use of third-party vendors by covered persons is not prohibited and may be employed by covered persons to allow flexibility and decrease costs. "The difference between a covered person relying on a reporting agent to fulfill its Rule 10c-1a reporting requirements and using a third-party vendor to help facilitate its Rule 10c-1a reporting is solely with respect to liability and responsibility under final Rule 10c-1a. When a covered person uses a reporting agent that meets the conditions of the rule, the covered person may rely on the reporting agent to fulfill its reporting obligations. However, the use of a third-party vendor that is not a reporting agent would not relieve a covered person of its obligation to report Rule 10c-1a information to an RNSA."[21]

FINRA's proposed compliance Rule 6530(d)(1) provides that covered persons (other than covered persons that engage a reporting agent that is a broker or dealer or clearing agent) have an ongoing obligation to report Initial Covered Securities Loans and Loan Modifications to FINRA timely, accurately, and completely. This is in line with the Commission's final rule discussed above. However, FINRA's Proposed Rule deviates from the final rule in a manner that could impact the very point of engaging a reporting agent, where it states:

> "…even where a member employs a Reporting Agent consistent with SEA Rule 10c-1a(a)(2), the member must nonetheless take reasonable steps to ensure that the Reporting Agent is in fact complying with the securities lending reporting requirements of SEA Rule 10c-1a and proposed FINRA Rule 6530 on its behalf."[22]

By not recognizing the responsibility of a reporting agent and its current regulatory oversight, FINRA is shifting reporting compliance (outside of a written agreement and timely access to data) back to the covered person creating a reconciliation loop that will be time consuming, costly and operationally intensive. We would propose that FINRA be required to accept the scope of responsibility the Commission established Rule 10c-1a for reporting agents and third-party service providers.

C. Costs

We appreciate that the Commission removed from final Rule 10c-1a the requirement that fees only be paid by entities that provide Rule 10c-1a information directly to an RNSA. We also note that the Proposed Rule Change does not address what FINRA's fees will be or how they will be allocated. Given that direct lenders or their lending agents will bear the costs of building the infrastructure to report the data or hire reporting agents, we strongly urge the Commission and FINRA to adopt a cost structure under which direct reporting fees will be borne by other market participants and not just by covered persons (primarily direct lenders and lending agents). One of the goals of this reporting regime is reduced costs for lending programs.[23] Any fees borne by the lenders of loaned securities will not serve the objectives of the Commission and since their lending agents only receive a small fraction of the income generated, any fees the lending agents might bear would more than likely have to be passed on, either directly or through negotiations,

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21 *See* Adopting Release at 75655.
22 *See* Proposed Rule Change at 38210.
23 *See* Adopting Release, 88 FR 75644 at 75667.

in fee splits in some cases. Otherwise, the lending of general collateral securities may be uneconomical for many lending agents given existing operational and capital costs.

The continued absence of a FINRA proposed fee schedule and the allocation of costs is concerning given the increased complexity and volume of reportable events introduced by the Proposed Rule Change. In addition, the absence of a proposed fee schedule impairs the ability of regulators and market participants to perform cost-benefit analysis. We recommend that any final rule promulgated by FINRA be conditional upon publication of proposed costs and public comment.

D. Unsettled Loan Flags

The Proposed Rule Change would require a covered person to identify a loan or a modification to a loan that did not settle by the close of SLATE system hours on the expected settlement date[24] of the securities loan and the draft SLATE Participant Reporting Specs include an Unsettled Loan Flag to indicate whether or not the securities loan settled.[25] It is noted that if a previously unsettled loan (Unsettled Loan Flag = "D") has settled, a Modify Loan Event must be reported with the Unsettled Loan Flag set to "S" to reflect such loan settlement. The fact of whether or not a loan has "settled" is largely an operational matter, especially when viewed through the lens of requiring intraday activity to be reported, and lending agents are entirely reliant on custodian banks for the sourcing of this information. As a result, this status is generally tracked via systems separate from those that track loan agreements (e.g., trading platforms). The reporting obligation clearly is not tied to settlement status, and we are concerned that including settlement status as a contextual indicator will greatly increase reporting complexity and increase the odds that reported data will be unclear or confusing. It is generally accepted market practice to cancel loans that remain unsettled, and since the cancelation of a previously reported trade is already contemplated elsewhere within the reporting rules, we believe this additional settled/unsettled status indicator is unnecessary and can be removed.

E. Reporting of Lending Fees, Loan Rebate Rates, and Other Income

This section addresses a series of questions and concerns associated with the reporting of lending fees, loan rebate rates, and other income under the Proposed Rule Change.

Lending Fees and Loan Rebate Rates

The draft SLATE Participant Reporting Specs require covered persons to report a lending fee when the collateral type is "*noncash*" and a rebate rate when the collateral type is "*cash*." While this is the most common booking approach, there can be scenarios where a loan versus cash collateral is negotiated at a loan fee rather than a rebate rate. For example, when a security is particularly "*special,*" meaning that it is hard to find to borrow in the market, a borrower may be willing to transfer cash as collateral and still pay a lending fee (a so-called "*negative rebate*"). Accordingly, keeping in mind that the intended purpose of the final rule is to provide transparency into the market for securities loans and not to dictate how they are negotiated and priced, we urge the Commission to support its own guidance on this matter and permit covered

[24] *See* 89 FR 38203 at 38208.
[25] *See* SLATE Participant Reporting Specs at 18.

persons to report lending fees and loan rebate rates as actually negotiated, rather than requiring them to report a lending fee for all non-cash collateralized loans and a loan rebate rate for all loans collateralized by cash regardless of the facts of the negotiation.

Benchmark Pricing

The Commission noted in the final rule that several commenters had requested the option to report pricing data as a spread to a benchmark rate to prevent the needless reporting of rate changes resulting from a day-to-day change in the benchmark.[26] Recognizing that the pricing data element is a material term of any loan that is agreed between the parties, the Commission included a requirement in the final rule that "negotiated or agreed-to pricing data, including as a spread to an identified benchmark or reference rate," be reported to an RNSA pursuant to the rule as adopted.[27] The Proposed Rule Change does not permit this flexibility; indeed, it requires the lending fee or the loan rebate rate to be reported as a percentage and does not afford covered persons the option to report pricing data as a spread to a reference rate. FINRA's proposal would require covered persons to report modifications on all loans tied to a given benchmark whenever that benchmark changes, even though the lending economics on all of those benchmark priced securities loans remain the same. It is important to note that the vast majority of cash collateralized loans are tied to a benchmark rate. Under the current proposal, a single benchmark change would require the lending agent to report modifications across its entire cash collateralized loan portfolio. Given variances in how securities loans are negotiated and priced, we would appreciate flexibility in the reporting format of fees to allow covered persons to report loan fees as: (1) a lending fee, (2) a loan rebate rate, or (3) a spread to a benchmark rate along with the associated benchmark rate. The addition of a loan spread option would be easy for FINRA to implement, would help alleviate the concerns highlighted here and in the original comments submitted to the Commission on proposed Rule 10c-1, and would ultimately comply with the terms of the final rule.

Other Fees or Charges

Under the Proposed Rule Change, a covered person would be required to report the lending fee or the loan rebate rate as a percentage and separately report the dollar cost of any other fees or charges.[28] The intent of FINRA in including reference to "*other fees or charges*" is not apparent. It could refer to, *inter alia*, a manual cash distribution, a settlement penalty fee, or an associated buy-in fee. In any of these cases, it is not clear how these "*fees or charges*" relate to the fees negotiated in respect of the particular loan. We would point out that cash distributions, settlement penalty fees, or associated buy-in fees are not native to any securities lending books and record systems, and thus are not readily available for lending agents to report. In addition, the complexity, time, and resourcing required to provide such information both at the individual loan transaction level and at an omnibus level should be carefully weighed against the related costs of such reporting. In addition, the final rule discusses lending fees and loan rebate rates; it does not contemplate the inclusion of additional fees or charges. For the foregoing reasons, we urge the Commission to delete, wholesale, the requirements related to reporting of "other fees or charges."

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[26] *See* Adopting Release, 88 FR 75644 at 75668.
[27] *See* Adopting Release, 88 FR 75644 at 75670.
[28] *See* 89 FR 38203, footnote 30.

Rate or Fee Adjustment / Modifiers

The draft SLATE Participant Reporting Specs include a Rate Fee Modifier field to identify when a reported rebate rate or lending fee reflects: (a) a billing adjustment or correction to a previously charged amount; (b) a corporate action adjustment; or (c) a basket of securities (at least 10 unique issues for a single rate or fee).[29] Reason codes for rate/fee adjustments would be difficult and onerous to provide, as the reasoning related to these adjustments is not native to securities lending books and records systems. Further, as intermediaries to securities lending transactions, neither lenders nor lending agents have transparency into the underlying reasoning for the borrower's interest in borrowing the securities. We believe the Commission's decision to impose the reporting obligation under Rule 10c-1a on the lending agent was due, in part, to the narrow scope of the fifteen fields prescribed by the final rule, which information could be sourced directly by lending agents. FINRA's addition of a Rate Fee Modifier expands the scope of reportable information under Rule 10c-1a and exceeds FINRA's authority to "implement rules regarding the format and manner of its collection of information described" in Rule 10c-1a (c) through (e)."[30] For these reasons, such codes or modifiers should be removed.

F. Data Validation

The draft SLATE Participant Reporting Specs include a Rate Fee Override Flag to indicate if values should override SLATE's validations. A "Y" indicator would be used to signify that the value provided "*is away from typical fees/rates.*"[31] This flag would seem to imply that FINRA intends to implement a data validation process for reported lending fees and loan rebate rates. We would appreciate it if more clarity could be provided on what this data validation process would entail, as we are concerned with a potential warning or rejection system regarding lending fees and/or loan rebate rates based on a tolerance level developed by FINRA from previously collected lending data that may or may not reflect the current market conditions. Lending fees and/or loan rebate rates on new or modified securities loans can rise or fall significantly and quickly based on supply and demand forces. We believe that there is a high likelihood that the imposition of any tolerance levels would materially harm the negotiation of the securities lending transactions that provide transparency in respect of current market demand and could inadvertently discourage lending agents from achieving their objectives of maximizing revenue for their clients and shareholders. Further, general market volatility could cause lending fees and loan rebate rates to fall outside any such tolerance band, which could then result in those lending fees/loan rebate rates to be flagged. We are also concerned that this data validation flag would introduce additional complexity to the reporting process as it is unclear what would happen if a reported lending fee or loan rebate rate were to be outside FINRA's tolerance levels. Would the securities loan submission be rejected? Would the covered person be required to confirm or resubmit data? If so, what is the proposed timeline for review, and would there be an associated charge for this additional submission? The determination of whether a negotiated lending fee or loan rebate rate is away from "*typical fees/rates*" would impose additional resource requirements on covered persons or reporting agents, likely through data provider subscriptions, which would increase costs, generally. Again, for the reasons discussed above and since this requirement is

[29] *See* SLATE Participant Reporting Specs at 17.
[30] *See* Adopting Release, 88 FR 75644 at 75741.
[31] *See* SLATE Participant Reporting Specs at 17.

not included in the final rule, we would urge the Commission to recommend deletion of the requirement to report data validation flags.

G. Affiliate Indicator

The Proposed Rule Change requires a covered person to identify a loan made to an affiliate of the lender or intermediary by use of an Affiliate Loan Flag. The addition of an affiliate indicator raises issues as to its utility, regulatory scope creep, and potential for confidentiality breaches. It is noted that the Affiliate Loan Flag was added "because an affiliate relationship between the borrower and lender or intermediary can impact borrowing costs."[32] Lending agents likely will not be aware, and are not required to know, of an affiliate relationship between their underlying beneficial owner lenders and borrowers. It is the underlying lender that provides the lending agent with a list of approved borrowers. The lending agent utilizes this list to arrange securities lending transactions. As such, it is the underlying lender, not the lending agent, that determines if a loan can be arranged with an affiliated borrower. Requiring the use of an Affiliate Loan Flag will require beneficial owners to expend additional resources to monitor and report to their lending agents the existence of an affiliate relationship. As many beneficial owners do not have full time resources staffed exclusively for oversight of their securities lending programs, additional resources to comply may be costly and beneficial owners may be unwilling to undertake the expense given the revenue opportunities. The requirement at least warrants a cost-benefit analysis.

The use of an affiliate indicator can also expose confidential data elements. When negotiating a securities loan, the borrower may be unaware that it is borrowing supply from an affiliated beneficial owner. The inclusion of an affiliate loan indicator on disseminated reporting data would reveal the affiliate relationship. As only a subset of lending agents has affiliated borrowers, even a reporting requirement to disclose an affiliate relationship between the intermediary negotiating the loan and a borrower could expose sensitive information.

For the above reasons, we would urge the Commission to remove the Affiliate Loan Flag from the required reporting. If the Commission chooses not to take this action, we ask that the Affiliate Loan Flag not apply to a traditional securities loan entered into on an arm's-length basis at a market rate, as the rationale for adding such an indicator would not apply.

H. LEI of Security Issuer

The Commission included in final Rule 10c-1a(c)(1) the requirement that covered persons report the "*non-lapsed LEI*" of the issuer of the loaned securities if the issuer has one.[33] Consistent with this requirement, FINRA has included, as a reporting requirement under Rule 10c-1a, that the LEI of the issuer of the loaned securities be reported (if the issuer has a non-lapsed LEI).[34] In addition to the LEI, covered persons are required to report at least one of the following security identifiers in their SLATE reporting: ISIN, CUSIP, SEDOL, Ticker, etc.

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32 *See* 89 FR 38203 at 38208.

33 *See* 17 CFR 240.10c-1a(c)(1).

34 *See* 89 FR 38203 at 38206.

A similar requirement was part of the Securities Financing Transaction Regulation ("SFTR") reporting set, when initially proposed. Following feedback from market participants, the lead regulator for SFTR, the European Securities Markets Authority ("ESMA"), agreed to delay the implementation of the requirement to report LEIs for third-country issuers (non-EU issuers) because a substantial percentage of third-country issuers had not obtained LEIs. As of December 2022, that substantial percentage was estimated to be at least 20% of all third-country issuers had not obtained LEIs. Accordingly, ESMA further delayed the mandatory requirement to report LEIs for third-country issuers, stating that they would provide at least 6 months' notice of their intention to make the requirement mandatory. As of the date of this letter, no such notice has been published.[35]

Given the fact that such a large percentage of third-country issuers have not obtained LEIs, we respectfully submit that FINRA requirements should be amended to make the provision of the LEI's for third-country issuers optional, such that when an LEI is available and/or known it will be reported, however if an LEI is not available, a blank field will not create a reporting issue.

I. Duty to Report/Identifying Reportable Securities

The Proposed Rule Change states "if a Covered Person makes a good faith determination that it has a reporting obligation under SEA Rule 10c–1a and this Rule 6500 Series, the Covered Person or Reporting Agent, as applicable, must report the Covered Securities Loan as provided in proposed Rule 6530. If the Reportable Security is not entered into the SLATE system, proposed Rule 6530(d)(4) would also require the Covered Person or Reporting Agent, as applicable, to promptly notify and provide FINRA Operations, in the form and manner required by FINRA, the information specified in Rule 6530(a)(2)(A) and (B), along with such other information as FINRA deems necessary to enter the Reportable Security for reporting through SLATE. This requirement would enable FINRA to set the security up in its systems and facilitate reporting of the Covered Securities Loan to SLATE, as required by SEA Rule 10c–1a and proposed Rule 6530."[36] We would like to better understand this requirement and what the process to notify FINRA would entail. As the reporting requirement under Rule 10c-1a is directly linked to securities for which information is reported or required to be reported to CAT , TRACE, RTRS, or any reporting system that replaces one of these systems, we do not feel it is an appropriate delegation of duties to require a covered person, particularly one that is not a FINRA member or included in any way in the underwriting process, to be required to notify FINRA of reportable securities not included in FINRA's SLATE system. This would be an inefficient and burdensome manner in which to update FINRA's record of covered securities. We would appreciate it if this were to be reviewed and either revised or removed.

J. Public Reporting and Dissemination of Data

In the Adopting Release, the Commission acknowledged the concern of many commenters that the reporting regime could "risk. […] revealing short trading strategies or confusing the public"[37]

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35 *See* https://www.esma.europa.eu/press-news/esma-news/esma-issues-third-statement-implementation-leirequirements-third-country.

36 *See* Proposed Rule Change at 38210.

37 *See* Adopting Release, 88 FR 75644 at 75684.

if transaction-level data is publicly disclosed, particularly granular data around amount or volume of securities on loan. The Commission then describes this risk as "*not applicable*" because "it is unlikely that providing data information directly and solely to an RNSA will reveal such short trading strategies or mislead or confuse the public to warrant such a modification to the final rule;"[38] and the final rule limits FINRA's publication of daily T+1 information to "aggregate transaction activity and distribution of loan rates for each reportable security."[39]

While we understand that the Commission afforded FINRA the right to determine how this aggregate transaction data is published, we are concerned that FINRA's proposal to publish daily volume information in various smaller data buckets (for example by borrower type) risks essentially disaggregating the data to reveal sensitive, proprietary information around trading strategies. These smaller datasets pose the risk that the public may be able to "back into" individual loan amounts on a T+1 basis, information which the Commission expressly requires FINRA to delay until T+20.

This risk may be especially acute for more thinly traded securities where individual "*buckets*" of data may be relatively small. While the Proposed Rule Change does include a "*de minimis*" threshold of three loans to help preclude this possibility, in practice we feel this threshold is too low, especially when viewed in conjunction with the possibility that FINRA will publish granular volume buckets. For example, a lending agent may allocate a single lender's position to four borrowers representing two different "*types*." The resultant granular datasets around volumes could seriously risk the disclosure of sensitive information to the public. We are also concerned that the Proposed Rule Change is not clear as to whether FINRA "*will omit*" or "*may omit*" de minimis loan details.

We recommend that FINRA revise its proposal to (a) limit its publication of daily aggregate volume to the aggregated dataset of received reports, and (b) restate the de minimis rule to be both mandatory and a higher figure than three loans.

Additionally, we are concerned that the Proposed Rule Change allows FINRA the right to publish or distribute SLATE data for fee-paying users without clearly stating if this data would include even more granular "*buckets*" or groupings than those already being made public, which would further heighten the risk that sensitive information was being revealed – this time to rate-paying entities. In addition to being required to undertake and publish for public comment a cost benefit analysis related to its proposed SLATE fees, FINRA should be required to make available for public review and comment their expected format and exact fields that would be eligible for distribution as part of this proposal and subject to the Commission's review and approval. Deviation from this format should not permissible.

K. SLATE Hours

The draft SLATE Participant Reporting Specs provide the SLATE system hours will be 6:00:00 a.m. EST to 7:59:59 p.m. EST excluding weekends and U.S. holidays.[40] While we understand these hours will be utilized to determine the required reporting deadline for in-scope loan

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38 *See* Adopting Release, 88 FR 75644 at 75670.

39 Id.

40 *See* SLATE Participant Reporting Specs at 4.

activity, we also strongly recommend that FINRA develop the SLATE system so that it can accept files transmitted outside of these hours for processing the following business day. Many firms have staff and coverage located across the globe. Restricting file submissions to U.S. hours, especially given the extra-territorial scope of final Rule 10c-1a, will needlessly strain resources needed for compliance.

L. Event Types

The draft SLATE Participant Reporting Specs include the six event types listed below, each of which has a specific set of reporting requirements:

- New Loan Event
- Pre-Existing Loan Modification Event
- Modify Loan Event
- Cancel Loan Event
- Correction Loan Event
- Delete Loan Event.[41]

We urge the Commission to encourage FINRA to consolidate some of these event types, most notably the Modify and Correction Loan Events and the Cancel and Delete Loan Events, as the large number of event types will make reporting overly complex and burdensome with limited value. Lending systems do not currently distinguish between a loan modification due to an agreed upon amendment versus a correction of a previously recorded loan element. Developing and implementing a tracking mechanism to distinguish between modifications and corrections will be costly and onerous for market participants and should be carefully considered in any cost benefit analysis. Additionally, Correction Loan Events will require the submitter to report not only the FINRA Loan ID but a FINRA Control Number, which is unique to each loan event and FINRA Control Date. This will require submitters to consume and maintain a substantial volume of unique identifiers at the individual event level to report back in the case of a correction. In the case of a correction, reporting a Modify Loan Event, the FINRA Loan ID, effective date and time of the modification, and modified fields should suffice.

We would also appreciate additional clarity on the Rejected Events File process as well as the Data Ingestions Errors process, which are noted as "*Placeholders for future use*" in the proposed SLATE Participant Reporting Specs.

IV. <u>Conclusion</u>

We appreciate the opportunity to provide these comments and would be happy to engage in further dialog with the Commission on any of the concerns or recommendations discussed in this letter. We believe that achieving effective and efficient securities lending pricing transparency requires healthy and robust collaboration between supervisors and market participants. ISLA

[41] *See* SLATE Participant Reporting Specs at 6.

Americas stands ready to assist the Commission as it continues to consider revisions to the Proposed Rule Change.

Sincerely,

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