December 6, 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)***

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 the entire ISLA Group and 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 ("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, 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, 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. EXECUTIVE SUMMARY

To comply with final Rule 10c-1a (the "Final Rule")[2], under the Securities and Exchange Act of 1934 (the "Exchange Act" or "SEA"), which requires a registered national securities association ("RNSA") to implement rules regarding the format and manner to administer the collection of information and reporting and public dissemination of information related to lending transactions and certain other information, on May 1, 2024, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Commission its proposed FINRA Rule 6500 Series (the "Original Proposal").[3] The related draft Participant Specification for Securities Lending and Transparency Engine (SLATE™) (the "SLATE Reporting Specs") were also published during May of 2024.[4]

On October 28, 2024, in its most recent action taken in respect of the Original Proposal, pursuant to Section 19(b)(2) of the SEA, the Commission designated January 2, 2025, as the date by which it shall either approve or disapprove the Original Proposal.[5] On November 14, 2024, responding to comments submitted in respect of the Original Proposal, FINRA submitted an explanatory letter[6] and filed with the Commission the 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"), which seeks to amend proposed Rules 6530 (*Reporting Securities Loan Information*) and 6540 (*Dissemination of Loan Information*).to address issues raised by commenters. If the Commission approves the Original Proposal as amended by the Partial Amendment, the SLATE Reporting Specs will also need to be amended.

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 regarding FINRA's Original Proposal and proposed SLATE Reporting Specs. The fact that each of the Commission and FINRA met with several industry associations on more than one occasion in order to fully understand the impediments the Original Proposal and the SLATE Reporting Specs presented to the industry is much appreciated. Moreover, we recognize that in the Partial Amendment, FINRA has addressed many of the topics of concern discussed in the ISLA Americas Comment Letter; and we appreciate that the Partial Amendment reflects the careful thought given to align the requirements of the Final Rule and the Original Proposal along

[2] 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).

[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").

[4] *See* https://www.finra.org/sites/default/files/2024-05/slate-participant.specification.pdf.

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

[6] *See* Letter from Racquel L. Russell, Senior Vice President, Director of Capital Markets Policy, Office of General Counsel, FINRA, dated November 14, 2024 (responding to comments regarding File No. SR-FINRA-2024-007) ("FINRA Response Letter").

with the SLATE Reporting Specs with industry concerns. We value the obvious commitment of the regulators to minimize complexity and implementation burdens reflected in the Partial Amendment.

We also note that the comment period granted with respect to the Partial Amendment is a short 15 days and that notwithstanding the effort reflected above by FINRA to address the industry's comments, there remain a number of questions and concerns about which ISLA Americas seeks clarity. This is particularly concerning given that it is our understanding that(a) the SLATE Reporting Specs, which are vital to a thorough analysis and preparation for reporting cannot be finalized until the SEC approves the Original Proposal as amended by the Partial Amendment, and, in any event, will need to be amended to conform with the changes to the Original Proposal that are reflected in the Partial Amendment and (b) the securities loan reporting fees and fees associated with securities loan data products ("Proposed Rule 7720" or the "Proposed Fees") to be imposed by FINRA were only filed with the SEC on November 21, 2024.[7] The Commission has granted a 21-day comment period in respect of Proposed Fees. Any effective cost benefit analysis was impossible until the filing of Proposed Rule 7720.[8] Even still, until the Original Proposal, the Partial Amendment, the SLATE Reporting Specs and the Proposed Fees have been finalized, there is little that the industry can do to prepare for implementation of the Final Rule.

This letter addresses a number of material questions, comments, and recommendations that we have concerning the Partial Amendment, and more generally our concerns about the timing of implementation of the Final Rule given the various rules, technical specifications and fees that have not yet been finalized. In particular, we would like to emphasize the imperative need for revised SLATE Reporting Specs and a means for covered persons to ask clarifying questions (perhaps in the form of an educational forum) to prepare for implementation of the Final Rule. 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.

## II. SUPPORT FOR CHANGES TO THE ORIGINAL PROPOSAL

ISLA Americas supports the proposals in the Partial Amendment that are discussed below.

### *1. Reporting Intraday Loan Modifications and Changes to the Parties to a Loan.*

FINRA proposes to delete from the Original Proposal the supplementary material regarding the reporting of intraday loans (Supplementary Material .01 (*Intraday Loan Modifications*)) and supplementary material regarding changes to the parties to a loan, including in the context of reallocating omnibus loans (Supplementary Material .02 (*Changes to the Parties to a Covered Securities Loan*)). We appreciate the removal of the requirement to report this supplementary

[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) (Proposed Rule Change to adopt FINRA Proposed Rule 7720) ("Proposed Rule 7720" or "Proposed Fees")

[8] *See* ISLA Americas Comment Letter ("ISLA Americas Comment Letter" or the "Comment Letter"), dated July 16, 2024, at 10, *see also* https://www.sec.gov/comments/sr-finra-2024-007/srfinra2024007-494003-1433147.pdf.

material as this requirement would have significantly increased the cost and complexity of the reporting without providing any useful information.[9]

### *2. Modifiers and Indicators.*

The Original Proposal required covered persons to identify and report (a) exclusive arrangements, (b) loans to affiliates, (c) unsettled loans, (d) terminated loans, (e) rate or fee adjustments, and (f) basket loans. FINRA proposed the inclusion of these modifiers and indicators to provide what they called "*important information*" to regulators and the public.[10] We were concerned about the complexity and burdens these modifiers and indicators would import into the reporting regime and appreciate that FINRA has proposed to delete them.

### *3. Rebate Rates, Lending Fees, and Other Fees or Charges.*

**(a) Rebate Rates and Lending Fees.** The draft SLATE Reporting Specs require covered persons to report a lending fee when the collateral type is "*non-cash*" 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, as reflected in the ISLA Americas Comment Letter.[11]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*"). We appreciate that FINRA recognized that to facilitate transparency in the market for securities loans, it should support the Commission's guidance permitting covered 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 cash collateralized loans -- regardless of the facts of the negotiation.

**(b) Benchmarks**. In the ISLA Americas Comment Letter, we requested the option, consistent with the terms of the Final Rule, to report pricing data as a spread to a benchmark rate to prevent the needless reporting of rate changes resulting from day-to-day changes in the benchmark. As further reflected in the Comment Letter, in the view of ISLA Americas, the addition of a loan spread option would be easy for FINRA to implement, would help alleviate the concerns highlighted in the Comment Letter 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. We are pleased to note that in the Partial Amendment, FINRA proposes 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 spread and identity of the benchmark or reference rate for covered securities loans that are priced based on a spread to a benchmark or reference rate.[12]FINRA acknowledges that this will provide covered persons with flexibility in the manner in which they

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[9] *See* the Partial Amendment, 89 FR 92228 at 92229.

[10] *See* Original Proposal, 89 FR 38203 at 38207.

[11] *See* ISLA Americas Comment Letter at 11.

[12] *See* the Partial Amendment, 89 FR 92228 at 92230.

may report a rebate rate or lending fee or rate, articulating that "This flexibility should address commenters' concern that covered persons would be required to report loan rate modifications when the rebate rate changes solely as a result of a change to the underlying benchmark rate (where there is no change in the negotiated spread or identity of the benchmark)".[13]

### *4. Covered Person Capacity and Market Participant Identifier ("MPID")*.

We appreciate FINRA's proposal to delete Proposed Rules 6530(a)(2)(V) and 6530(b)(2)(G), which would have required a covered person to report whether it is the lender, the borrower, or the intermediary in a securities loan transaction.

### *5. Internal Loan Identifiers*.

The Original Proposal required a covered person to report the unique internal loan identifier it assigned to the loan. Similarly, a covered person was required to report the unique internal loan identifier it assigned to an omnibus loan. FINRA's objective in requiring this information was to (a) link same-day related loan reports where a FINRA identifier had not yet been assigned, allowing FINRA to accurately record transactions reported pursuant to the Final Rule, (b) incorporate modifications for clarity into the daily loan statistics to be disseminated to the public and (c) improve the audit trail data available to regulators. We are pleased that FINRA has streamlined this requirement to apply only when a covered person's daily, T+0 submission includes two or more reports related to the same securities loan and FINRA has not yet assigned its own unique identifier.[14]

### *6. Reporting Agent Supervision*.

The Final Rule provides that if a covered person (a) engages a reporting agent, which is a U.S. registered broker or dealer or a registered clearing organization to provide its SLATE reporting, (b) enters into a written agreement with the reporting agent, pursuant to which the reporting agent agrees to establish, maintain, and enforce policies and procedures to ensure compliance with the Final Rule, and (c) provides timely information to the reporting agent, the reporting agent assumes responsibility for compliance with the Rule 10c-1a reporting requirements. The same is not true with respect to a person who is not a registered broker dealer or registered clearing broker, such as a third-party vendor or a service bureau, who is not subject to FINRA oversight. Though a covered person may use the services of such a third-party vendor, it may not shift the information reporting obligation to such vendor.

The Original Proposal sought to impose a further obligation on the relationship between the covered person and the reporting agent, requiring the covered person to take reasonable steps to ensure that the reporting agent was complying with the Final Rule on the member's behalf. In the Comment Letter, we proposed that FINRA revise the Original Proposal to accept the scope of responsibility the Commission established under the Final Rule for reporting agents and third-

[13] *See* the Partial Amendment, 89 FR 92228 at 92230; *see also* FINRA Response Letter, SR-FINRA-2024-007.

[14] *Id.* at 92231.

party service providers.[15] We appreciate that FINRA has proposed to delete this compliance requirement as being inconsistent with the Final Rule**.**

### *7. Loan Transaction Activity and Rate Distribution Data.*

ISLA Americas was concerned that dissemination by FINRA on T+1 of aggregate loan transaction activity (including borrower type and whether a loan was a term loan or an open loan) would exceed the discretion provided by the Commission and could permit market participants to identify the securities lending counterparties and individual loan amounts that are subject to delayed dissemination. We appreciate that FINRA has chosen to revise the Original Proposal to remove these requirements and to revisit this issue at a later time.

### *8. De Minimis Loan Transaction Activity.*

We further appreciate FINRA's proposal to amend the application of the de minimis threshold to be non-discretionary and to permit FINRA only to include aggregate volume information for a security if reports were 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). These changes will facilitate the prevention of information leakage and enhance the integrity of securities loan reporting.

## III. CONCERNS AND RECOMMENDATIONS

As reflected above, ISLA Americas appreciates the substantial amendments FINRA has proposed in the Partial Amendment. However, we continue to seek guidance in respect of certain aspects of the Original Proposal as revised by the Partial Amendment, each of which must be addressed prior to finalizing the reporting rules in order to permit an orderly implementation.

### *1. SLATE Participant Reporting Specifications*

We understand that, given the significant revisions FINRA has proposed in the Partial Amendment, the SLATE Reporting Specs will also require revision, and that FINRA has already begun this project. We would urge you to hasten this process as final specifications are imperative to permit the industry to provide well-considered feedback and to seek further guidance in respect of reporting requirements. Due to the importance of the SLATE Reporting Specs, we assume FINRA, and the Commission will allow adequate time for both analysis and public comment on the revised SLATE Reporting Specs, once finalized, recognizing that this may require an extension of the implementation date.

### *2. Other Fees and Charges.*

The Partial Amendment removes the requirement for covered persons to separately report other fees and charges when the rebate rate or lending fee or rate field is populated; but, in each case,

[15] *See* ISLA Americas Comment Letter at 9.

mirroring SEA Rule 10c-1a(c)(8) and (9), respectively, requires such covered persons to report any other fees and charges. We appreciate the inclusion of this proposed amendment as it addresses one of our principal concerns related to complexity, time and resourcing needed to provide this information at both an individual loan level and an omnibus level. We would appreciate further guidance as to how FINRA expects such additional information to be populated in the reporting.

### *3. Reporting Deadlines.*

In the Partial Amendment, FINRA has revised the SLATE reporting times, extending the reporting deadline on U.S. business days to 11:59:59 p.m. EST and changing the reporting cut-off time to 7:00:00 p.m. EST. We value the consideration that went into revising these reporting deadlines and agree that the proposed changes will ease the reporting burden on covered firms. We would appreciate it if FINRA would consider developing the SLATE system so that it can accept files transmitted outside of the specified hours to permit firms the flexibility to leverage their global staffing. Restricting file submissions to U.S. hours, especially given the extra-territorial scope of the Final Rule, will needlessly strain resources needed for compliance.

### *5. LEI of Security Issuer.*

The Commission included in final Rule 10c-1a(c)(1) the requirement that a covered person report the "*non-lapsed LEI*" of the issuer of the loaned securities if the issuer has one.[16] Consistent with this, 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).[17] In addition to the LEI, covered persons are required to report at least one of the following security identifiers in their SLATE reporting: "security symbol, CUSIP, ISIN, or FIGI, or other security identifier (if any)".[18]

When comparing Rule 10c-1a(c)(1) with other regulatory reporting regimes, industry participants identified issues related to the reporting of LEIs. Specifically, when initially proposed, the European Union's Securities Financing Transactions Regulation ("SFTR") required the reporting of third country issuer LEIs[19] 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 yet obtained LEIs. Accordingly, ESMA further delayed the mandatory requirement to report LEIs for third-country issuers, stating that they would provide at least 6

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[16] *See* 17 CFR 240.10c-1a(c)(1).

[17] *See* Original Proposal, 89 FR 38203 at 38206 and s*ee* the Partial Amendment, *89* FR 92228 at 92233.

[18] *Id.* at 92233.

[19] *See* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015R2365 at Chapter II Transparency of SFTS, Article 4 Reporting Obligation and Safeguarding in respect of SFTs, Section 10.

months' notice of their intention to make the requirement mandatory. As of the date of this letter, no such notice has been published.[20]

Given the fact that such a large percentage of third-country issuers have not obtained LEIs, we continue to 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.

### *6. Event Types: Modification v. Correction.*

We appreciate the guidance provided in the FINRA Response Letter regarding the stated purpose of the Loan Modification, Loan Correction, Loan Cancellation, and Delete Loan Events. We continue, however, to be concerned about complexity and costs related to the mechanics of reporting such events.

As noted in our original comment letter, securities lending systems generally do not currently distinguish between a loan modification resulting from an agreed upon amendment and the correction of a previously recorded loan element.[21] We would like to reiterate that developing and implementing a tracking mechanism to distinguish between modifications and corrections would be costly and onerous for market participants and should be carefully considered in any cost benefit analysis. While we appreciate that SEA Rule 10c-1a(d) requires covered persons to report loan modifications, we do not see the distinction between corrections and modifications and would still argue that, at the end of the day, a change is a change.[22] Note as well that those covered persons that intend to rely on third party vendor platforms to provide reporting would need those service providers to integrate these requirements into their platform releases, which would be costly.

Additionally, in respect of the current SLATE Reporting Specs, we would appreciate it if FINRA would carefully evaluate the need for a covered person to provide a FINRA Control Number as well as a FINRA Control Date in order to report a Correction Loan Event. We would urge the Commission to encourage FINRA to consider streamlining these requirements to simply include the date of the event, the FINRA Loan ID and the revised terms. 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 Reporting Specs.

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

[21] *See* ISLA Americas Comment Letter at 17.

[22] *See* FINRA Response Letter at 12.

### *7. Adding Securities to SLATE*

We appreciate FINRA's intention to create and publish a SLATE security list. However, we are concerned with the residual obligation FINRA has imposed on a covered person who has made a good faith determination that it has a reporting obligation under the Final Rule related to a security that is not included on the SLATE security list. Rule 6530(d)(3) requires that a covered person promptly notify and provide FINRA Operations with the information FINRA requires. As noted in the ISLA Americas Comment Letter, 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.[23] 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.

### *8. Reporting Fees and Costs*

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. We note that the neither the Original Proposal nor the Partial Amendment addressed the fees that FINRA intends to impose on this securities reporting activity. We do acknowledge, however, that, on November 21, 2024, FINRA filed Proposed Rule 7720 with the Commission, establishing securities loan reporting fees and securities loan data products with associated fees in connection with its Original Proposal.[24] ISLA Americas intends to submit comments with respect to FINRA's Proposed Fees in a separate letter. Given that direct lenders or their lending agents will bear the costs of building the infrastructure 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 the securities lending transparency regime is reduced costs for lending programs.[25] Any fees borne by the lenders of loaned securities will not serve the objectives of the Commission and since lending agents only receive 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, in 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.

## IV. CONCLUSION

In addition to the topics discussed above, we recognize that the Partial Amendment is only a partial amendment and accordingly, we foresee the publication of further guidance in the form of additional amendments from FINRA and the Commission. In particular, we are keen to receive

[23] *Id*. at 15.

[24] *See* Proposed Rule 7720, 89 FR 93750.

[25] *See* Adopting Release, 88 FR 75644 at 75667.

the next draft of the SLATE Reporting Specs, which FINRA has indicated is forthcoming, and further guidance in respect of areas described further above. All of these outstanding issues must be resolved before implementation can be contemplated.

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 that in order to achieve effective and efficient securities lending price transparency, regulators and market participants must collaborate. ISLA Americas stands ready to assist the Commission and FINRA staff as they continue to consider amendments necessary to finalize FINRA's SLATE Reporting Rules.

Sincerely,

*Fran Garritt*
Head of Business
International Securities Lending Association Americas

*Mark Whipple*
Chairman of the Board of Directors
International Securities Lending Association Americas