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Invested in America

December 18, 2024

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

RE: File No. SR-FINRA-2024-020; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Fees in FINRA Rule 7720 (Securities Lending and Transparency Engine (SLATE™))

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment to the U.S. Securities and Exchange Commission (the "Commission" or "SEC") regarding the Financial Industry Regulatory Authority, Inc. ("FINRA") filing to establish securities loan reporting and securities loan data product fees ("SLATE Fee Proposal") related to securities loan reporting under FINRA's proposed Securities Lending and Transparency Engine ("SLATE").[2] For the reasons described below, SIFMA requests that the Commission temporarily suspend the SLATE Fee Proposal and issue an order instituting proceedings ("OIP") to review the filing and determine whether it meets the requirements of the Securities Exchange Act of 1934 (the "Exchange Act") for self-regulatory organization ("SRO") fee filings. Following its review, the Commission should disapprove the SLATE Fee Proposal because FINRA has not demonstrated that the fees are (i) reasonable, (ii) equitably allocated, (iii)

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] 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 (Nov. 21, 2024), 89 FR 93750 (Nov. 27, 2024).

not unfairly discriminatory, and (iv) not an undue burden on competition, as required by the Exchange Act.[3]

As discussed below, the SLATE Fee Proposal likely significantly underestimates the number of daily Initial Covered Securities Loan reports and Loan Modifications that will be submitted to SLATE, which would result in FINRA collecting significantly more revenue than is required to operate the SLATE system. In turn, excessive SLATE fees could create disincentives for market participants by, for example, discouraging lenders from transacting securities loans with smaller notional amounts and could otherwise affect liquidity in the underlying markets. FINRA should consider alternative approaches to avoid these unintended consequences, including increasing SLATE connectivity fees to reduce reliance on variable and unpredictable transaction-based fees.

Background

FINRA filed the initial SLATE proposal ("Initial Proposal")[4] on May 1, 2024 and a partial amendment to the Initial Proposal (the "Partial Amendment") on November 15, 2024.[5] FINRA is creating the new SLATE system pursuant to its obligations under Rule 10c-1a under the Exchange Act,[6] which the Commission adopted in October 2023 with the goal of increasing transparency in the securities lending market. In adopting Rule 10c-1a, the Commission provided FINRA with the authority to "establish and collect reasonable fees" in connection with establishing a securities loan reporting regime. While the current deadline for the Commission to approve or disapprove FINRA's Partial Amendment is January 2, 2025, no such deadline exists for FINRA to establish fees for its SLATE system.[7] FINRA is proposing that its SLATE fees become effective when SLATE reporting is scheduled to commence on January 2, 2026.

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[3] 15 U.S.C. § 78o-3(b)(5), (6), and (9).

[4] Notice of Filing of a Proposed Rule Change to Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)), Release No. 34-100046, SR-FINRA-2024-007 (May 1, 2024), 89 FR 38203 (May 7, 2024).

[5] 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. 34-101654, File No. SR-FINRA-2024-007 (Nov. 15, 2024), 89 FR 92228 (Nov. 21, 2024).

[6] 17 CFR § 240.10c-1a ("Rule 10c-1a"). See Release No. 34-98737 (Oct. 13, 2023), 88 FR 75644 (Nov. 3, 2023) (Reporting of Securities Loans) ("SEC Adopting Release").

[7] SIFMA submitted one comment letter in response to the Initial Proposal and SIFMA together with its Asset Management Group ("AMG") submitted a second comment letter in response to the Partial Amendment. See Letter from Robert Toomey and Joseph Corcoran, Managing Directors, SIFMA to Ms. Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission (May 28, 2024), available at https://www.sec.gov/comments/sr-finra-2024-007/srfinra2024007-478691-1370214.pdf and Letter from Robert Toomey and Joseph Corcoran, Managing Directors, SIFMA and Lindsey Weber Keljo and William Thum, Managing Directors SIFMA AMG to Ms. Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission (Dec. 6, 2024), available at https://www.sec.gov/comments/sr-finra-2024-007/srfinra2024007-545835-1563442.pdf.

SIFMA supports FINRA's collection of fees to recover the costs for building and operating the SLATE system pursuant to Rule 10c-1a. However, as discussed below, such fees must be reasonable and must otherwise meet the requirements for SRO fees under the Exchange Act. We believe that FINRA in its SLATE Fee Proposal significantly underestimated the number of daily Initial Covered Securities Loan and Loan Modification events that will be reported to the SLATE system on a daily basis, and that as a result, it will collect much more in revenue than it needs to fund the SLATE system, resulting in a proposal for the collection of excessive and unreasonable fees that is inconsistent with the Exchange Act requirements for SRO fees.

Summary of the Proposal

In the SLATE Fee Proposal, FINRA states that "the proposed fees are designed to generate an amount of revenue that is calibrated to align with the estimated incremental direct ongoing costs associated with the SLATE program[.]"[8] FINRA estimated its annual incremental direct ongoing costs to operate the SLATE system from 2026-2028 would be approximately $4.5 million, and approximately $4.4 million annually thereafter.

The SLATE Fee Proposal imposes fees via three components, a charge for connecting to the SLATE System, a charge for each securities loan event reported to the system, and subscription charges to receive certain SLATE data. To generate sufficient revenue to recover the estimated annual SLATE operating costs, FINRA estimated the number of Covered Persons and Reporting Agents that will connect to the SLATE system,[9] the daily number of expected loan events in each category, and the anticipated level of subscriptions to the SLATE data products.

FINRA stated that to develop the estimates related to "the anticipated number and type of SLATE reports" it "used data gathered through outreach to industry participants, including data vendors, agent lenders, prime brokers, retail brokers, and beneficial owners." FINRA estimated that on a daily basis, there will be approximately 125,000 Initial Covered Securities Loan reports, 200,000 Loan Modification reports, 1,000 corrections, cancellations, and deletions, and 1,000 late reports.

Using the estimated daily number of reports for each event type, FINRA established reporting fee levels that, combined with the connectivity and SLATE data subscriptions fees, would generate approximately $4.5 million annually. Specifically, the SLATE connectivity fee

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[8] The SLATE Fee Proposal also states: "[T]he proposed fees generally are consistent with FINRA's efforts to align its operating expenses with its operating revenues, target break-even cash flows, and continue to responsibly manage expenses driven by mandatory initiatives in a manner consistent with FINRA's public Financial Guiding Principles."

[9] For these numbers, FINRA used the Commission's estimates from the Rul 10c-1a adopting release.

is $25 per month per user ID, and FINRA estimated that total annual connectivity fees will generate $365,400. The transaction reporting fees are broken down as follows: (1) $0.07 per Initial Covered Securities Loan report; (2) $0.03 per Loan Modification report; (3) $0.10 per cancellation, correction, and deletion report; and (4) $0.20 per Initial Covered Securities Loan or Loan Modification reports that are late. Based on the number of reports projected in each of these categories, FINRA estimated that the total annual transaction-based reporting fees (not including the connectivity fees) will be approximately $3,839,850.

FINRA also proposes to establish the following SLATE data product fees: (1) $3,000 per month for market participants that wish to receive daily the SLATE Loan-Level Data and Daily Loan Statistics, (2) $10,000 per month for vendors and other market participants that wish to redistribute those data sets, and (3) a one-time $2,000 set-up fee and a $5,000 calendar year fee for market participants that wish to receive Historic SLATE Data.[10] FINRA estimates these subscription fees will generate $250,000 annually. Therefore, in total, FINRA estimates its proposed SLATE fees will generate $4,455,250 per year. As currently proposed, the transaction-based revenue would generate most of these fees (86%).

SIFMA is Concerned that FINRA Significantly Underestimated the Number of Daily Covered Securities Loan Reports

SIFMA members have had insufficient time to review SLATE Fee Proposal, and continue to review vendor and member firm data to better understand whether the reporting event estimates FINRA used in the Proposal are accurate. The Commission published the SLATE Fee Proposal on November 21, 2024, which was ten business days before the expiration of the comment period for FINRA's Partial Amendment to the SLATE rules (and also spanned the Thanksgiving holiday). As a result of our focus on drafting a comment letter on the Partial Amendment within the comment period, SIFMA has not had sufficient time to conduct the analysis necessary to generate estimates of the average number of Initial Covered Securities Loans and Loan Modifications per day.

Based on our preliminary review, however, as well as consultation with the International Securities Lending Association ("ISLA") Americas, SIFMA members believe FINRA has materially underestimated the number of daily loan events that Covered Persons will report to SLATE that will be subject to SLATE fees. Specifically, FINRA's estimates of the number of Initial Covered Securities Loans and Loan Modifications appear to be significantly lower than the data reviewed so far by SIFMA members. If the actual number of Covered Securities Loan events reported to SLATE on a daily basis is materially higher than FINRA's estimates, which we believe is the case, FINRA's heavy reliance on transaction-based reporting fees in its

[10] Qualifying tax-exempt organizations will pay half of the listed rates for daily receipt of the SLATE Loan-Level Data and Daily Loan Statistics ($1,500), the one-time set-up fee for Historic SLATE data ($1,000), and receipt of Historic SLATE Data ($2,500).

proposal will generate much more revenue than FINRA estimated. After we have had more time to review relevant data, we would like to meet with FINRA to further discuss our findings.

The securities lending market is broad with many institutional and retail participants. Generally, the securities lending market, as covered under Rule 10c-1a and the SLATE rules, is comprised of agent lender loans, broker-to-broker loans, broker-dealers borrowing shares from customers, retail broker-dealers loaning shares to customers, intercompany broker loans, and securities loan transactions with customers pursuant to arranged financing agreements. While agent lenders will be a large contributor to the daily number of securities loan reports to SLATE, this number is only a subset of the overall daily number of loan transactions that occur in the securities lending market and that will be reported to SLATE. SIFMA has been speaking with its members to gather estimates about the daily number of loan transactions from these other sources and is continuing to do so, but given the very short time frame to comment and the large SIFMA membership, SIFMA needs more time to gather requisite data to feel comfortable providing a representative estimate of the size of the securities lending market that will be subject to SLATE reporting. However, in speaking with ISLA Americas, based on preliminary estimates from fewer than 10 of its agent lender members, the FINRA SLATE Fee Proposal would generate more than $6 million in SLATE reporting fees per year.

Based on this limited estimate, as well as the fact that many loan transactions (and daily reportable events under Rule 10c-1a) occur outside of the agent lending space, SIFMA believes that FINRA has materially underestimated the amount of loan transaction fees its SLATE Fee Proposal will generate. We therefore believe that the Commission should suspend and ultimately disapprove the proposal because FINRA has not demonstrated that the fees are reasonable and otherwise meet the requirements for SRO fees under the Exchange Act.[11]

The Current Proposal Could Alter Behaviors in the Securities Lending Market

In addition to likely raising significantly more revenue than projected, the proposed securities loan reporting fees could potentially have the effect of changing the way the securities lending market operates by incentivizing market participants to change lending behaviors to minimize the impact of the excessive fees. For example, lenders could potentially avoid transacting loans with small notional amounts that already provide limited economic upside when they factor in the additional transaction fees. This potential outcome appears to be inconsistent with the establishment of SLATE and could have wider impacts on the liquidity of

[11] As discussed in our prior comment letters, SIFMA is of the view that, notwithstanding the statements made in the SEC Adopting Release, unsettled loans are not transactions, and therefore should not be required to be reported to SLATE as Initial Covered Securities Loans. See supra n. 7, Dec. 6, 2024 letter at n. 9. However, if these unsettled loans are required to be reported to SLATE as Initial Covered Securities Loans, and modifications to these reports also would be required to be reported as Loan Modifications, SIFMA members believe this would significantly increase the number of daily SLATE reports and render FINRA's estimates in its SLATE Fee Proposal even more inaccurate.

the underlying equity and fixed income markets by, for example, discouraging short selling activity by making it more costly for market participants to do so. It could also make it more costly and less profitable for lending participants (e.g., pensions, endowments, retail investors) to participate in the securities lending market and in extreme scenarios, cause them to exit the securities lending market, which could have an adverse impact on market liquidity. With these considerations in mind, SIFMA believes that it is critical when determining the reasonableness of proposed SLATE fees that the industry is provided a reasonable period of time to carefully consider and provide informed feedback regarding the potential impact of the fee structure (both in design and the prescribed amount of the fees) on the securities lending market and broader cash markets. The current SLATE Fee Proposal, which was filed for immediate effectiveness, is not an approach that allows for reasonable refinements based on industry feedback.

As described below, we believe that there are ways that the proposal can be modified to help reduce the chance of such unintended adverse outcomes. A Commission suspension of the proposal would afford FINRA and market participants more time to work together to develop a fee structure that allows FINRA to recoup its costs while also limiting the impact of the fees on the overall functioning of the securities lending market.

FINRA Should Consider Alternative Approaches to SLATE Fees, Including Increasing the Connectivity Fee to Reduce the Variability and Unpredictability of the Fees

FINRA stated in the SLATE Fee Proposal that it "considered the potential impact of the proposed SLATE reporting fee structure on securities lending activities."[12] Further, FINRA noted that lenders may pass along the cost of SLATE reporting fees to beneficial owners, which "may affect how Covered Persons structure or conduct their securities lending business—e.g., how lending agents determine to structure pool or lending programs."[13] To mitigate the potential impacts of the fees on the securities lending market, SIFMA members have held preliminary discussions on ways FINRA could restructure the proposed SLATE fees.

The current fee structure appears to be too heavily reliant on the transaction-based component, where approximately 86% of the total SLATE fees would be generated via transaction reports. The number of securities lending transactions can vary significantly from day-to-day based on several unpredictable factors, including news events or index rebalances as two examples. Therefore, to achieve more predictability and less volatility in the fees Covered Persons must pay (and budget) from week-to-week and month-to-month, FINRA should consider decreasing its reliance on transaction-based fees and should fund most (or all) SLATE costs through fixed, rather than variable, fees.

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[12] 89 FR at 93756.

[13] Id.

One preliminary approach that SIFMA members have discussed is a modification to the proposed $25 per month user ID fee. In the proposal, FINRA estimated that each of the 609 Covered Persons will have two user accounts and that the total connection fees per year would therefore yield $365,400. SIFMA preliminarily believes that FINRA should explore whether this connectivity fee should be higher to help fund SLATE. For example, if the 609 covered persons each paid $5,000 per year in connectivity fees, that would generate more than $3 million in revenue for FINRA to offset its total SLATE costs. SIFMA also believes that FINRA is significantly underestimating the level of market participant interest in subscribing to receive SLATE data, and that revenue from this source will be significantly higher than the estimate of $250,000 per year, even in the first year.

This approach of relying on user fees to fund most of the SLATE costs also would reduce the complexity involved in the current approach of relying on transaction reporting fees, which in turn should save on overall costs of compliance for industry participants. If SLATE fees come from user and subscription fees rather than transaction reports, the programming complexities, reconciliation, and allocation costs associated with establishing a transaction-based fee funding mechanism – such as establishing a reconciliation process to make sure a firm is being billed the correct amount by FINRA – could be eliminated.

SIFMA also notes that the per-transaction fees included in the SLATE Fee Proposal are significantly elevated compared to other transaction-based fee regimes for similar regulatory systems. For example, Europe's Securities Financing Transaction Regulation ("SFTR") fees, which are charged based on the number of submissions per month, are very low fractions of a Euro (ranging from €0.007 to €0.00005). The per-transaction fees included in the SLATE Fee Proposal are significantly higher as a percentage of the underlying currency (i.e., dollars), ranging from $0.07 to $0.20. These proposed per-transaction fees could be reduced (or eliminated) if FINRA increased the level of connectivity and subscriber fees. Further, securities loans are unique relative to cash market transactions in terms of the occurrence of multiple reportable events over the lifecycle of a single transaction. Each of these reportable events can trigger the assessment of a separate fee under the current SLATE proposal, adding to the complexity of the implementation of this transaction-dependent fee structure relative to other approaches.

Cap the Annual Total Amount of SLATE Fees

FINRA estimated that its annual cost to operate SLATE will total $4.5 million for the first three years, and $4.4 million annually thereafter. While we appreciate FINRA's statement that it will revisit the proposed SLATE fees if necessary after SLATE comes online in 2026,[14] to

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[14] 89 FR 93753 ("FINRA intends to reassess the SLATE reporting fees and data products and associated fees after the commencement of SLATE reporting and dissemination and obtaining additional information regarding reporting volumes and subscription interest. To the extent that FINRA determines that a change to the SLATE fee structure

the extent FINRA continues to follow the current approach of relying on transaction-based fees for a majority of SLATE funding despite our suggestions above, we urge FINRA to consider whether it should establish an annual cap on SLATE fee revenue at $4.5 million so that FINRA does not collect more in annual fees than the amount of its break-even cost. For example, if the level of covered securities loans reported to SLATE by July of a given year are such that FINRA has assessed the $4.5 million level of fees necessary for it to break even for that year, FINRA should not continue to assess SLATE fees on additional reports of covered securities loans for the rest of that year. The options exchanges often apply a similar approach when collecting options regulatory fees ("ORF"), though we note that the ORF funding model is extremely flawed and in need of significant reform.

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SIFMA appreciates the opportunity to respond to FINRA's SLATE Fee Proposal. As discussed above, the Commission should suspend the SLATE Fee Proposal, issue an OIP, and ultimately disapprove the proposal as being inconsistent with the Exchange Act standards for SRO fees. We would welcome the opportunity to meet with Commission and/or FINRA staff to further discuss our comments and recommendations. If you have any questions or need any additional information, please contact Robert Toomey at (212) 313-1124 or Joe Corcoran at (202) 962-7383.

Sincerely,

Robert Toomey
Managing Director and Associate General Counsel
Head of Capital Markets
SIFMA

Joseph Corcoran
Managing Director and Associate General Counsel
SIFMA

Cc: Ms. Lauren Schreur, Associate General Counsel, FINRA
Ms. Racquel Russell, Senior Vice President and Director of Capital Markets, FINRA

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would be appropriate to better align SLATE revenues with the incremental direct ongoing costs incurred in connection with the SLATE program, FINRA would file a proposed rule change with the Commission pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder.").