



asset management group

July 31, 2024

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

Re: Release No. 34-100046; File No. SR-FINRA-2024-007 Notice of Filing of a Proposed Rule Change To Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™))

Dear Ms. Countryman:

The Asset Management Group of the Securities Industry and Financial Markets Association (“**SIFMA AMG**”)¹ appreciates the opportunity to provide comments to the Securities and Exchange Commission (the “**Commission**” or “**SEC**”) on the above-referenced Financial Industry Regulatory Authority, Inc. (“**FINRA**”) proposal to adopt FINRA Rule 6500 Series (the “**Proposed Rule Change**”), requiring reporting of securities loans and providing for the public dissemination of loan information.²

Overview

In October 2023, the Commission adopted Rule 10c-1a under the Securities and Exchange Act of 1934, directing FINRA to implement rules regarding the format and manner of collecting prescribed securities loan information and the publication of such information.³ SIFMA AMG provided written comments during the notice and comment period sharing recommendations on the Commission’s proposal.⁴

¹ SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG’s members represent U.S. and global asset management firms whose combined assets under management exceed \$45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

² Exchange Act Release No. 100046, SR-FINRA-2024-007 (May 1, 2024), 89 FR 38203 (May 7, 2024) (Notice of Filing of a Proposed Rule Change To Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™))).

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

⁴ SIFMA AMG Letter from Lindsey Weber Keljo, Acting Head to Vanessa A. Countryman, Secretary, SEC, on Proposed Rule 10c-1 (January 7, 2022), available at <https://www.sec.gov/comments/s7-18-21/s71821-20111386-264989.pdf>.

SIFMA AMG members have significant concerns with FINRA’s Proposed Rule Change. These concerns include, but are not limited to:

Executive Summary

- I. **The Proposed Rule Change Re-Introduces Intraday Reporting Despite the Commission’s Rejection of Such Requirements.** The Proposed Rule Change re-introduces intraday reporting requirements for securities loan adjustments despite the Commission’s previous rejection of such requirements. The re-introduction of intraday reporting would have significant unintended negative consequences.
- II. **The Proposed Rule Change Exceeds the Scope of the Commission’s Requirements, Resulting in the Disclosure of Sensitive Trading Information and Creating Additional Reporting Costs.** SEC Rule 10c-1a directed FINRA to implement rules regarding the format and manner of its collection of securities loan information. However, the Proposed Rule Change would implement numerous additional reporting requirements beyond those required under Rule 10c-1a, which is inconsistent with the Commission’s final rule and would result in the disclosure of highly sensitive information and contribute to increased costs and complexity.
- III. **The Comment Period Should be Extended to Evaluate FINRA’s Complex Proposal.** Firms have not had enough time to evaluate and more fully understand the new reporting regime contemplated under the Proposed Rule Change. We recommend that the Commission extend the 45-day review period to allow for further consideration and opportunity for public comment.

Discussion

- I. **The Proposed Rule Change Re-Introduces Intraday Reporting Despite the Commission’s Rejection of Such Requirements**

The Commission’s Proposing Release for Rule 10c-1a initially required covered persons to report new covered securities loans or modifications within 15 minutes after the loan or modification was effected.⁵ However, the Commission ultimately rejected this approach in response to concerns from commenters, noting “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.”⁶

⁵ 86 FR 69802 (Dec. 8, 2021) (Reporting of Securities Loans) (“SEC Proposing Release”) at 69812.

⁶ SEC Adopting Release, 88 FR at 75679.

The Commission observed 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.”⁷ In light of these concerns, the Commission adopted a single, end-of-day reporting requirement to help prevent “an excessive number of incomplete or slightly modified reports that otherwise would occur throughout the day without providing any incremental value.”⁸

Despite the Commission’s rejection of such an approach, the Proposed Rule Change would re-introduce intraday reporting requirements, requiring covered persons to report on all intraday adjustments to new or existing securities loans.⁹ As the Commission cautioned when adopting the final framework for end-of-day reporting, reporting of such intraday activity would result in high reporting volume that provides little value, while creating significant unintended consequences. Given these concerns, we recommend the removal of intraday reporting requirements from the Proposed Rule Change, consistent with the Commission’s reasoning in adopting Rule 10c-1a.

In discussions with Commission Staff, we understand that interest in intra-day reporting may arise from concerns related to market practices whereby, at times, a borrower may seek to upsize, downsize, and/or cancel a loan in the course of a day. It is important for the Commission to understand the workings of the market and we would appreciate the opportunity to describe these situations and how they should be perceived from a public policy perspective related to the impact on the economics and/or risk arising from loans.

With respect to the upsizing of a loan position, once a borrower initiates a loan early in the day it can initiate additional loans involving the same security over the course of the day. Each such loan is treated as a separate loan, each having its unique pricing as well as an individual fee. In other words, a borrower can initiate a borrow of \$50 shares of a security at 11:00am (involving a specific price and fee); and initiate an additional borrow of \$25 shares of the same security at 2:00pm (involving a new price and fee) and thereby have two loans, each on the same security, but each with a different size, price, and fee. Consistent with our recommendation, each such loan should properly be required to be reported at the end of the day.

With respect to the downsizing of a loan, once a loan is initiated, a borrower can effectively return any portion of such a loan – up to 100% of the loan – throughout the same day. As revenue is calculated once at the end of each day, all that matters is the size of each individual loan at day’s end. In other words, if a borrower initiates a borrow of \$50 shares of a security at

⁷ Id.

⁸ SEC Adopting Release, 88 FR at 75680.

⁹ Proposed FINRA Rule 6530(b)(2)(A) and (B).

11:00am (involving a specific price and fee), the borrower can return a portion of such loan before the end of the day with the only impact being a transaction fee for the return. The original price of the original loan will be used for valuation purposes of any remaining loan at the end of the day. Consistent with our recommendation, such remaining loan should properly be required to be reported at the end of the day.

Just as a loan can be downsized without pricing implications same day, it can also be effectively cancelled – whereby a borrower returns 100% of the original loan – same day. In other words, as loan revenue is calculated at the end of the day, all that matters is the size of the loan position at the end of the day. If the borrower has returned 100% of a loan, there is no loan position at the end of the day for valuation. Of course, there will still be a transaction fee for the initial loan as well as a smaller transaction fee for the returns, however we assert such transaction fees are irrelevant with respect to the SEC’s public policy goals. Consistent with our recommendation, as there is no remaining loan, there is nothing to report at the end of the day.

While the reporting of new loans initiated same day is proper and consistent with the Commission’s public policy goals, the reporting of loans that have either been partially returned or completely cancelled can only reflect the end of day loan position – which would be consistent with the Commission’s stated preference of avoiding incomplete intraday reporting.¹⁰

II. The Proposed Rule Change Exceeds the Scope of the Commission’s Requirements, Resulting in the Disclosure of Sensitive Trading Information and Creating Additional Reporting Costs

SEC Rule 10c-1a directed FINRA (as the only existing Registered National Securities Association) to implement rules regarding the format and manner of its collection of securities loan information and the publication of such information.¹¹ Importantly, Rule 10c-1a prescribed specific data elements required to be reported.¹² Though the Rule allowed FINRA to define “the format and manner in which it collects Rule 10c-1a information”,¹³ the Commission did not authorize FINRA to mandate the reporting of additional data elements, nor did it intend for FINRA to make such data publicly available at the level of granularity established under the Proposed Rule Change.

¹⁰ Id supra n. 8.

¹¹ SEC Adopting Release.

¹² SEC Adopting Release, 88 FR at 75682.

¹³ Id.

A. The Publication of Aggregate Data Filtered by Borrower Type Under the Proposed Rule Change Risks Exposing Sensitive Trading Information

SEC Rule 10c-1a directs FINRA to “make publicly available, on a daily basis, information pertaining to the aggregate transaction activity and distribution of loan rates for each reportable security and the security identifier(s)” under applicable sections of the Rule.¹⁴ The Commission stated that “aggregate transaction activity, as used in the final rule, refers to information pertaining to the *absolute value of transactions* such that net position change 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.”¹⁵ The Commission further explained that “it would not be possible to use [aggregate transaction activity information] to discern information about, for example, changes in net short sale positions.”

Notwithstanding the final rule and Commission direction, FINRA proposes to publish aggregate securities loan information on a next-day basis disaggregated by borrower type.¹⁶ Thus, rather than publishing the aggregate loan transaction activity described in the final rule, the FINRA proposal would provide significant next-day information regarding customer borrowing activity. Disaggregating loan activity in this manner is directly inconsistent with the final rule. Publishing loan data disaggregated by borrower type exposes sensitive information and proprietary trading strategies to disclosure. Disaggregating loan data in this manner is inconsistent with the final rule and the Commission’s discussion and analysis therein and should be removed from the proposal.

To address information leakage concerns, the Proposed Rule Change would implement a de minimis threshold for securities of which there are three or fewer types of securities loans and modifications reported in a given day.¹⁷ While establishing a de minimis threshold is important for addressing concerns regarding the exposure of sensitive information, the proposed de minimis threshold is unreasonably low. Moreover, FINRA failed to explain or provide data supporting how this threshold number was determined. In the event FINRA’s inconsistent disaggregated reporting requirement is not struck, further analysis and public engagement is needed to determine the appropriate threshold level to effectively address such concerns.

¹⁴ SEC Adopting Release, 88 FR at 75742.

¹⁵ Adopting release at 146 (emphasis added).

¹⁶ Proposed FINRA Rule 6530(a)(2)(N).

¹⁷ Proposed FINRA Rule Supplementary Material .01 De Minimis Loan Transaction Activity.

B. The Additional Reporting Requirements Under the Proposed Rule Change Increase Complexity and Costs

SEC Rule 10c-1a prescribed a specific set of data elements required to be reported.¹⁸ Nevertheless, the Proposed Rule Change would add numerous new reporting requirements, including the reporting of data regarding the expected settlement dates and fees of covered securities loans, status of covered persons, and identifying information regarding allocations and modifications of omnibus loans.¹⁹ The Proposed Rule Change would also create new categories of reportable data, referred to as “modifiers and indicators”.²⁰ Data required to be reported under these provisions would include identifying information regarding loans with affiliates and loans with rate or fee adjustments, among other requirements.²¹

The affiliate loan indicator was included in the Proposed Rule Change due to concerns that affiliate relationships between borrowers and lenders or intermediaries could impact borrowing costs, giving rise to loans inconsistent with current market rates.²² However, intermediaries negotiating loans may not be aware of affiliate relationships between borrowers and lenders and are reliant on lenders to disclose affiliate relationships. Moreover, most loans to affiliates are negotiated on an arm’s length basis at market rates. It is not clear that adding an affiliate indicator to these transactions would add any additional value to the reporting and could potentially expose highly sensitive confidential information. Similarly, the loan rate and fee adjustment indicator would be difficult to implement, as lending systems may not track the reasons for rate changes and billing adjustments. It is unclear what value this new indicator would add.

The Proposed Rule Change would also introduce reporting requirements for adjustments to loan rebates through the use of a rebate/fee modifier.²³ Such reporting requirements would be difficult to implement, as rebate rates are typically set by reference to a fixed benchmark and may fluctuate in value. The Commission considered this concern, concluding that the extent of the difficulty regarding benchmark price reporting “will be determined by how an RNSA chooses to structure the reporting of this variable. For instance, if an RNSA chooses to allow market participants to report a spread and a benchmark, then no modifications will be required to

¹⁸ SEC Adopting Release, 88 FR at 75682.

¹⁹ Proposed FINRA Rule 6530(a), (b).

²⁰ Proposed FINRA Rule 6530(c).

²¹ Id.

²² Notice of Filing of a Proposed Rule Change To Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)), 89 Fed. Reg. 38203 at 38208 (May 7, 2024) available at <https://www.govinfo.gov/content/pkg/FR-2024-05-07/pdf/2024-09847.pdf> (“FINRA Proposing Release”).

²³ Proposed FINRA Rule 6530(c)(5).

be reported from day to day unless there were a change in the negotiated spread or benchmark. However, if an RNSA chooses to require market participants to report the total fee, then market participants will be required to report changes to the fee if the benchmark changes, which can require daily revisions.”²⁴

Despite the Commission’s acknowledgement of potentially heightened reporting difficulties, FINRA’s Proposed Rule Change does not provide for the reporting of a spread and a benchmark, instead requiring the disclosure of the rebate rate and “any other fees or charges”.²⁵ As such, under the Proposed Rule Change, covered persons would be required to report loan modifications when benchmark rates change, despite the underlying economic terms of the loan not having changed. The required reporting of such benchmark rate changes would be onerous and would provide little valuable information to the marketplace. Instead, FINRA should allow for the reporting of a spread and a benchmark rate, consistent with the approach described by the Commission.

In addition, the Proposed Rule Change would require covered persons to report the Legal Entity Identifier (“LEI”) of the loan issuer.²⁶ While this reporting obligation was mandated under Rule 10c-1a,²⁷ LEI information is not available to market participants in a systematic way. It would be highly costly for market participants to build out systems to obtain this data compared to using existing identifiers. Considered in conjunction with the additional reporting requirements previously discussed, market participants would face significant compliance costs under the Proposed Rule Change.

The additional reporting requirements under the Proposed Rule Change would create new layers of complexity for covered persons. Such complexity would likely lead to increased reliance on reporting agents for compliance purposes, increasing costs and data security concerns. These costs would be compounded by the obligation under the Proposed Rule Change for covered persons to ensure that reporting agents file timely, accurate, and complete data.²⁸

Ultimately, these additional reporting and compliance costs will make securities lending more expensive, adversely impacting market participants and investors. Such costs were not taken into consideration by the Commission’s cost-benefit analysis under Rule 10c-1a. By imposing new reporting obligations that were not subject to thorough cost-benefit analysis, the

²⁴ SEC Adopting Release at 75672.

²⁵ Proposed FINRA Rule 6530(a)(2)(I), (K).

²⁶ Proposed FINRA Rule 6530(a)(2)(A).

²⁷ SEC Adopting Release at 75741.

²⁸ Proposed FINRA Rule 6530(d)(3).

Proposed Rule Change would hinder the ability of industry participants to meaningfully consider and comment on critical securities lending reporting requirements.

III. The Comment Period Should be Extended to Evaluate FINRA's Complex Proposal

While FINRA's Proposed Rule Change prescribes additional reporting requirements for covered persons, important details regarding fees for commercial use of public data and technical specifications have not been published yet. Absent further clarification, market participants will not be able to adequately weigh the costs and benefits under the Proposed Rule Change. Given these additional reporting requirements and remaining questions, we request that the Commission extend the 45-day review period to further consider FINRA's proposal and provide industry participants an opportunity to thoroughly comment the Proposed Rule Change.

On behalf of SIFMA AMG, we appreciate the Commission's consideration of our comments and recommendations on the Proposed Rule Change. If you have any questions or require additional information, please do not hesitate to contact us by calling Lindsey Keljo at (202) 962-7312 or William Thum at (202) 962-7381.

Sincerely,



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cc: The Honorable Gary Gensler, Chair
The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
The Hon. Mark T. Uyeda, Commissioner
The Hon. Jamie Lizárraga, Commissioner