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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-2024-020 – Proposed Rule Change to Adopt FINRA Rule 7720 (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.<sup>1</sup> The proposed rule change would adopt new FINRA Rule 7720 (Securities Lending and Transparency Engine (SLATE™)) to establish securities loan reporting fees and securities loan data products with associated fees. Our fee filing is in connection with FINRA’s separately proposed Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™))<sup>2</sup> establishing reporting requirements for covered securities loans and providing 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-

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<sup>1</sup> See Securities Exchange Act Release No. 101697 (November 21, 2024), 89 FR 93750 (November 27, 2024) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2024-020) (“Proposal”).

<sup>2</sup> 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); *see also* Securities Exchange Act Release No. 101645 (November 15, 2024), 89 FR 92228 (November 21, 2024) (Notice of Partial Amendment No. 1 to File No. SR-FINRA-2024-007) (“Partial Amendment No. 1”).

1a.<sup>3</sup> The Commission published the Proposal for public comment in the *Federal Register* on November 27, 2024<sup>4</sup> and received two substantive comment letters on the rule filing.<sup>5</sup>

### SLATE Fee Framework and Revenue Estimates

Both ISLA and SIFMA expressed concern that FINRA underestimated the quantity of securities loan reports as well as the demand for SLATE data products.<sup>6</sup> For example, ISLA stated that it conducted a high-level survey of its members' securities lending activities, and based on the responses of fewer than 10 agent lenders, estimated that FINRA would collect more than \$6 million in SLATE reporting fees (rather than the \$4.5 million estimated by FINRA), suggesting that FINRA significantly underestimated the daily quantity of SLATE-reportable transactions.<sup>7</sup> Citing ISLA's estimates, and its own preliminary review, SIFMA also stated that it believes FINRA underestimated the number of daily initial loan and modification reports that will be submitted to SLATE.<sup>8</sup> SIFMA also stated its belief that FINRA underestimated the level of market participant interest in SLATE market data, and that market data revenue will be significantly higher than FINRA's \$250,000 per year estimate, even in the first year.<sup>9</sup>

FINRA continues to believe that the Proposal strikes a reasonable balance in calibrating initial SLATE fees—both for securities loan reports as well as SLATE data product subscriptions. With respect to the proposed reporting fees, because SEA Rule 10c-

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<sup>3</sup> 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").

<sup>4</sup> See *supra* note 1.

<sup>5</sup> See Letters from: Fran Garritt, Head of Business, and Mark Whipple, Chairman of the Board of Directors, International Securities Lending Association Americas ("ISLA"), to Vanessa Countryman, Secretary, SEC, dated December 18, 2024 ("ISLA Letter"); and Joseph Corcoran, Managing Director and Associate General Counsel, and Robert Toomey, Managing Director and Associate General Counsel, Head of Capital Markets, Securities Industry and Financial Markets Association ("SIFMA"), to Vanessa Countryman, Secretary, SEC, dated December 18, 2024 ("SIFMA Letter"). One additional comment letter was received from an anonymous commenter; however, this comment letter is not substantive.

<sup>6</sup> See ISLA Letter at 4; SIFMA Letter at 4-5 and 7.

<sup>7</sup> See ISLA Letter at 4. ISLA also generally urged FINRA to perform a more thorough and considerate cost analysis to ensure that total estimated costs are not understated. FINRA already has conducted a thorough cost analysis based on the information available at this stage. As stated previously, to the extent possible, FINRA will leverage existing systems, personnel, and processes in connection with FINRA's SLATE program consistent with FINRA's structure as a not-for-profit self-regulatory organization. See Proposal, 89 FR 93750, 93753, n.39.

<sup>8</sup> See SIFMA Letter at 5. SIFMA also suggested that FINRA consider an annual fee cap whereby FINRA would discontinue assessing SLATE fees once it met its funding target of \$4.5 million, citing that options exchanges employ a similar approach in connection with options regulatory fees. See SIFMA Letter at 7-8.

<sup>9</sup> See SIFMA Letter at 7.

1a is a new requirement and a SLATE reporting system does not currently exist, FINRA recognizes that SLATE fees may need to be recalibrated based on actual reporting data once reporting activity has commenced, and FINRA has committed to doing so.<sup>10</sup> And while we appreciate that one commenter informally gathered information from some of its members, commenters have not provided specific information sufficient for FINRA to change its estimate of daily reporting activity for use in calibrating fees. For example, the commenter neither disclosed the number of daily reports it used for its estimates nor how many of those reports would be initial loan reports versus loan modification reports.

With respect to data product subscription fees, FINRA similarly recognizes the difficulty of estimating in advance the likely subscription levels and associated revenue.<sup>11</sup> Thus, while subscribership may ultimately exceed the initial revenue estimate of \$250,000, the rate at which interested parties subscribe for data products is uncertain and may take time to build, as typically is the case with data product subscriptions (in FINRA's experience, interest tends to build over time).<sup>12</sup> In addition, unlike reporting, which is legally required under SEA Rule 10c-1a, subscribing to data products is optional and parties can choose when to subscribe, if at all. Thus, on balance, FINRA continues to believe that, *ab initio*, the proposed SLATE fees are reasonable and are designed to generate an amount of revenue that aligns with the estimated incremental direct ongoing costs associated with the SLATE program and to enable FINRA to meet its regulatory obligations.<sup>13</sup>

To address concerns that FINRA's current estimates may result in the collection of fees in an amount materially in excess of FINRA's direct ongoing costs, FINRA commits to reviewing SLATE reporting and data subscribership activity after approximately 12 months and, if FINRA finds that it collected amounts materially different from FINRA's direct costs actually incurred, FINRA would file a proposed rule change to recalibrate SLATE fees. In the event of a material over-collection of fees in excess of costs in the first year of SLATE reporting, FINRA commits that the recalibrated fees in the subsequent rule proposal would be designed such that FINRA's recovery would not materially differ from FINRA's incremental direct ongoing costs *minus* the amount previously collected that was in excess of FINRA's incremental direct ongoing costs, and assuming similar expected levels of future SLATE reporting and subscription activity.<sup>14</sup>

Thus, if the Rule 6500 Series and the corresponding reporting fees under Rule 7720<sup>15</sup>

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<sup>10</sup> See Proposal, 89 FR 93750, 93753.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> FINRA also intends to file a proposed rule change to recalibrate fees in the event of a material under-collection, after approximately 12 months or later.

<sup>15</sup> See Rule 7720(a) and (b).

become effective on January 2, 2026 and data products and fees under Rule 7720<sup>16</sup> become effective on April 2, 2026 (per the dates established in the SEC's Adopting Release for an RNSA's securities lending rules), then after a year, FINRA will assess the amounts it collected from firms pursuant to Rule 7720. If, for example, firms reported an average per day of 200,000 initial loans (instead of 125,000) and 250,000 loan modifications (instead of 200,000), and assuming the same percentage of late reports or corrections, cancellations, and deletions (0.5%), then FINRA would collect approximately \$5.9 million (instead of the estimated \$4.2 million) in SLATE reporting fees. If, for example, FINRA also collected \$1 million in SLATE data product fees (instead of the estimated \$250,000), then FINRA's total SLATE revenue in the first year would be approximately \$7 million (instead of the currently estimated \$4.5 million).

Under this scenario, after approximately 12 months of reporting, FINRA would file a subsequent proposed rule change to recalibrate the SLATE fees accounting for the prior year's SLATE activity, revenues, and costs.<sup>17</sup> The purpose of such proposed rule change would be to adjust fees such that FINRA's revenues under the new fees would not materially differ from FINRA's incremental direct ongoing costs *minus* the amount previously collected that was in excess of FINRA's incremental direct ongoing costs. Thereafter, with the benefit of at least approximately two years' experience with SLATE reporting and data product subscription activity, and additional information regarding costs, FINRA would file a proposed rule change establishing recalibrated, going-forward SLATE fees.<sup>18</sup> FINRA believes that this approach is reasonable in responding to commenters' concerns that FINRA may collect an amount materially in excess of FINRA's costs—which is not FINRA's intention in setting these fees—and provides commenters with preliminary insight into how monies materially in excess of costs would be applied pursuant to a subsequent proposed rule change for future fees.

ISLA and SIFMA also both recommended that FINRA decrease its reliance on transaction-based reporting fees in favor of higher fixed fees, such as system connectivity and market data fees.<sup>19</sup> Both commenters specifically recommended that FINRA replace the \$25 per month, per user ID connectivity fee with a \$5,000 annual charge per covered person

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<sup>16</sup> See Rule 7720(c) and (d).

<sup>17</sup> FINRA also may file a proposed rule change in the future, if through experience, FINRA believes that a different overall reporting and data product fee framework would be more appropriate.

<sup>18</sup> Cost drivers as well as the level of securities lending activity may fluctuate over time, impacting FINRA's anticipated and actual costs as these factors bear out; therefore, FINRA may reassess SLATE fees (as with other fees) to ensure that they are reasonably designed to meet FINRA's regulatory objectives in a manner consistent with FINRA's public [Financial Guiding Principles](#). See also Proposal, 89 FR 93750, 93755, n.60. FINRA does not intend to recalibrate SLATE fees on an annual basis thereafter.

<sup>19</sup> See ISLA Letter at 5; SIFMA Letter at 6.

or reporting agent.<sup>20</sup> FINRA continues to believe that, *ab initio*, the Proposal provides for the equitable allocation of reasonable fees and is consistent with the Exchange Act. FINRA also is concerned that assessing a \$5,000 connectivity fee on all reporting firms would fall short of Exchange Act standards.<sup>21</sup> An annual charge of \$5,000 per covered person would result in disparities whereby firms with limited reportable securities lending activity bear a disproportionate portion of SLATE cost recovery responsibility as compared to more active reporters. As stated in the Proposal, FINRA believes that it is equitable, reasonable, and consistent with the Exchange Act to require that the parties reporting data to SLATE be directly responsible for paying SLATE fees because the reporting process is a primary driver of the costs that the proposed fees are intended to recover.<sup>22</sup> The framework under the Proposal aligns responsibility for SLATE cost recovery with the parties generating the information collection costs<sup>23</sup> and commenters' recommended \$5,000 fee would inappropriately shift the bulk of SLATE fees away from the primary cost driver of operating the SLATE system.<sup>24</sup>

#### Other Comments

Commenters raised concerns that the Proposal may incentivize market participants to change their behavior to minimize reporting fees in ways that negatively impact market liquidity.<sup>25</sup> FINRA notes that, in its Adopting Release, the Commission recognized that SEA Rule 10c-1a may result in the assessment of fees by an RNSA on reporters and data users<sup>26</sup> and, notwithstanding such costs, the Commission stated its belief that SEA Rule 10c-1a

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<sup>20</sup> See ISLA Letter at 5; SIFMA Letter at 6-7. ISLA also suggested that FINRA increase data product fees to allocate more costs to market participants that benefit from the availability of such data (*e.g.*, hedge funds). See ISLA Letter at 4-5.

<sup>21</sup> Section 15A(b)(5) of the Exchange Act requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. See 15 U.S.C. 78o-3(b)(5).

<sup>22</sup> See 89 FR 93750, 93754.

<sup>23</sup> ISLA stated that the Proposal would inappropriately impose direct costs almost exclusively on the lender-side of the market. See ISLA Letter at 5. However, lenders generally are the parties responsible for reporting to an RNSA's system under SEA Rule 10c-1a. See SEA Rule 10c-1a(j)(1) for the definition of the term "covered person."

The Adopting Release also stated that "[t]he final rule will also impose direct costs on an RNSA responsible for collecting, maintaining, and distributing the data, who may pass on these costs by imposing fees on entities that provide Rule 10c-1a information to an RNSA and/or consumers of Rule 10c-1a data." See Adopting Release, 88 FR 75644, 75687 (*emphasis added*). See also 89 FR 93750, 93754.

<sup>24</sup> FINRA also notes that the Commission has repeatedly authorized FINRA to charge similar use-based reporting fees for other reporting systems. See *e.g.*, FINRA Rule 7710(b) (OTC Reporting Facility); and FINRA Rule 7730(a) (Trade Reporting and Compliance Engine).

<sup>25</sup> See ISLA Letter at 4-5; SIFMA Letter at 5-6.

<sup>26</sup> See Adopting Release, 88 FR 75644, 75693.

would “increase transparency in the securities lending market through improvements to the comprehensiveness, breadth, accuracy, and accessibility of securities lending data.”<sup>27</sup>

In addition, both commenters stated that FINRA’s per-transaction fees are significantly higher than the European Union’s Securities Financing Transactions Regulation (“SFTR”) fees. Specifically, ISLA stated that the per-transaction fees included in the Proposal are 800% higher than SFTR fees, while SIFMA stated that FINRA’s proposed per-transaction reporting fees are significantly higher as a percentage of the underlying currency than SFTR fees, which range from €0.007 to €0.00005.<sup>28</sup> FINRA notes that its proposed fees relate to cost recovery efforts and are based on FINRA’s own estimates of its incremental direct ongoing costs related to operating SLATE; it is therefore unclear how fees in Europe for SFTR bear any relevance to FINRA’s Proposal. FINRA also notes that the SFTR reporting regime is dissimilar in many regards to SEA Rule 10c-1a and SLATE’s planned functionality, such that the systems are not comparable.

For the reasons discussed above, FINRA continues to believe that the Proposal is consistent with Section 15A(b)(5) of the Exchange Act, including that the Proposal provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.<sup>29</sup> FINRA likewise believes that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>30</sup>

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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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<sup>27</sup> See Adopting Release, 88 FR 75644, 75706 (*citation omitted*).

<sup>28</sup> See ISLA Letter at 4; SIFMA Letter at 8.

<sup>29</sup> 15 U.S.C. 78o-3(b)(5).

<sup>30</sup> 15 U.S.C. 78o-3(b)(6).