ISLA™

International Securities Lending Association (ISLA)
2nd Floor
107 Cheapside
London
EC2V 6DN
United Kingdom

December 20, 2024

Via Electronic Submission

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

Re: ***Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Partial Amendment No. 1 to Proposed Rule Change to Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)) (Release No. 34-101645; File No. SR-FINRA-2024-007) (the "Partial Amendment")***

Dear Ms. Countryman,

The International Securities Lending Association (ISLA) appreciates the opportunity to seek urgent clarity on one of the key challenges our membership faces in respect of compliance with Final Rule 10c-1a (the "Final Rule"): the extraterritorial and cross border impact of the Final Rule to **non-US market participants.** We would like to be able to confirm [guidance to confirm] that our non-US based members (a) can comply with the relevant reporting requirements of the Final Rule, and (b) can focus efforts on an accurate development build.

To summarise, a "covered securities loan" is a transaction in which any person on behalf of itself or one or more other persons lends a "reportable security" to another person. A "reportable security" is any security or class of securities for which information is required to be reported to FINRA under CAT, TRACE or the MSRB's Real Time Transaction Reporting System.[1] In [Release No. 34–98737; File No. S7–18–21] on page 75689 (the "Adopting Release"), the Commission states that its "*regulatory authority under Section 10(c) is conduct within the U.S. that comprises (in whole or in part) effecting, accepting, or facilitating of a borrowing or lending transaction*" and that since the Final Rule is intended to be co-extensive with the regulatory scope of Section 10(c), the Final Rule's reporting requirements will "generally be triggered whenever a covered person effects, accepts, or facilitates (in whole or in part) in the U.S. a lending or borrowing transaction."_ irrespective of the domicile of the counterparty, if the

[1] See 17 CFR 240.10c-1a (the "Final Rule"). See Release No. 34-98737 (October 13, 2023), 88 FR 75644 (November 3, 2023) (Reporting of Securities Loans), at 75648.

subject of the securities lending transaction is a CAT, TRACE or and MSRB instrument, then one would be in scope of reporting under 10c-1a to the SLATE system, however, this remains unclear.

FINRA's recent Partial Amendment [2] to its Original Proposal[3] does not discuss any updates or amendments to the extraterritorial scope of Final Rule 10c-1a. In fact the only mention of this topic can be found in FINRA's letter to the SEC, dated November 14th, footnote 37; *'FINRA also notes that the Adopting Release discusses the cross-border application of SEA Rule 10c-1a and states that the Commission is of the view that the rule's reporting requirements will generally be triggered whenever a covered person effects, accepts, or facilitates (in whole or in part) in the U.S. a lending or borrowing transaction'* and this maintains the broad scope that has been in place since its adoption in November of 2023.

Though the Adopting Release seems to provide that any person, regardless of domicile, that lends a reportable security is required to report the transaction to FINRA, this remains unclear.

It has been ISLA's interpretation to date that to be considered a 'covered securities loan', three things must apply:

1. The product must be a Securities Loan transaction;
2. The Security must be a reportable security under CAT, TRACE or RTRS (MSRB); and
3. The Securities Loan transaction must be effected, accepted, or facilitated (in whole or in part) in the U.S.

However, ISLA seeks further clarity on the meaning of 'effecting, accepting, or facilitating in whole or in part within the US'. For example, if a non-U.S. lender is transacting with a non-US borrower, with a US security within CAT, TRACE or MSRB, ISLA would like clear guidance as to whether this transaction would trigger a reporting requirement even though the domicile of each of the lender and borrower is non-U.S. (*i.e.*, does the fact that the U.S. security is transacted via CAT, TRACE, or MSRB take precedent over the domicile of the two entities?

Please see here a 2-page list of additional examples where it is unclear whether the non-U.S. counterpart would be subject to reporting requirements. Clarity on these nine scenarios and whether they trigger a reporting requirement would help provide comfort to ISLA members.

We would welcome the opportunity to discuss these scenarios in further detail when time permits.

Yours Faithfully

Tony Holland
Director of Market Practice at ISLA

[2] See Securities Exchange Act Release No. 101450 (October 28, 2024), 89 FR 87448 (November 1, 2024) (the "Partial Amendment").

[3] See Securities Exchange Act Release No. 100046 (May 1, 2024), 89 FR 38203 (May 7, 2024) (Notice of Filing of File No. SR-FINRA-2024-007) (the "Original Proposal").

Tony.Holland@islaemea.org

ISLA is a non-profit industry association, representing the common interests of securities lending and financing market participants across Europe, the Middle East and Africa. Its geographically diverse membership of over 200 firms includes institutional investors, asset managers, custodial banks, prime brokers, and service providers. Working closely with the industry, ISLA advocates for, amongst other things, the importance of securities lending to the broader financial services industry. ISLA also 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.