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November 14, 2024

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Via email to rule-comments@sec.gov

Re: File No. SR-FINRA-2024-007 – Proposed Rule Change to Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE))

Dear Ms. Countryman:

This letter is being submitted by the Financial Industry Regulatory Authority, Inc. ("FINRA") in response to comments received by the Securities and Exchange Commission ("SEC" or "Commission") regarding the above-referenced rule filing.[1] The proposed rule change would adopt the new FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)) to establish reporting requirements for covered securities loans[2] and to provide for the dissemination of individual and aggregate covered securities loan information and loan rate statistics, as required for a registered national securities association ("RNSA") by Securities Exchange Act Rule 10c-1a.[3]

The Commission published the Original Proposal for public comment in the *Federal*

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1 *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) ("Original Proposal").

2 *See* SEA Rule 10c-1a(j) and proposed FINRA Rule 6510 (Definitions) for definitions of the terms "covered securities loan," "covered person," and "reporting agent" as used throughout this letter. *See* proposed FINRA Rule 6510 for definitions of the terms "initial covered securities loan," "loan modification," and "SLATE participant" as used throughout this letter.

3 *See* 17 CFR 240.10c-1a ("SEA Rule 10c-1a"); Securities Exchange Act Release No. 98737 (October 13, 2023), 88 FR 75644 (November 3, 2023) (Reporting of Securities Loans) ("Adopting Release").

Register on May 7, 2024.[4] On June 10, 2024, the Commission extended the time for Commission action until August 5, 2024.[5] On August 5, 2024, the Commission instituted proceedings to determine whether to approve or disapprove the Original Proposal, and allow for additional analysis of, and input from commenters with respect to, the scope and implementation of the proposed rules.[6] On October 28, 2024, the Commission designated January 2, 2025, as the date by which the Commission shall either approve or disapprove the proposed rule change.[7] The Commission received 199 comment letters in response to its notices.[8] Overall, retail investors expressed general support for the Original Proposal as it would improve transparency. Industry members were critical of the reporting elements required by the Original Proposal as being excessive when compared to SEA Rule 10c-1a's prescribed data elements, among other concerns.

In light of the comments received, FINRA has submitted Partial Amendment No. 1 to amend the Original Proposal's reporting requirements and data dissemination provisions. As discussed further below, Partial Amendment No. 1 would amend proposed Rule 6530 (Reporting Securities Loan Information) to include changes that streamline the fields, indicators and modifiers required by that rule; to amend the requirements related to reporting loan rates; to modify SLATE reporting hours; and to delete the provision regarding member supervision of reporting agents.[9] Partial Amendment No. 1 would also amend proposed Rule 6540 (Dissemination of Loan Information) to revise the aggregate transaction activity

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4 *See supra* note 1.

5 *See* Securities Exchange Act Release No. Release No. 100305 (June 10, 2024), 89 FR 50644 (June 14, 2024).

6 *See* Securities Exchange Act Release No. 100655 (August 5, 2024), 89 FR 65441 (August 9, 2024).

7 *See* Securities Exchange Act Release No. 101450 (October 28, 2024), 89 FR 87448 (November 1, 2024).

8 Of the 199 comment letters received by the SEC, 184 were from retail investors, 14 were from industry members, and one was from an academic. Industry member and academic commenters include: the Center for the Study of Financial Market Evolution ("CSFME"), EquiLend Holdings LLC ("EquiLend"), the Financial Information Forum ("FIF"), the Investment Company Institute ("ICI"), the International Securities Lending Association, Americas ("ISLA") and EMEA ("ISLA EMEA"), the Managed Funds Association ("MFA"), Robinhood Financial LLC and Robinhood Securities, LLC ("Robinhood"), the Securities Industry and Financial Markets Association ("SIFMA") and its Asset Management Group ("SIFMA AMG"), and S3 Partners, LLC ("S3").

9 Partial Amendment No. 1 also makes conforming changes to proposed Rule 6510 and to proposed Rule 6540(d). In addition, Partial Amendment No. 1, FINRA made textual changes to better align with the language of SEA Rule 10c-1a.

provision and to clarify and modify the operation of the *de minimis* threshold for disseminating aggregate volume data.[10] Below, FINRA responds to the material aspects of the comments received.[11]

I. Proposed Reporting Requirements Not Explicitly Required in SEA Rule 10c-1a

Industry members objected to aspects of FINRA's Original Proposal that prescribed reporting requirements that were not explicitly required in SEA Rule 10c-1a. As discussed in the Original Proposal, FINRA intended these reporting requirements to address data gaps and to facilitate the availability of a comprehensive audit trail and quality disseminated data. However, industry commenters raised a variety of concerns, including that these items of information also increased the rule's complexity and implementation burdens, and, in some cases, may raise information leakage concerns. Specifically, commenters objected to:

1. Proposed Rule 6530(c) (Modifiers and Indicators), which required that SLATE reports identify: (1) exclusive arrangements, (2) loans to affiliates, (3) unsettled loans, (4) terminated loans, (5) rate or fee adjustments, and (6) basket loans.[12]
2. Proposed Rule 6530(a)(2)(E), which required the reporting of the expected settlement date of the covered securities loan, and proposed Rule 6530(b)(2)(F), which required the reporting of the expected settlement date for modifications to the loan amount (if the expected settlement date is a date other than the date of the loan modification), or the effective date for all other loan modifications (if effective date is a date other than the date of the loan modification).[13]
3. Proposed Rule 6530(a)(2)(K), which required the reporting of "any other fees or charges."[14]
4. Proposed Rules 6530(a)(2)(V) and 6530(b)(2)(G), which required the reporting of whether the covered person was the lender, borrower or intermediary.[15]
5. Proposed Rules 6530(a)(2)(X) and 6530(b)(2)(B), which required, if the covered securities loan was an allocation of an omnibus loan effected pursuant to an agency

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10 *See* File No. SR-FINRA-2024-007.

11 Commenters raised a number of issues that were not related to FINRA's determinations regarding the proposed reporting requirements or dissemination provisions. FINRA is therefore not responding to these comments as they are not germane to the instant filing.

12 *See generally*, EquiLend, ICI, ISLA, ISLA EMEA, MFA, Robinhood, SIFMA, SIFMA AMG, S3.

13 *See generally*, EquiLend, ICI, MFA, Robinhood, SIFMA, SIFMA AMG, S3.

14 *See* EquiLend, ISLA, MFA, SIFMA, SIFMA AMG.

15 *See generally*, MFA, SIFMA, S3.

lending agreement, the unique internal identifier for the associated omnibus loan assigned by the covered person responsible for reporting the covered securities loan to SLATE.[16]

6. Proposed Rules 6530(a)(2)(W) and 6530(b)(2)(A), which required the reporting of the unique internal identifier assigned to the covered securities loan by the covered person responsible for reporting the loan to SLATE.[17]

FINRA has determined at this time to eliminate most of these data elements in the interest of achieving the timely implementation of SLATE and the new Rule 6500 Series. Specifically, Partial Amendment No. 1 would amend the Original Proposal to delete the requirements described in items 1 through 5 above.[18] In some cases, FINRA has identified alternative means of addressing the data gap.[19] In other cases, FINRA plans to reassess the need for the data after gaining experience with the operation of SLATE and the initial data set and will revisit whether changes are appropriate. Any such efforts would be subject to a separate proposed rule change with the Commission and as such, subject to notice and comment.

With respect to item 6 above, FINRA has amended the Original Proposal to streamline the requirement that a covered person report a unique identifier assigned by the covered person to the loan. Specifically, revised proposed Rule 6530(a)(2)(W) in Partial

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16 *See generally*, ICI, MFA, Robinhood, SIFMA, SIFMA AMG.

17 *See generally*, MFA, SIFMA.

18 Partial Amendment No. 1 would also delete the provision in proposed Rule 6530(d)(3) regarding reporting agent supervision. *See* ISLA, SIFMA AMG. As noted in Partial Amendment No. 1, in its oversight of member compliance with SEA Rule 10c-1a, in addition to reviewing whether members have complied with the requirements of SEA Rule 10c-1a(a)(2) with respect to the use of reporting agents, FINRA also will review the timeliness and accuracy of SLATE reports submitted by reporting agents in light of a reporting agent's obligations under SEA Rule 10c-1a(b) and the underlying requirements of SEA Rule 10c-1a. After gaining experience with the SLATE program, FINRA will reevaluate whether any additional measures are appropriate.

19 For example, as discussed in Partial Amendment No. 1, a covered person that agrees to a covered securities loan that ultimately does not settle would still be required to report the termination of that loan pursuant to proposed Rule 6530(b)(2) by submitting a loan modification to terminate a covered securities loan. However, because the securities were never transferred to the borrower, the loan modification termination report would not modify the loan amount to zero (unlike in the case of a loan that was terminated because the shares were returned, which would modify the loan amount to zero), which would allow FINRA to identify the loan as being terminated because it was unsettled as opposed to a return of shares.

Amendment No. 1 would provide that, where a covered person's daily submission includes two or more reports related to the same covered securities loan for which FINRA has not yet assigned a unique loan identifier (*e.g.*, an initial covered securities loan and a loan modification to terminate the covered securities loan), the covered person must report a unique identifier (assigned to the covered securities loan by the covered person responsible for reporting the loan to SLATE).

Under the amendment, the requirement to include a covered person-assigned identifier would be limited to instances where a covered person's daily submission includes two or more reports related to the same covered securities loan for which FINRA has not yet assigned a unique loan identifier—which is the circumstance that gives rise to the audit trail gap sought to be addressed.[20] In these instances, the unique identifier reported for the loan modification must be the same as the identifier provided with respect to the associated same-day report for that initial covered securities loan. This amended requirement is necessary to allow FINRA to link same-day reports that relate to the same covered securities loan, which allows FINRA to accurately record transactions reported pursuant to SEC Rule 10c-1a and to incorporate modifications into the daily loan statistics.

II. Reporting of Loan Events: Intraday Modifications and Reallocations/Changes to the Parties to a Loan

Commenters raised concerns regarding areas in which they believed that FINRA's Original Proposal required firms to report loan events that were not required to be reported pursuant to SEA Rule 10c-1a. Specifically, industry members raised concerns regarding proposed Rule 6530.01 (Intraday Loan Modifications), stating that it was inconsistent with SEA Rule 10c-1a's end-of-day reporting requirement[21] and with proposed Rule 6530.02 (Changes to the Parties to a Covered Securities Loan), stating that it contradicted the SEC's decision not to treat reallocations among a pooled loan's underlying constituents as a new covered securities loan or as a loan modification.[22]

FINRA is clarifying for covered persons that the SLATE proposal would not require the reporting of a covered securities loan initiation or modification event (including a termination) to FINRA that is not required to be reported to an RNSA pursuant to SEA Rule 10c-1a. To make this clearer, Partial Amendment No. 1 would delete both Supplementary Material .01 regarding the reporting of intraday loan modifications as well as Supplementary Material .02 regarding the reporting of changes to the parties to a loan. The reporting of

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[20] Covered persons may choose voluntarily to populate this field in instances where doing so is not required by proposed Rule 6530.

[21] *See generally*, FIF, ICI, ISLA, ISLA EMEA, Robinhood, SIFMA, SIFMA AMG, S3.

[22] *See* ICI. FIF also requested confirmation that an intermediary would not report an omnibus transaction to SLATE and would instead report the allocations of the omnibus transaction once the allocations have been finalized.

initial covered securities loans is already covered by proposed Rule 6530(a) (Initial Covered Securities Loans) and the reporting of modifications is already covered by proposed Rule 6530(b) (Covered Securities Loan Modifications). As stated in Partial Amendment No. 1, covered persons must report loan events consistent with the Commission's rule and as described in the Adopting Release.

Based on SEC statements in the Adopting Release regarding the reporting of modifications, FINRA's understanding is that modifications are required to be reported to an RNSA pursuant to SEA Rule 10c-1a once they are finalized, and that indicative terms are not reportable.[23] The Adopting Release discusses commenters' concerns that the Commission's previously proposed 15-minute reporting regime would have captured indicative terms that could have changed by the end of the day.[24] In response to these concerns, the Adopting Release explains that SEA Rule 10c-1a's final end-of-day requirement was intended to better capture *final* loan information.

> As modified, the final rule's end-of-day reporting requirement will help prevent an excessive number of incomplete or slightly modified reports that otherwise would occur throughout the day yet without providing any incremental value. Thus, 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.[25]

The Adopting Release also stated, among other things, that whether or not a loan has been effected is a legal/factual question.[26] FINRA notes, for example, with respect to a covered securities loan used to close out a fail-to-deliver pursuant to Rule 204 of Regulation SHO, where the broker-dealer is complying by entering into a *bona fide* arrangement to

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23 *See infra* note 24.

24 *See e.g.,* Adopting Release, 88 FR 75644, 75679-80. ("For example, most of these larger market participants explained that the terms of securities loans change during the day and are generally not finalized until the end of the day. These changes include reallocations of securities loans among lenders, re-pricings, and changes in collateral. As a result, the 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.") (citations omitted).

25 Adopting Release, 88 FR 75644, 75680-81.

26 *See* Adopting Release, 88 FR 75644, 75681 (citations omitted).

borrow the security by no later than the beginning of regular trading hours on the settlement day following the settlement date in question, FINRA believes that firms would view such loans as having been agreed to in the morning consistent with the timing parameters of Rule 204 of Regulation SHO (albeit that the loan is not required to be reported until the end of the day under SEA Rule 10c-1a).

In the context of omnibus loans and reallocations, proposed Rule 6530 does not alter which entities must be reported as parties to a loan, whether a change to the parties to a loan triggers a reporting obligation, or whether such report must reflect a modification or a new loan (and therefore, also a termination of the prior loan)—these obligations are prescribed by SEA Rule 10c-1a as discussed in the Adopting Release. FINRA's understanding is that SEA Rule 10c-1a generally requires that a change in the parties to a loan be reported as a termination of the prior loan and the initiation of a new loan (reflecting the new parties, if known).[27] With respect to omnibus loans and reallocations, in its Adopting Release, the Commission discusses the circumstances that are relevant to determining whether an individual allocation of an omnibus loan is reportable under SEA Rule 10c-1a:

> Whether the parties to a covered securities loan change for purposes of the reporting requirements under final Rule 10c-1a(e)(1) depends on how a pool or lending program is structured (*e.g.*, whether the pool or lending program itself or the individual underlying participants are the party or parties identified as the lender for the loan). For example, if a lending program as an individual entity is the party that is the lender of the covered securities loan, changes to the underlying participants, inventory providers, or customers of that lending program will not constitute a change to the parties of the covered securities loan.
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> … However, if the multiple, individual participants are all parties identified as lenders to the loan, with no lending program or other entity interposed between them and the borrower, a change in their composition (the removal or addition of a lender) would constitute an assignment of the loan and therefore would require reporting as a new loan pursuant to final Rule 10c-1a(a)(1).[28]

Therefore, FINRA believes that proposed Rule 6530 is consistent with SEA Rule 10c-1a and its end-of-day reporting regime.

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27 *See* Adopting Release, 88 FR 75644, 75664 ("Changing the party or parties to a covered securities loan, which is required to be confidentially reported under [Rule 10c-1a(e)(1)], creates a new covered securities loan that would require reporting as a new covered securities loan to an RNSA under final Rule 10c-1a(a)(1), and not as a modification under final Rule 10c-1a(d).").

28 Adopting Release, 88 FR 75644, 75664 (citations omitted).

III. Other Reporting Requirement Amendments

Some industry members addressed the reporting to SLATE of rebate rates based on a spread to a benchmark.[29] Specifically, these commenters advocated for the flexibility to report the negotiated spread and the identity of the benchmark, which would minimize the number of modifications that covered persons would be required to report under SEA Rule 10c-1a as a result of fluctuations in the underlying benchmark (as opposed to a negotiated modification to the securities loan).[30]

FINRA is amending the Original Proposal to provide covered persons with the requested flexibility. Specifically, Partial Amendment No. 1 would add new proposed Rule 6530(a)(4) (Reporting Loan Rates Based on a Spread to a Benchmark or Reference Rate) to permit covered persons to—in addition to reporting the rebate rate or lending fee or rate for a covered securities loan—also report the negotiated spread and the identity of the benchmark or reference rate for covered securities loans that are priced based on a spread to a benchmark or reference rate. Alternatively, a covered person may choose to report only the rebate rate or lending fee or rate.[31]

One commenter also recommended that FINRA ensure that SLATE can accommodate negative rebates, stating that even for cash collateral loans, there may be scenarios where the loan is negotiated at a fee rather than a rebate (*e.g.*, when a security is particularly hard to borrow).[32] To accommodate market practices and rebate rate variability, FINRA intends to accept negative values in the rebate rate field if the collateral type is reported as cash. As discussed further below, SLATE's validation logic will accept a wide range of values in the rebate rate/lending fee or rate fields, and SLATE will not reject reports because a cash collateral loan is reported with a negative rebate rate.

In addition, some commenters expressed concern regarding the proposed 7:45:00 p.m. ET cut-off time for same-day reporting and the 8:00:00 p.m. ET reporting deadline, including that closing SLATE at 8:00:00 p.m. ET would not capture certain end-of-day activity, and that a 15-minute turnaround time (between 7:45:00 p.m. ET and 8:00:00 p.m.

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29 *See generally*, FIF, ICI, ISLA, and SIFMA AMG.

30 *See id*.

31 As required under SEA Rule 10c-1a, a covered person would continue to be required to report a loan modification pursuant to proposed Rule 6530(b)(2) in the event of a change to the negotiated spread or to the identity of the benchmark or reference rate. *See* Adopting Release, 88 FR 75644, 75672 (generally stating that if a covered person reports based on a spread and a benchmark, then no modification would be required to be reported unless there were a change in the negotiated spread or benchmark).

32 *See* ISLA.

ET) would make end-of-day processes challenging.[33] Specifically, ISLA recommended that FINRA's system accept files transmitted outside of SLATE's system hours, noting that many firms have coverage across the globe and restricting file submissions to U.S. hours would strain compliance resources. FIF recommended that SLATE accept files until 11:59 p.m. ET and asked whether the SLATE system would provide feedback outside of the SLATE system hours. FIF also recommended that the cut-off time for same-day reporting be moved up to 4:00 p.m. ET to align with the "close of trading" such that loans effected after 4:00 p.m. would not need to be reported until the next business day. EquiLend requested that the reporting deadline be extended to 8:30 p.m. ET for reporting agents to allow for additional time to collect and prepare covered persons' data. EquiLend stated that some larger agent lenders complete their allocation process between 7:00 p.m. ET and 8:00 p.m. ET, and reporting agents would require additional time to receive, process, verify, and submit the final information to FINRA.

FINRA is proposing changes to SLATE system hours and reporting deadlines in light of comments received. Partial Amendment No. 1 would amend proposed Rule 6530(a)(1) and (b)(1) to extend the reporting deadline to 11:59:59 p.m. ET and to change the reporting cut-off time in proposed Rule 6530(a)(1) and (b)(1) to 7:00:00 p.m. ET. Partial Amendment No. 1 would also make a corresponding change to the definition of "SLATE system hours" in revised proposed Rule 6510(h) to specify that the SLATE system is open through 11:59:59 p.m. ET. FINRA believes that the proposed amendment to extend SLATE system hours is appropriate to provide additional time to process SLATE submissions at the end of the day.[34] FINRA also believes that the proposed amendment to modify the loan cut-off time from 7:45:00 p.m. ET to 7:00:00 p.m. ET would provide additional time to report loans that are effected near the end of the day, including time to complete any necessary security set up in SLATE.

Industry members raised a number of other questions regarding securities lending reporting and the operation of SEA Rule 10c-1a. For example, among other questions, one commenter requested confirmation that the delivery by a broker-dealer of securities to settle a short sale—and the carrying of a short position in a brokerage account—is not a "covered

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33 *See generally*, EquiLend, FIF, ISLA.

34 Given the operation of the securities lending market, including that many loans will not be finalized until after the traditional 4:00 p.m. ET close of the U.S. equities markets, FINRA does not believe it would be appropriate to move the cut-off time for same-day reporting to 4:00 p.m. ET. FINRA also notes that the fixed income markets generally have later trading hours, and the same-day reporting cut-off time for transactions in many TRACE-eligible securities is 6:15:00 p.m. ET.

While the SLATE system will provide reporters feedback on submissions that are submitted during SLATE system hours, the SLATE system will not accept reports submitted after the close of the SLATE system.

securities loan" reportable under SEA Rule 10c-1a;[35] and another commenter raised questions regarding when activity in foreign securities and by foreign entities would be reportable to SLATE under SEA Rule 10c-1a.[36] FINRA notes that the Adopting Release addresses some of these issues raised by commenters and that these issues are not related to determinations that FINRA has made regarding the proposed reporting requirements or dissemination provisions.[37]

Commenters also raised concerns regarding SEA Rule 10c-1a's requirements, arguing, for example, that a covered person should only be required to report a covered securities loan that has settled,[38] or disagreeing with SEA Rule 10c-1a's requirement that covered persons must report an issuer's legal entity identifier ("LEI"), if non-lapsed.[39] However, these and other requirements that are established directly by SEA Rule 10c-1a cannot be amended by FINRA and, therefore, these comments are not germane to the SEC's consideration of FINRA's proposal. For other issues, FINRA intends to work with firms and with SEC staff to address operational and implementation issues as they arise.

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35 *See* SIFMA.

36 *See* ISLA EMEA.

37 For example, the Adopting Release discusses commenters' concern that Rule 10c-1a would require that short sales or short positions be reported as securities loans and states that "under the final rule covered persons will not be required to report short sales as defined by . . . Rule 200(a), but will be required to report loans that are used for short sales." *See* Adopting Release, 88 FR 75644, 75663 (citations omitted). 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." *See* Adopting Release, 88 FR 75644, 76589.

38 In its letter, FIF recommends that reporting be limited to transactions that settle (though FIF also notes that "[t]he Commission makes clear in the adopting release that the time that a loan is 'effected' is distinct from the settlement time"). *See* FIF. *See also* Adopting Release, 88 FR 75644, 75651 (explaining "the term 'agrees to a covered securities loan' also provides that Rule 10c-1a information is not limited to covered securities loans that have been settled").

39 *See generally*, EquiLend, ISLA, SIFMA AMG. Proposed Rule 6530(a)(2)(A)'s requirement to report the LEI of an issuer, if non-lapsed, mirrors the requirement in SEA Rule 10c-1a(c)(1).

IV. Technical Specifications for SLATE Reporting[40]

A. Data Validation

Two commenters expressed concerns with the potential validation logic that SLATE would employ for the rebate rate and lending fee fields and requested further clarity on what the validation process would entail.[41] In particular, ISLA stated that FINRA should not reject reports based on rebate rate/lending fee price bands developed using historic data. ISLA said that FINRA's data validation process would increase costs, cause operational difficulties, and harm the negotiation of securities lending transactions.

FINRA believes that data validation is necessary to ensure the integrity of the data submitted to SLATE and, ultimately, disseminated to the public. At this stage, FINRA intends to employ broad data validation logic for the rebate rate and lending fee or rate fields. For example, FINRA's validation logic might reject a report that contained an invalid character type in the field (*e.g.*, where a report contained letters instead of a percentage value in the rebate rate or lending fee field). FINRA's validation logic may also issue a warning to flag a rebate rate or lending fee or rate that falls outside a wide range (*e.g.*, a rebate rate of 10,000%); however, the SLATE system would not reject the report, and a reporter would not be required to take any action to override the warning. Therefore, FINRA believes that the broad validation parameters being contemplated are on balance appropriate from both a data and compliance perspective and would not harm the negotiation of securities lending transactions (negotiations that would have taken place before the SLATE reporting process).

ISLA also requested additional clarity on the Rejected Events and Data Ingestions Errors processes referenced in the draft technical specification, which are presently placeholder sections to be populated in the future. FINRA envisions that these sections will provide technical programming code information (*e.g.*, character restrictions, error codes, field sizes), along with examples to aid SLATE participants. These sections will not describe required fields and their inputs, which are discussed in the earlier sections of the draft SLATE participant specification.

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40 FINRA has published draft participant specifications for SLATE at: https://www.finra.org/sites/default/files/2024-05/slate-participant-specification.pdf. In addition to the issues discussed in this section, commenters provided a number of other recommendations and requests for clarification with respect to the draft SLATE participant specification. FINRA will publish updated draft participant specifications to reflect Partial Amendment No. 1 and other changes. FINRA will continue to engage with market participants regarding questions concerning the updated draft SLATE participant specification. FINRA will endeavor to publish further updates to the participant specification, as appropriate, and will work with industry participants to respond to questions.

41 *See* ISLA, Robinhood.

B. Event Types

One commenter expressed concerns regarding the report event types provided for in the draft SLATE participant specification.[42] First, this commenter recommended consolidating the Modification and Loan Correction events. This commenter stated that lending systems do not currently distinguish between agreed-upon loan modifications and corrections to a previously recorded loan, and developing a mechanism to track this information would be costly and onerous. FINRA believes it is important to specifically record in the audit trail the events that are required to be reported to an RNSA pursuant to SEA Rule 10c-1a. In this regard, FINRA notes that a "loan modification" generally is defined as a change to a data element with respect to a covered securities loan, whereas a "correction" does not reflect a change to the underlying terms of a loan itself, but is necessary where a reported item of information regarding a covered securities loan has been misreported to SLATE. Loan modifications are specifically required to be reported pursuant to SEA Rule 10c-1a(d). Because firms' reports must be accurate, where a firm has erroneously reported an item of information to SLATE, FINRA believes that it is important to provide reporters with a mechanism to correct such errors.

Second, this commenter recommended consolidating the Loan Cancellation and Delete Loan events. However, these report types perform different functions—the Cancellation event will permit a reporter to delete a single report associated with a loan, while the Delete Loan event will enable a reporter to delete all reports associated with a loan (rather than potentially needing to delete each report, one-by-one, using the Cancellation event). FINRA intends to revise the draft participant specification to clarify the function of each of these event types.

In addition, one commenter recommended that FINRA create a terminated loan event type with limited fields for reporting loan terminations.[43] FINRA agrees that a specific report type for reporting a loan modification to terminate a loan would streamline covered persons' reporting obligations because only certain fields will be relevant to the report. The updated draft participant specification that FINRA will publish to reflect Partial Amendment No. 1 will reflect the new terminated loan modification type.

V. Securities Loan Data Dissemination

A. Emergency Authority

Retail investors generally expressed support for the Proposal and for increasing

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42 *See* ISLA.

43 *See* FIF. Alternatively, FIF recommended that if a covered person reported the proposed terminated loan indicator, the covered person would only be required to report specified, limited fields. However, Partial Amendment No. 1 would remove the proposed terminated loan indicator from the Proposal's required data elements.

transparency in the securities lending market.[44] Retail investors expressed concern, however, regarding proposed Rule 6550 (Emergency Authority), which would enable FINRA, as market conditions may warrant and in consultation with the SEC, to suspend the reporting or dissemination of certain covered securities loans, or the reporting of certain data elements or confidential data elements, or the dissemination of certain data elements for such period of time as FINRA deems necessary.[45] Specifically, retail investors cautioned that use of this provision could undermine the transparency that the Proposal aims to promote and inadvertently create information asymmetry, disadvantaging end borrowers and beneficial owners who may rely on the data when making investment decisions.

FINRA does not believe that the proposed provision, which would provide FINRA with limited, emergency authority, would reduce the transparency intended to be provided under SEA Rule 10c-1a. FINRA anticipates that, should the proposed emergency authority be used, any such action would be taken only as market conditions warrant and only in consultation with the SEC. FINRA notes that it has similar authority in connection with other transaction reporting facilities that it operates, and believes that such emergency authority is appropriate to maintain fair and orderly markets.[46]

B. Aggregate Loan Transaction Data and *De Minimis* Activity

Several commenters raised concerns regarding FINRA's proposed dissemination of aggregate loan activity, including subcategories of information.[47] For example, these commenters expressed concern regarding the Original Proposal, including that the level of data granularity exceeds the discretion provided by the Commission with respect to aggregate data, and that bucketing data by borrower type, in particular, may permit market participants to discern individual loan amounts that are subject to delayed dissemination under SEA Rule 10c-1a (inconsistent with the 20-day dissemination delay for loan amounts).[48] Commenters also expressed concern that the *de minimis* threshold of three loans was too low and stated that the *de minimis* provision should be applied consistently, without FINRA discretion.[49]

SEA Rule 10c-1a provides that an RNSA disseminate "information pertaining to the aggregate transaction activity and distribution of loan rates for each reportable security."[50]

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44 *See, e.g.*, Letter Type A.

45 *See, e.g.*, Letter Type A.

46 *See, e.g.*, FINRA Rule 6770 (Emergency Authority).

47 *See generally*, ISLA, MFA, SIFMA, and SIFMA AMG

48 *See generally*, ISLA, MFA, SIFMA, SIFMA AG.

49 *See generally*, ICI, ISLA, ISLA EMEA, MFA, SIFMA, SIFMA AMG.

50 *See* SEA Rule 10c-1a(g)(5). The Adopting Release provides that "aggregate transaction activity" means "information pertaining to the absolute value of

FINRA notes that the Commission did not specify the precise manner in which aggregate transaction activity or the distribution of loan rates would be compiled and disseminated by an RNSA, thereby providing the RNSA discretion as to the formulation of the data (so long as the "aggregate transaction activity" represented the absolute value of loan transactions).[51] In determining what aggregate data is appropriate for public dissemination, FINRA remains very sensitive to concerns regarding potential information leakage. In Partial Amendment No. 1, FINRA is removing at this time the subcategories of volume data from the aggregate loan transaction activity to be disseminated until experience is gained with the impact of disseminating volume data. As amended, FINRA would disseminate pursuant to proposed Rule 6540(c)(1) the security identifier and the aggregate volume of securities subject to an initial covered securities loan or modification to the amount of reportable securities loaned.

With respect to the proposed three-loan *de minimis* threshold, in Partial Amendment No. 1, FINRA would increase the *de minimis* threshold and clarify the intended operation of the provision. Specifically, as amended, the *de minimis* provision would provide that FINRA will not include volume information for a security unless there were reports submitted to SLATE on the prior business day for at least 10 distinct covered securities loans in the reportable security (represented by different FINRA-assigned unique loan identifiers).[52] FINRA believes these changes to the aggregate data dissemination provisions and the operation of the *de minimis* provision are appropriate at this time, and, intends to revisit the possibility of enhancing the aggregate loan transaction activity in the future after gaining experience with the initial SLATE data set and analyzing what additional information could be useful, while continuing to be sensitive to potential information leakage concerns. Any such efforts would be subject to a separate proposed rule change with the Commission and subject to notice and comment.

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transactions such that net position changes should not be discernable in the data, and is intended to help ensure that only aggregate information about net positions changes, rather than individualized information, is provided to the public." *See* Adopting Release, 88 FR 75644, 75684.

51 *See* Adopting Release, 88 FR 75644, 75684. *See, e.g.*, Adopting Release, 88 FR 75644, 75715 ("[H]ow the aggregate information disseminated by an RNSA will compare to the information available from current commercially available datasets, and the range of analyses that market participants will be able to perform using this information, will depend on the specific aggregate statistics that an RNSA chooses to publish.").

52 The *de minimis* exclusion was not intended to provide FINRA with discretion on a case-by-case basis as to whether to omit volume information that met the *de minimis* criteria. Accordingly, Partial Amendment No. 1 would amend proposed Rule 6540.01 to make clear that FINRA "will" omit from the aggregate loan transaction activity statistics all volume information that meets the *de minimis* criteria.

VI. Other Issues

A. Role of Service Bureaus

One commenter argued that "service bureaus" should not be permitted to report on behalf of covered persons, and noted that the Commission limited reporting agents to entities regulated by the SEC.[53] However, nothing in FINRA's Original Proposal modifies the parameters that the SEC set forth regarding the use of a "reporting agent," which is a defined term under SEA Rule 10c-1a. Importantly, while the SEC established the role of a reporting agent, it did not preclude firms from using other types of third parties to facilitate reporting (albeit that covered persons may not rely on such other parties in the same manner reserved for reporting agents under Rule 10c-1a). This is clear in the Commission's Adopting Release, which specifically contemplates that covered persons may rely on a third-party service provider (that is not a reporting agent) to facilitate reporting:

> The Commission is also clarifying that the ability to use a reporting agent does not prevent covered persons from contracting privately with third-party vendors to assist in reporting. . . . The rule as adopted does not prohibit the use of third-party vendors by covered persons. The use of third-party vendors by covered persons to help facilitate the reporting of Rule 10c-1a information should allow covered persons flexibility and decrease costs, and help address a commenter's concerns with the ability of certain covered persons to report.[54]

B. Adding Securities to SLATE

Some commenters requested further clarification regarding the security setup requirements of proposed Rule 6530(d)(4) and objected to any requirement that would place on covered persons, particularly ones that are not FINRA members or included in the underwriting process, the primary obligation to notify FINRA of reportable securities not included in the SLATE system.[55] These commenters suggested that this would be an inefficient and burdensome method for updating SLATE.

Under SEA Rule 10c-1a, it is the covered person's (or, where applicable, a reporting agent's) responsibility to ensure that it submits required reports in compliance with applicable rules. The rule does not assign to an RNSA the responsibility to identify all reportable securities. Nonetheless, as FINRA typically does with its other over-the-counter facilities, FINRA intends to create a SLATE security list that it will make available to

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53 *See* EquiLend.

54 Adopting Release, 88 FR 75644, 75655 (citations omitted); *see also* Adopting Release, 88 FR 75644, n. 115 ("The final rule also permits covered persons to use third party vendors to help facilitate the fulfillment of their reporting obligation.").

55 *See* FIF, ICI, and ISLA.

covered persons and other SLATE participants (leveraging reference data from the CAT NMS list, TRACE, and the MSRB). However, a covered person remains obligated to determine whether a securities loan transaction that it has engaged in is reportable under SEA Rule 10c-1a, regardless of whether the security appears on FINRA's SLATE security list. For this reason, proposed Rule 6530(d)(4) (renumbered as (c)(3) in Partial Amendment No. 1) requires that, if a covered person makes a good faith determination that it has a reporting obligation under SEA Rule 10c-1a with respect to a securities loan, and the reportable security is not already entered into the SLATE system, the covered person (or its reporting agent) must promptly notify FINRA and work with FINRA operations to enter the reportable security into the SLATE system.

C. Reporting Fees and Data Products and Fees

Industry commenters noted that FINRA's Original Proposal did not address reporting fees or data products and related fees.[56] These commenters generally requested sufficient time to review FINRA's Original Proposal in conjunction with FINRA's forthcoming fee and data products proposal, arguing that understanding FINRA's proposed fees is necessary to provide fully informed comments on the Original Proposal. FINRA will be filing a separate proposed rule change with the Commission in the near future regarding FINRA's proposed reporting fees and data products and related fees, which interested parties may review.

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FINRA believes that the foregoing responds to the material issues raised by the commenters on the rule filing. If you have any questions, please contact me at (202) 728-8363.

Sincerely,

/s/ Racquel Russell

Racquel L. Russell
Senior Vice President
Director of Capital Markets Policy

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56 *See generally*, EquiLend, ICI, ISLA, ISLA EMEA, MFA, SIFMA, SIFMA AMG.