



December 18, 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 Proposed Rule Change to Adopt the FINRA Rule 7720 (Securities Lending and Transparency Engine (SLATE™)) (Release No. 34-101697; File No. SR-FINRA-2024-020*

Dear Ms. Countryman,

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.

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, 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, among 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, a leading non-profit industry association representing the common interests of securities financing market participants across Europe, the Middle East, and Africa (focusing primarily on securities lending and borrowing activity). Its geographically diverse membership of over 200 firms includes institutional investors, asset managers, custodial banks, prime brokers and service providers. ISLA Americas, together with ISLA (the “ISLA Group”), serve 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.

I. INTRODUCTION

To comply with final Rule 10c-1a (the “Final Rule”)² under the Securities and Exchange Act of 1934 (the “Exchange Act”), which requires covered persons to provide securities loan information concerning reportable securities to a registered national securities association (“RNSA”) in the format and manner required by the RNSA necessary to administer the collection, reporting and public dissemination of information related to securities lending transactions and certain other information³, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed its proposed FINRA Rule 6500 Series (the “Original Proposal”)⁴ with the Commission on May 1, 2024. The related draft Participant Specification for Securities Lending and Transparency Engine (SLATE™) (the “SLATE Reporting Specs”) was also filed with the Commission during May of 2024.⁵ On November 15, 2024, FINRA filed Partial Amendment No. 1 (the “Partial Amendment”) to the Original Proposal, with a short, 15-day comment period, which ended on December 6, 2024.⁶

This letter addresses FINRA’s Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Fees in FINRA Rule 7720 (Securities Lending and Transparency Engine (SLATE™)) (Release No. 34-101697; File No. SR-FINRA-2024-020) (the “Fee Proposal”)⁷ which seeks to amend proposed FINRA Rule 7200 to establish securities loan reporting fees and securities loan data product with associated fees in connection with FINRA’s Original Proposal. The comment period for the Fee Proposal is not long enough to allow for a comprehensive evaluation especially given that it significantly overlaps with the comment period for the Partial Amendment. In addition, the fact that neither the Original Proposal nor the SLATE Reporting Specs is final imposes serious impediments to the ability of industry members to fairly assess the impact of the Fee Proposal. Due to the effect that the proposed SLATE fees will have on covered persons, the Fee Proposal should be subject to a Quantitative Impact study that would give a complete and full view of the how the proposed SLATE fees would affect both the securities lending market and the securities markets in general.

ISLA Americas continues to support the Commission’s efforts to increase transparency in the securities lending market as promulgated by Section 984(b) of the Dodd-Frank Act and values the willingness of the Commission and FINRA to listen to and address various concerns of the industry

² See Securities Exchange Act Release No. 34-98737 (October 13, 2023), 88 FR 75644 (November 3, 2023) (Reporting of Securities Loans) (the “Adopting Release”).

³ See Adopting Release, 88 FR 75644 at 75644.

⁴ 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”).

⁵ See <https://www.finra.org/sites/default/files/2024-05/slate-participant-specification.pdf>.

⁶ See Securities Exchange Act Release No. 34-101645 (November 14, 2024), 89 FR 92228 (November 21, 2024) (Notice of Partial Amendment No. 1 to Proposed Rule Change to Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)) (the “Partial Amendment”).

⁷ See Securities and Exchange Commission Release No. 34-101697, File No. SR-FINRA-2024-020 (November 21, 2024), 89 FR 93750 (November 27, 2024) (the “Fee Proposal”).

regarding FINRA’s Original Proposal and proposed SLATE Reporting Specs. The ongoing, meaningful dialog among the Commission, FINRA and various industry associations aimed at facilitating the industry’s understanding of the requirements to be imposed and providing further context to assist the Commission and FINRA in evaluating the impact of the Final Rule, as augmented by FINRA’s various SLATE reporting rules, will have on the securities lending industry is much appreciated.

We reiterate that the comment period granted in respect of the Fee Proposal was only 21 days – overlapping the comment period for the Partial Amendment -- giving commenters only 8 days from the end of the comment period of the Partial Amendment to gather the necessary statistics to evaluate the impact of the Fee Proposal in order to provide meaningful comments and observations. This is particularly concerning given that (a) the SLATE Reporting Specs, which are vital to a thorough analysis and preparation for reporting, have not yet been amended to accommodate any changes to the Original Proposal that will be required from the Partial Amendment, and (b) the fact that the Partial Amendment, which seeks to revise proposed Rules 6530 (*Reporting Securities Loan Information*) and 6540 (*Dissemination of Loan Information*) to address issues raised by commenters, was filed with the SEC on November 14, 2024, and provided a similarly short, and overlapping, comment period, has not yet been finalized. As reflected in our previous comment letters, any effective cost benefit analysis was all but impossible until FINRA published its Fee Proposal, and, as reflected above, is still nearly so, given the lack of information necessary to evaluate the full costs of compliance.⁸

II. CONCERNS AND RECOMMENDATIONS

We appreciate that the Commission removed from the Final Rule the requirement that fees only be paid by entities that provide Rule 10c-1a information directly to an RNSA. Given that direct lenders or their lending agents will bear either the costs of building the infrastructure necessary to satisfy the SLATE reporting obligations or the cost of hiring reporting agents, we strongly urge the Commission and FINRA to ensure that the cost structure related to the reporting of covered securities loans is equitable. One of the goals of this securities lending transparency regime is to reduce costs of lending programs.⁹ Any fees borne by the lenders of loaned securities will not serve the objectives of the Commission and since lending agents receive only a small fraction of the income generated from securities lending transactions, any fees the lending agents might bear would more than likely have to be passed on, either directly or through negotiations of fee splits in some cases. Otherwise, the lending of securities that command low fees may not be economically viable for many lending agents given existing operational and capital costs. Such an outcome may result in lower trading liquidity and higher trading costs for investors, many of which are pension plans, retirement funds, mutual funds, endowments, and sovereign wealth funds.

⁸ See ISLA Americas Comment Letter (“[ISLA Americas Comment Letter](https://www.sec.gov/comments/sr-finra-2024-007/srfinra2024007-494003-1433147.pdf)”), dated July 16, 2024, at 10; see also <https://www.sec.gov/comments/sr-finra-2024-007/srfinra2024007-494003-1433147.pdf>.

⁹ See Adopting Release, 88 FR 75644 at 75667.

ISLA Americas would like to highlight the material questions, comments, and recommendations that are set forth below. We appreciate the Commission's willingness to review our comments and would be pleased to engage in a more comprehensive dialog if that would be helpful.

1. FINRA's Proposed Fees Far Exceed Costs

FINRA has acknowledged the difficulty in developing its estimates for the anticipated number and type of SLATE reports due to the fact that this is a new regime, for which, there is, of course, limited availability of information upon which to base any such estimates.¹⁰ We respectfully submit that the short comment period has significantly impacted our ability to assist FINRA in this effort. In the short period of time we have had to perform an informal, high-level survey and analysis of expectations of the impact of the SLATE reporting fees on our members' securities lending activities, we have received reporting fee estimates aggregating more than \$6,000,000 from fewer than 10 agent lenders. From these estimates, it is clear that reportable SLATE transactions will significantly exceed the estimates of 125,000 initial loan reports and 200,000 loan modifications per day provided by FINRA, resulting in compliance costs that are meaningfully higher than what has been proposed and that would significantly exceed the expenses FINRA is seeking to recoup. We recognize that, in addition to agent lenders and direct lenders, there are many other types of securities lending activities undertaken by other types of institutions that will be captured by the Final Rule, including broker to broker transactions, prime broker activities, inter-company transactions, arranged-financing transactions, fully paid lending and retail securities lending activities, to name a few. Also, when comparing the proposed SLATE reporting fees with those of the European Union's Securities Financing Transactions Regulation ("SFTR"), we note that FINRA's are more than 800% higher than SFTR's.

Given the potential negative impacts that excessive SLATE reporting fees could have on the broader market and liquidity, ISLA Americas would urge the SEC and FINRA to perform a more thorough and considerate cost analysis to ensure the total estimated costs are not understated. A comprehensive analysis of the proposed SLATE transaction reporting fees will require additional time and resources not afforded to the industry under the short comment period permitted for this important Fee Proposal.

2. Securities Loan Data Products and Associated Fees

Under the Fee Proposal, the large majority of estimated fee revenue, \$4,200,000, is derived from SLATE reporting fees, while only \$250,000 in fees is derived from data subscriptions. While we appreciate FINRA's decision to rely primarily on revenues from SLATE reporting fees because of its concern about the difficulty in estimating subscription levels, we strongly recommend that subscription costs for the use and access to SLATE data be increased to more appropriately allocate costs to market participants benefitting from the availability of such data. As reflected in the Final Rule, hedge funds rank among the largest securities borrowers. It is likely that they will be very interested in subscribing to this SLATE data.¹¹

¹⁰ See <https://www.finra.org/sites/default/files/2024-11/SR-FINRA-2024-020.pdf>.

¹¹ See Adopting Release, 88 FR 75644 at 75645.

We also recommend that the Commission and FINRA explore alternative fee structures not linked to transaction volumes. We would suggest that FINRA increase the SLATE web browser connectivity fee from the proposed rate of \$25 per month per user ID¹² to a \$5,000 annual charge per covered person or reporting agent. This would (a) result in more stable and consistent fees to FINRA, (b) allow covered persons and reporting agents to budget for the costs of SLATE reporting more easily, and (c) minimize the variability of the fees based on market volatility. Under the proposed SLATE fee schedule, FINRA estimates SLATE web browser connectivity fees to generate \$365,400 per year from an estimated 609¹³ covered persons and reporting agents, which equates to an annual cost of \$600 per covered person or reporting agent. By increasing the annual SLATE connectivity fee from \$600 per year to \$5,000 per year per covered person or reporting agent, FINRA could generate over \$3 million in SLATE connectivity fees and could then eliminate or significantly reduce the proposed transaction level reporting fees.

3. *Cost Benefit Analysis*

The Fee Proposal would impose direct costs exclusively on the lender-side of the market while the reporting information gained from this reporting will primarily benefit end users of borrowed securities, such as hedge funds.¹⁴ In the proposing release related to the Final Rule (the “Proposing Release”),¹⁵ compliance with the Final Rule is estimated to be quite costly in absolute terms, with an initial implementation cost estimated at \$371,000,000 and annual direct compliance costs estimated to be \$140,000,000 thereafter.¹⁶ These costs are expected to be offset with unquantified benefits in improved regulatory supervision and increased market efficiency while also contributing to “*small*” increases to capital formation. In light of this trade-off, factors that may contribute to excessive and/or unanticipated costs could materially change the net benefit of any rulemaking or even cause a net loss of welfare. As reflected above, we submit that imposing the direct costs of the reporting system almost entirely on the lender-side of the market (primarily lending agents, mutual funds and benefit plans) creates asymmetries that will magnify the indirect costs of transaction reporting. This allocation of costs and benefits creates the very high risk of a material negative impact on liquidity. As the Commission acknowledges in the Proposing Release, securities lending in the United States is already a low-margin business, and this is true in particular for lending agents who are subject to bank capital requirements and typically guaranty beneficial owners against borrower defaults. For structural reasons, lending agents are also unlikely to be able to fully pass on the costs of implementation to borrowers or to capture the benefit of increasing lending fees, which are primarily passed on to beneficial owners through long-term service contracts that include negotiated revenue splits. Accordingly, ISLA Americas has substantial concerns that the imposition of material additional regulatory costs on lenders could make agency

¹² See Fee Proposal, 89 FR 93750, at 93756.

¹³ *Id.*, at 93755.

¹⁴ See Adopting Release, 88 FR 75644 at 75697.

¹⁵ See Securities Exchange Act Release No. 34-93613 (2021), 86 FR 69802 (December 8, 2021) Proposed Rule Reporting of Securities Loans (the “Proposing Release”).

¹⁶ *Id.*, at 69842.

lending unprofitable in some cases, causing beneficial owners to exit from markets with particularly thin spreads and causing smaller lending agents to exit the market entirely.

Accordingly, we strongly recommend that the costs of reporting be more equitably distributed across market participants.

III. CONCLUSION

RNSA rule filings are subject to notice, comment, and Commission review pursuant to Section 19(b) of the Exchange Act and Rule 19b-4. Further, an RNSA must demonstrate that proposed fees satisfy the Exchange Act requirements under Section 15A(b)¹⁷, including that such proposed fees equitably allocate reasonable dues, fees, and other charges among members and issuers and other persons using the SRO's facilities. Given the very short comment period for the Fee Proposal and the discrepancies in estimated transaction volumes noted above, we do not think the Fee Proposal has sufficiently met the requirements under the Exchange Act and would strongly urge the Commission to reconsider its proposal per the above concerns and recommendations.

We appreciate the opportunity to provide these comments and, as stated above, would be pleased to engage in further discussion of the concerns or recommendations included in this letter. We believe it to be imperative for regulators and market participants to collaborate in order to achieve effective and efficient securities lending price transparency. ISLA Americas stands ready to assist the Commission as it continues to consider amendments necessary to finalize FINRA's SLATE Reporting Rules, including the Proposed Fees.

Sincerely,

Fran Garritt

Head of Business, International Securities Lending Association Americas

Mark Whipple

Chairman of the Board of Directors, International Securities Lending Association Americas

¹⁷ See 15 U.S.C. 780(b) (Section 15A(b) of the Exchange Act).