

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100655; File No. SR–FINRA–2024–007]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule To Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™))

August 5, 2024.

I. Introduction

On May 1, 2024, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission” or “SEC”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”) ¹ and Rule 19b–4 thereunder, ² a proposed rule change to adopt the new FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)) to (1) require reporting of securities loans; and (2) provide for the public dissemination of loan information. The proposed rule change was published for comment in the **Federal Register** on May 7, 2024. ³ The Commission received comments in response to the proposal. ⁴ On June 10, 2024, the Commission extended until August 5, 2024, the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. ⁵ This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act ⁶ to determine whether to approve or disapprove the proposed rule change.

II. Summary of the Proposed Rule Change

As described in more detail in the Notice, FINRA stated it is proposing, consistent with Exchange Act Rule 10c–1a, to adopt the new FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)) to establish reporting requirements for covered securities loans and to provide for the dissemination of individual and

aggregate covered securities loan information and loan rate statistics. These proposed rules would define key terms for the reporting of covered securities loans and specify the reporting requirements with respect to both initial covered securities loans and loan modifications, including prescribing required modifiers and indicators. ⁷ FINRA stated that it intends to file separately a proposed rule change to establish covered securities loan reporting fees and securities loan data products and associated fees. ⁸

According to FINRA, the proposed Rule 6500 Series is designed to improve transparency and efficiency in the securities lending market, consistent with Section 15(A)(b)(6) of the Exchange Act, Rule 10c–1a, and Section 984 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. ⁹ FINRA stated that the proposed rule change would do so by facilitating the collection of specified securities loan information from Covered Persons and Reporting Agents, which include non-FINRA members, and providing access to such information to market participants, the public, and regulators. ¹⁰

A. Reporting Initial Covered Securities Loans

Proposed Rule 6530(a) would govern the reporting requirements applicable to Covered Persons for reporting Initial Covered Securities Loans. ¹¹ Proposed Rule 6510(e) would define “Initial Covered Securities Loan” as a new Covered Securities Loan not previously reported to SLATE. The definitions of “Covered Person” and “Covered Securities Loan” for the purposes of this proposed rule change would be the same as set forth in Rule 10c–1a. Initial Covered Securities Loans would be required to be reported within the time periods outlined in proposed Rule 6530(a)(1) (When and How Initial Covered Securities Loans Are Reported). Specifically, for Initial Covered Securities Loans effected on a business day at or after 12:00:00 a.m. Eastern Time (“ET”) through 7:45:00 p.m. ET, the required information must be reported the same day before 8:00:00 p.m. ET. ¹² For Initial Covered Securities Loans effected on a business day after 7:45:00 p.m. ET, the required information must be reported no later

than the next business day (T+1) before 8:00:00 p.m. ET; ¹³ and Initial Covered Securities Loans effected on a Saturday, a Sunday, a federal or religious holiday or other day on which SLATE is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T+1) before 8:00:00 p.m. ET. ¹⁴

Proposed Rule 6530(a)(2) (Loan Information To Be Reported) would specify the items of information that must be reported to FINRA. Specifically, proposed Rule 6530(a)(2)(A) through (N) would require that Initial Covered Securities Loan reports must contain the below non-confidential data elements:

- (1) The legal name of the security issuer and the LEI of the issuer (if the issuer has a non-lapsed LEI);
- (2) Security symbol, CUSIP, ISIN, or FIGI, if any;
- (3) The date the Covered Securities Loan was effected;
- (4) The time the Covered Securities Loan was effected;
- (5) The expected settlement date of the Covered Securities Loan;
- (6) The platform or venue where the Covered Securities Loan was effected;
- (7) The amount of the Reportable Securities loaned;
- (8) The type of collateral used to secure the Covered Securities Loan;
- (9) For a Covered Securities Loan collateralized by cash, the rebate rate;
- (10) For a Covered Securities Loan not collateralized by cash, the securities lending fee;
- (11) Any other fees or charges;
- (12) The percentage of collateral to value of Reportable Securities loaned required to secure such Covered Securities Loan;
- (13) For a Covered Securities Loan with a specified term, the termination date of the Covered Securities Loan; ¹⁵
- (14) Whether the borrower is a Broker or Dealer, a customer (if the person lending securities is a Broker or Dealer), a Clearing Agency, a Bank, a Custodian, or other person.

Proposed Rule 6530(a)(2)(O) through (U) would also require that Initial Covered Securities Loan reports contain the below confidential data elements:

- (1) If known, the legal name of each party to the Covered Securities Loan (other than the customer from whom a

¹³ See proposed Rule 6530(a)(1)(B).

¹⁴ See proposed Rule 6530(a)(1)(C).

¹⁵ FINRA stated that this field would remain blank if reporting a Covered Securities Loan without a specified term (*i.e.*, an open-ended loan). However, upon the termination of an open-ended loan, as is the case with a term loan, a Covered Person would be required to submit a Loan Modification appending the terminated loan indicator pursuant to proposed Rule 6530(c)(4).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 100046 (May 1, 2024), 89 FR 38203 (May 7, 2024) (“Notice”). All defined terms herein have the same meaning as they do in the Notice.

⁴ Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-finra-2024-007/srfinra2024007.htm>.

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

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ Notice, 89 FR 38206.

⁸ Notice, 89 FR 38206.

⁹ Notice, 89 FR 38213.

¹⁰ Notice, 89 FR 38213.

¹¹ As described in more detail in the Notice, a Covered Person may engage a Reporting Agent to comply with the reporting obligations on its behalf.

¹² See proposed Rule 6530(a)(1)(A).

Broker or Dealer borrows fully paid or excess margin securities pursuant to SEA Rule 15c3-3(b)(3));

(2) If known, the CRD Number or IARD Number of each party to the Covered Securities Loan, if applicable;

(3) If known, the MPID of each party to the Covered Securities Loan;

(4) If known, the LEI of each party to the Covered Securities Loan;

(5) If known, whether each party to the Covered Securities Loan is the lender, the borrower, or an intermediary between the lender and the borrower;

(6) If the person lending securities is a Broker or Dealer and the borrower is its customer, whether the security is loaned from the Broker's or Dealer's securities inventory to the customer of such Broker or Dealer; and

(7) If known, whether the Covered Securities Loan is being used to close out a fail to deliver pursuant to Rule 204 of SEC Regulation SHO or to close out a fail to deliver outside of Regulation SHO.

Additionally, proposed Rule 6530(a)(2)(V) through (Y) would require a Covered Person to report:

(1) Whether the Covered Person is the lender, borrower or intermediary;

(2) The unique internal identifier assigned to the Covered Securities Loan by the Covered Person responsible for reporting the loan to SLATE;

(3) If the Covered Securities Loan is an allocation of an omnibus loan effected pursuant to an agency 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;

(4) Such modifiers and indicators as required by either the Rule 6500 Series or the SLATE Participant specification.

FINRA stated that the modifiers and indicators—set forth in proposed Rule 6530(c) (Modifiers and Indicators)—would apply to specific scenarios where additional detail is appropriate to clarify the information required to be reported pursuant to proposed Rule 6530(a)(2) and (b)(2). FINRA stated that it intends to use these modifiers and indicators to provide regulators and the public with important information regarding the reported securities loan. Specifically, proposed Rule 6530(c)(1) (Exclusive Arrangement) would require a Covered Person to append an indicator to identify a loan made pursuant to an exclusive arrangement with the borrower or intermediary. Proposed Rule 6530(c)(2) (Loan to Affiliate) would require a Covered Person to append an indicator to identify a loan made to an Affiliate of the lender or intermediary.

Proposed Rule 6530(c)(3) (Unsettled Loan) would require a Covered Person to append an indicator to identify an Initial Covered Securities Loan or modification to the amount of Reportable Securities loaned that did not settle by the close of SLATE System Hours on the expected settlement date reported to SLATE. Proposed Rule 6530(c)(4) (Terminated Loan) would require a Covered Person to indicate when a Covered Securities Loan has been terminated. The terminated loan indicator would therefore be required to be appended on reports of: (1) an Initial Covered Securities Loan that did not and will not settle; and (2) Loan Modifications reporting the termination of a Covered Securities Loan (whether an open-ended or a term loan).

Proposed Rule 6530(c)(5) (Rate or Fee Adjustment) would require a Covered Person to report the appropriate modifier if a loan rebate rate or lending fee accounts for: (1) a billing adjustment or correction to amounts previously rebated or charged; or (2) the value of a distribution or other economic benefit associated with the Reportable Security, *e.g.*, a corporate action. Similarly, proposed Rule 6530(c)(6) (Basket Loan) would require a Covered Person to report the appropriate modifier if a loan rebate rate or lending fee reflects a rate or fee involving a basket of at least 10 unique Reportable Securities for a single agreed rate or fee for the entire basket. In each of these scenarios, the modifier would help to identify loans where the rate or fee may not reflect the current market. FINRA stated that it plans to use these modifiers for data validation (*e.g.*, in instances where FINRA's data validation logic identifies the reported rate as potentially erroneous) in addition to enhancing the disseminated data and its value to market participants.

B. Reporting Securities Loan Modifications

Proposed Rule 6530(b) would govern the reporting requirements applicable to Covered Persons for reporting Loan Modifications. Proposed Rule 6510(f) would define "Loan Modification" as a change to any "Data Element" with respect to a Covered Securities Loan (irrespective of whether such Covered Securities Loan was previously reported to SLATE), where "Data Element" refers to the required non-confidential data elements and modifiers reported pursuant to proposed Rule 6530(a)(2). Proposed Rule 6530(b)(1) (When and How Loan Modifications Are Reported) would require that Loan Modifications be reported within the same timeframes applicable to the reporting of Initial

Covered Securities Loans. Specifically, for Loan Modifications effected on a business day at or after 12:00:00 a.m. ET through 7:45:00 p.m. ET, the required information must be reported the same day before 8:00:00 p.m. ET. For Loan Modifications effected on a business day after 7:45:00 p.m. ET, the required information must be reported no later than the next business day (T+1) before 8:00:00 p.m. ET; and Loan Modifications effected on a Saturday, a Sunday, a federal or religious holiday or other day on which SLATE is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T+1) before 8:00:00 p.m. ET.

Proposed Rule 6530(b)(2) (Loan Modifications—Information To Be Reported) would specify the items of information that must be reported to FINRA. Specifically, proposed Rule 6530(b)(2)(A) through (I) would require that each Loan Modification report contain the information below:

(1) The unique identifier assigned by FINRA to the Initial Covered Securities Loan, or, if a unique identifier has not yet been assigned by FINRA, the unique internal identifier assigned to the Covered Securities Loan by the Covered Person responsible for reporting the loan to SLATE;

(2) If the Covered Securities Loan is an allocation of an omnibus loan effected pursuant to an agency 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;

(3) The MPID of the Covered Person;

(4) The date of the Loan Modification;

(5) The time of the Loan Modification;

(6) 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 the effective date is a date other than the date of the Loan Modification);¹⁶

(7) Whether the Covered Person is the lender, borrower or intermediary;

(8) The modified Data Elements for a Loan Modification to a Covered Securities Loan previously reported to

¹⁶ FINRA stated that Covered Persons must report a decrease to the loan amount resulting from a return of securities only once the securities have been delivered because returns are not considered "effected" until the securities are actually returned. However, Covered Persons must report all other Loan Modifications on the date that the Loan Modification was agreed upon and, in such instances, must report the effective date (pursuant to proposed Rule 6530(b)(2)(F)) unless the effective date is the same as the Loan Modification date (reported pursuant to 6530(b)(2)(D)).

SLATE or all Data Elements for a Loan Modification to a Covered Securities Loan that was not previously required to be reported to SLATE;¹⁷

(9) Such modifiers and indicators as required by either the Rule 6500 Series or the SLATE Participant specification.

Proposed Rule 6530.01 (Intraday Loan Modifications) addresses a Covered Person's reporting obligations when multiple Loan Modifications occur on a given day. Specifically, if a Covered Securities Loan (whether or not previously reported to SLATE) is modified multiple times throughout the day, a Covered Person must report each Loan Modification that occurs on a given day as set forth in proposed Rule 6530(b). Proposed Rule 6530.02 (Changes to the Parties of a Covered Securities Loan) provides that, with respect to a previously reported Covered Securities Loan, following the addition or removal of a party required to be identified pursuant to Rule 6530(a)(2)(O) a Covered Person must: (1) report the termination of the previously reported Covered Securities Loan as a Loan Modification pursuant to Rule 6530(b) that reflects the date and time the party was added or removed and select the terminated loan indicator; and (2) report an Initial Covered Securities Loan pursuant to Rule 6530(a) that reflects the new parties to the loan, if known (other than the customer from whom a Broker or Dealer borrows fully paid or excess margin securities pursuant to SEA Rule 15c3-3(b)(3)).

C. Compliance With Reporting Obligations

FINRA is proposing to adopt proposed Rule 6530(d) (Compliance with Reporting Obligations) to implement provisions regarding Covered Persons' ongoing reporting obligations and the use of third parties in meeting Exchange Act Rule 10c-1a and FINRA 6500 Rule Series obligations.¹⁸ Specifically, proposed Rule 6530(d)(1) provides that Covered Persons (other than Covered Persons that engage a Reporting Agent) have an ongoing obligation to report Initial Covered Securities Loans and Loan

Modifications to FINRA timely, accurately, and completely. In addition, a Covered Person may employ an agent for the purpose of submitting loan information to SLATE; however, unless the Covered Person has retained a Reporting Agent as permitted under Exchange Act Rule 10c-1a, the primary responsibility for the timely, accurate, and complete reporting of loan information to SLATE remains the non-delegable duty of the Covered Person with the reporting obligation. Also, similar to requirements that exist with respect to reporting obligations under other FINRA rules, proposed Rule 6530(d)(2) provides that a member's pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.¹⁹

FINRA also is proposing to adopt a provision to specify that, even where a member employs a Reporting Agent consistent with Rule 10c-1a(a)(2), the member must nonetheless take reasonable steps to ensure that the Reporting Agent is in fact complying with the securities lending reporting requirements of Rule 10c-1a and proposed FINRA Rule 6530 on its behalf.²⁰ Proposed Rule 6530(d)(3) would provide that a member relying on a Reporting Agent has an obligation under FINRA Rule 3110 (Supervision) to take reasonable steps to ensure that the Reporting Agent is complying with Rule 10c-1a and FINRA Rule 6530 on its behalf. In executing this obligation, FINRA would expect, for example, that the member review the Covered Securities Loan reporting data made available to it by the Reporting Agent or through FINRA's system to evaluate the accuracy and timeliness of the Covered Securities Loan reports submitted on its behalf by the Reporting Agent.

Proposed Rule 6530(d)(4) would provide that, if a Covered Person makes a good faith determination that it has a reporting obligation under Rule 10c-1a and this Rule 6500 Series, the Covered Person or Reporting Agent, as applicable, must report the Covered Securities Loan as provided in proposed Rule 6530. If the Reportable Security is not entered into the SLATE system, proposed Rule 6530(d)(4) would also require the Covered Person or Reporting Agent, as applicable, to promptly notify and provide FINRA Operations, in the form and manner required by FINRA, the information specified in Rule

6530(a)(2)(A) and (B), along with such other information as FINRA deems necessary to enter the Reportable Security for reporting through SLATE.

D. Participation in SLATE

Proposed Rule 6520 (Participation in SLATE) would establish the requirements applicable to Covered Persons and Reporting Agents with respect to participation in SLATE. Rule 6510(h) would define a "SLATE Participant" as "any person that reports securities loan information to SLATE, directly or indirectly." "SLATE Participant" therefore would include both persons who connect to SLATE directly to report Covered Securities Loan information, including Reporting Agents, as well as any Covered Person who has engaged a Reporting Agent or other agent.

Paragraph (1) of proposed Rule 6520(a) (Mandatory Participation) would provide that participation in SLATE is mandatory for purposes of reporting Covered Securities Loans. Such mandatory participation would obligate a Covered Person to submit Covered Securities Loan information to SLATE in conformity with Rule 10c-1a and the FINRA Rule 6500 Series. Proposed Rule 6520(a)(2) would provide that participation in SLATE would be conditioned on the SLATE Participant's initial and continuing compliance with specified requirements. Specifically, SLATE Participants must: (1) obtain an MPID for reporting Covered Securities Loans to SLATE; (2) execute and comply with the SLATE Participant application agreement and all applicable rules and operating procedures of FINRA; and the SEC; and (3) maintain the physical security of the equipment located on the premises of the SLATE Participant to prevent unauthorized entry of information into SLATE. Proposed Rule 6520(a)(3) would provide that SLATE Participants would be obligated to inform FINRA of non-compliance with, or changes to, any of these mandatory participation requirements.

Proposed Rule 6520(b) (Reporting Agents) would set forth the participation requirements specific to Reporting Agents. Proposed Rule 6520(b) would require a SLATE Participant acting as a Reporting Agent to provide FINRA with a list naming each Covered Person on whose behalf the Reporting Agent is providing information to SLATE and any changes to the list of such persons by the end of the day on which any such change occurs, in the form and manner specified by FINRA.

¹⁷ As defined by proposed Rule 6510(d), "Data Element" includes any item of information that a Covered Person must report under Exchange Act Rule 10c-1a(c) and proposed Rule 6530(a)(2)(A) through (N) and such modifiers and indicators required by proposed Rule 6530(a)(2)(Y). Accordingly, a modification to a Covered Securities Loan that would require the addition or removal of a modifier or indicator required to be reported pursuant to proposed Rule 6530(a)(2)(Y) would require a Covered Person to report a Loan Modification as set forth in proposed Rule 6530(b).

¹⁸ See, e.g., Rule 6380A(h); Rule 6622(h); Rule 6730(a)(6).

¹⁹ See, e.g., Rule 6380A(a)(4); Rule 6622(a)(4); Rule 6623; Rule 6730(f).

²⁰ See proposed Rule 6530(d)(3).

Finally, proposed Rule 6520(c) (SLATE Participant Obligations) would provide that, upon execution and receipt by FINRA of the SLATE Participant application agreement, a SLATE Participant may commence input of Covered Securities Loan reports into SLATE. Proposed Rule 6520(c) would also require that a SLATE Participant must report Covered Securities Loan information using its MPID, and would provide that a SLATE Participant may access SLATE via a FINRA-approved facility during SLATE System Hours.

E. Dissemination of Loan Information

Proposed Rule 6540 (Dissemination of Loan Information) would provide for the public dissemination of securities loan data reported to SLATE and information pertaining to the aggregate loan transaction activity and distribution of loan rates for each Reportable Security. The publicly available data would include: (1) next day (T+1) loan-level data dissemination for Initial Covered Securities Loans and Loan Modifications (except for the loan amount); (2) T+20 dissemination of the loan amount for Initial Covered Securities Loans and Loan Modifications; and (3) daily loan statistics (*i.e.*, aggregate loan activity and distribution of loan rates).

1. T+1 Loan-Level Data Dissemination

Under proposed Rule 6540(a) (Next Day Dissemination), for each Initial Covered Securities Loan and Loan Modification reported to SLATE on a given business day, no later than the morning of the next business day, FINRA would make publicly available: (1) the unique identifier assigned by FINRA to the Covered Securities Loan; (2) the security identifier(s) specified in Rule 6530(a)(2)(A) or (B) that FINRA determines is appropriate to disseminate; and (3) the requisite Data Elements.

With respect to each Initial Covered Securities Loan reported to SLATE, proposed Rule 6540(a)(3)(A) would specify that FINRA make publicly available no later than the morning of the next business day all other reported Data Elements, except the amount of Reportable Securities loaned (reported pursuant to Rule 6530(a)(2)(G)) and any modifier or indicator required by either the Rule 6500 Series or the SLATE Participant specification that FINRA determines shall not be publicly disseminated.

With respect to each Loan Modification to a Covered Securities Loan reported to SLATE on the same or a prior business day, proposed Rule

6540(a)(3)(B) would specify that FINRA make publicly available no later than the morning of the next business day the modified Data Elements reported to SLATE, except the amount of Reportable Securities loaned and any modifier or indicator required by either the Rule 6500 Series or the SLATE Participant specification that FINRA determines shall not be publicly disseminated.

In the case of a Loan Modification to a Covered Securities Loan that was not previously required to be reported to SLATE (*e.g.*, because the Initial Covered Securities Loan occurred prior to the effectiveness of the Rule 6500 Series), proposed Rule 6540(a)(3)(C) would specify that FINRA make publicly available the unique loan identifier assigned by FINRA to the loan, the security identifier, and all other reported Data Elements, except the amount of Reportable Securities loaned and any modifier or indicator required by either the Rule 6500 Series or the SLATE Participant specification that FINRA determines shall not be publicly disseminated.

2. T+20 Loan Amount Dissemination

Pursuant to Rule 6540(b) (Delayed Dissemination), for each Initial Covered Securities Loan and Loan Modification reported to SLATE, 20 business days after the date on which the Initial Covered Securities Loan was effected or the loan amount was modified, FINRA would make publicly available: (1) the unique identifier assigned by FINRA to the Covered Securities Loan, (2) the security identifier(s) specified in Rule 6530(a)(2)(A) or (B) that FINRA determines is appropriate to disseminate, and (3) the amount of Reportable Securities loaned reported to SLATE. For Initial Covered Securities Loans, the 20-day delay period would begin the day after the Covered Securities Loan is effected (even in the case of late reports).

3. Daily Loan Statistics

In addition to T+1 loan-level data disseminated pursuant to proposed Rule 6540(a), FINRA would disseminate statistics regarding Covered Securities Loans reported to FINRA, including aggregate loan activity and distribution of loan rebate rates and lending fees.

4. Aggregate Loan Transaction Activity

Pursuant to paragraph (1) of proposed Rule 6540(c) (Aggregate Loan Transaction Activity), for each Reportable Security for which an Initial Covered Securities Loan or Loan Modification is reported to SLATE on a given business day, FINRA would

disseminate, no later than the morning of the next business day, aggregated loan activity in the Reportable Security (along with the security identifier specified in Rule 6530(a)(2)(A) or (B) that FINRA determines is appropriate to identify the relevant Reportable Security). The aggregated data would include, for each Reportable Security, under proposed Rule 6540(c)(1)(A), the aggregate volume of securities (both in total and broken down by collateral type) subject to an Initial Covered Securities Loan or modification to the amount of Reportable Securities loaned reported on the prior business day, and, under proposed Rule 6540(c)(1)(B), the aggregate volume of securities (both in total and broken down by collateral type) subject to a rebate rate or fee modification reported on the prior business day.

Pursuant to Rule 6540(c)(1)(C), FINRA would also disseminate the aggregate volume of securities subject to an Initial Covered Securities Loan or modification to the amount of Reportable Securities loaned subject to a term loan (*i.e.*, a loan with a specified term) and subject to an open loan (*i.e.*, a loan without a specified term) reported on the prior business day. Pursuant to Rule 6540(c)(1)(D), FINRA would also disseminate the aggregate volume of securities subject to an Initial Covered Securities Loan or modification to the amount of Reportable Securities loaned broken down by borrower type (as specified in proposed Rule 6530(a)(2)(N) on the prior business day. Pursuant to proposed Rule 6540(c)(1)(E), FINRA would disseminate the aggregate number of Initial Covered Securities Loans and terminated Covered Securities Loans (both in total and broken down by collateral type) reported on the prior business day.

5. Loan Rate Distributions

Pursuant to paragraph (2) of proposed Rule 6540(c) (Loan Rate Distribution Data), for each Reportable Security for which an Initial Covered Securities Loan or Loan Modification is reported to SLATE on a business day, FINRA would also disseminate, no later than the morning of the next business day, the security identifier (specified in Rule 6530(a)(2)(A) or (B)) that FINRA determines is appropriate to identify the relevant Reportable Security and information pertaining to the distribution of loan rebate rates or lending fees, as applicable, including: the highest rebate rate, lowest rebate rate, and volume weighted average of the rebate rates reported to SLATE for Initial Covered Securities Loans collateralized by cash and, separately,

for Loan Modifications collateralized by cash (where the Loan Modification involved a change to the rebate rate). FINRA would also disseminate the highest lending fee, lowest lending fee, and volume weighted average of the lending fees reported for Initial Covered Securities Loans not collateralized by cash and, separately, for Loan Modifications not collateralized by cash (where the Loan Modification involved a change to the lending fee).

Proposed Rule 6540(d) (Loan Transaction Information Not Disseminated) would specify the information reported to FINRA that would not be disseminated. As prescribed by Exchange Act Rule 10c-1a(g)(4), proposed Rule 6540(d)(1) provides that the Confidential Data Elements reported to FINRA would not be disseminated. In addition, proposed Rule 6540(d)(2) would provide that FINRA may determine not to publicly disseminate any modifier or indicator required by either the Rule 6500 Series or the SLATE Participant specification. FINRA stated that it may determine not to disseminate a modifier or indicator where the use of such information is intended for regulatory purposes only or its public disclosure may otherwise be inappropriate (e.g., where it may result in information leakage).

As proposed in Rule 6540.02 (Means of Data Dissemination), FINRA would make the data pursuant to proposed Rule 6540(a) through (c) available on FINRA's website free of charge for personal, non-commercial purposes only. For other uses, FINRA would publish or distribute SLATE data for fees that have been filed with the SEC pursuant to Rule 19b-4 under the Exchange Act.

F. Other Provisions

Proposed Rule 6550 (Emergency Authority) would provide that, as market conditions may warrant, FINRA, in consultation with the Commission, may 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.

III. Summary of Comments

The Commission received comments on the proposed rule change.²¹ Some commenters stated their "strong general support" for FINRA's proposed rules.²² One commenter stated that SLATE will

"aid in the protection of investors by ensuring they are appropriately informed about the terms of securities loans and the parties involved" and that the proposed "requirement to report comprehensive data elements will contribute to a fair and orderly market."²³ Another commenter stated that FINRA's proposal "is a great idea."²⁴

A. Data Elements, Modifiers, and Indicators

Some commenters stated that FINRA's proposed rules would impose on market participants reporting requirements that go beyond the Commission's requirements under Rule 10c-1a,²⁵ which would result in the disclosure of highly sensitive and complex information and contribute to significant increased costs and burdens for implementation and compliance.²⁶ Some commenters stated that the additional data and information requirements specified in the proposed Rule 6500 Series that are not

specifically mentioned in Rule 10c-1a should be removed.²⁷

One commenter stated that some of these additional fields and indicators "may not currently be captured by market participants at the trade level" and "could not have been contemplated in the cost benefit analysis undertaken by the SEC in their analysis of the impact of Rule 10c-1a."²⁸ This commenter stated that the addition of these data elements "would constitute an impermissible end-run around the Commission rulemaking process . . . without being subject to the public comments and economic analyses required to be performed under such rulemaking process."²⁹ Another commenter also stated that "the significant increase in reportable fields and complexity of the Proposed Rule Change warrant a proper cost-benefit analysis as required under Federal agency rulemaking."³⁰ This commenter also stated that the increased number of reportable data fields, in turn, increases the likelihood that a covered person would need to rely on a reporting agent to fulfill its regulatory requirements.³¹ Another commenter stated that "these additional requirements may serve to increase the cost and complexity of reporting without sufficient regard for their benefits."³²

One commenter stated that Rule 10c-1a requires the reporting of 18 data fields, while FINRA's proposed rules would require the reporting of 30 data fields.³³ Some commenters identified the data elements that would be required to be reported under FINRA's proposed rules that they stated were not included under Rule 10c-1a: (1) the expected settlement date of the covered securities loan; (2) the dollar cost of any fees or charges (in addition to the rebate rate or securities lending fee specifically mentioned in Rule 10c1-a); (3) whether the covered person is the lender, borrower, or intermediary; (4) the unique internal identifier assigned to the covered securities loan by the covered person responsible for reporting the loan to SLATE; (5) if the covered securities loan is an allocation of an omnibus loan effected pursuant to an agency lending agreement, the unique internal identifier for the associated omnibus loan assigned by the covered

²³ Letter from Jennifer (May 15, 2024).

²⁴ Letter from Suzanne Shatto (May 22, 2024).

²⁵ See, e.g., Letter from Robert Toomey, Managing Director and Associate General Counsel, and Joseph Corcoran, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, SEC (May 28, 2024) ("SIFMA Letter"), at 3; Letter from Sarah A. Bessin, Deputy General Counsel, Investment Company Institute, to Vanessa Countryman, Secretary, SEC (May 24, 2024) ("ICI Letter 1"), at 2; Letter from Paul Cellupica, General Counsel and Kimberly Thomasson Assistant General Counsel, Investment Company Institute, to Vanessa A. Countryman, Secretary, SEC (July 30, 2024) ("ICI Letter 2"), at 2; Letter from Brian P. Lamb, CEO, EquiLend Holdings LLC, to Vanessa Countryman, Secretary, SEC (May 28, 2024) ("EquiLend Letter"), at 6-7; Letter from Fran Garrett, Head of Business, and Mark Whipple, Chairman of the Board of Directors, International Securities Lending Association Americas, to Vanessa Countryman, Secretary, SEC (July 16, 2024) ("ISLA Americas Letter"), at 4; Letter from Tony Holland, Director of Market Practice, International Securities Lending Assoc., to Vanessa Countryman, Sec'y, SEC (May 28, 2024) ("ISLA Letter 1"), at 9; Letter from Jennifer W. Han, Executive Vice President, Chief Counsel and Head of Global Regulatory Affairs, MFA, to Vanessa A. Countryman, Secretary, SEC (July 31, 2024) ("MFA Letter"), at 2; Letter from William C. Thum, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association Asset Management Group, to Vanessa A. Countryman, Secretary, SEC (July 31, 2024) ("SIFMA AMG Letter 2"), at 2.

²⁶ See, e.g., Letter from Lindsey Weber Keljo, Esq., Head, The Asset Management Group, and William C. Thum, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association Asset Management Group, to Vanessa Countryman, Secretary, SEC (May 28, 2024) ("SIFMA AMG Letter 1"), at 2; SIFMA AMG Letter 2, at 2, 4-6; SIFMA Letter, at 4; ISLA Letter 1, at 2; ISLA Americas Letter, at 4; ICI Letter 2, at 3-4; MFA Letter, at 2.

²⁷ See, e.g., EquiLend Letter, at 1, 7; SIFMA Letter, at 4; SIFMA AMG Letter 2, at 2; ICI Letter 2, at 2-3; MFA Letter, at 7.

²⁸ EquiLend Letter, at 6.

²⁹ SIFMA Letter, at 4.

³⁰ ISLA Americas Letter, at 4-5.

³¹ See ISLA Americas Letter, at 8-9.

³² EquiLend Letter, at 1. See also ICI Letter 1, at 2; ICI Letter 2, at 3.

³³ See ISLA Letter 1, at 2-3.

²¹ See *supra* note 4.

²² See, e.g., Form Letter A. See also Letter from vetvec (May 14, 2024).

person responsible for reporting the covered securities loan to SLATE; (6) 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); and (7) such modifiers and indicators as are required by FINRA under the Rule 6500 Series or the SLATE Participant specification.³⁴

Commenters also identified proposed modifiers and indicators as data elements that they stated were not addressed by Rule 10c-1a: (1) loans associated with exclusive arrangements; (2) loans with affiliates; (3) unsettled loans; (4) terminated loans; (5) loans with rate or fee adjustments; and (6) basket loans.³⁵ One commenter stated that the affiliate indicator required by proposed Rule 6510(a) would “not add any additional value to the reporting and could potentially expose confidential information.”³⁶ The commenter also stated that “the intermediary negotiating the loan may not be aware of an affiliate relationship between the borrower and underlying lender,” requiring additional resources to monitor whether an affiliate relationship was established.³⁷ Another commenter stated that the affiliate loan flag should be removed from the proposed required reporting and that inclusion of this requirement “will require beneficial owners to expend additional resources to monitor and report to their lending agents the existence of an affiliate relationship” and “at least warrants a cost-benefit analysis.” The commenter also stated that “use of the affiliate indicator can also expose confidential data elements.”³⁸

One commenter stated that the reporting requirements for security issuer LEIs should be removed or made optional, stating that “security issuer LEIs are not easily accessible and are not always available.”³⁹ Another commenter stated that, because “a large percentage of third-country issuers have not obtained LEIs . . . requirements should be amended to make the provision of the LEI’s for third-country issuers optional.”⁴⁰

One commenter requested clarification of whether the reporting of the “expected settlement date for modifications to the loan amount” required by proposed Rule 6530(f) means “contractual settlement” or “actual settlement.”⁴¹ This commenter also requested clarification of the requirement that Covered Persons “separately report the dollar costs of any other fees or charges” to “make clear how to populate this field clearly and in what format.”⁴²

One commenter requested confirmation whether, if FINRA does not generate a “UTI” for a covered securities loan, the covered person responsible for reporting it would be required to generate a UTI.⁴³ The commenter also stated that “[u]nder SFTR firms agree the UTI before you trade and agree who is going to generate and distribute the UTI beforehand.”⁴⁴ The commenter recommended that “FINRA should follow the SFTR waterfall protocol, where possible for generation and distribution of UTI’s, as many firms will already be familiar with this method for the purposes of reporting their EU securities loans.”⁴⁵

B. Timing for Reporting

One commenter requested a “clear and concise definition of the term ‘effected.’”⁴⁶ The commenter stated that it “would like to understand if (A) ‘effected’ is equivalent to an ‘event date’ file *i.e.*, the event date that the trade took place (B) is the ‘effected’ date more similar to an execution timestamp that would carry both date and time or (C) is the ‘effected[.]’ date when a trade is verbally agreed upon.”⁴⁷

Another commenter recommended that the “interpretation for time ‘effected’ and ‘agrees to a covered securities loan’ is prior to loan settlement but only once all contractual terms, including the identity of the lender, are agreed.”⁴⁸ The commenter further stated that “[u]ntil all contractual terms of a securities loan (including the final details related to the identity of the lender) are agreed between the lending agent as agent for the lender and the borrower, the trading desk will view the borrower’s offer

discussions as a ‘potential loan’—not an actual loan” and will book the securities loan into its system when all contractual terms are agreed.⁴⁹ This commenter stated that “[o]nly when the securities loan is booked into the lending agent’s trading system, will the lending agent view it to be ‘effected’—an actual securities loan pending settlement.”⁵⁰ Regarding allocations, this commenter stated that “[t]his analysis applies equally to securities loans that have been settled and need to be reallocated” and “until the reallocation is finalized, there is no utility to requiring a covered person to report *potential* loan modifications.”⁵¹

Another commenter stated that the proposed rule would require that “all Partials and Full Returns to be checked for settlement first, prior to being reported” and that “[i]n contrast the EU [Securities Financing Transactions Regulation (“SFTR”)] only requests the final close out of a trade to be reported, *i.e.*, under SFTR, partials only have to be reported on a contractual settlement basis as opposed to an actual settlement basis.”⁵² The same commenter, “encourage[d] alignment with the EU’s SFTR where possible.”⁵³ This commenter stated that “market participants would have to consider how to monitor settlement separately to what they are reporting for regulatory purposes under the proposed rule” and that “this will create a challenge for systems from a books & records perspective.”⁵⁴ The commenter also stated that “[i]ncluding partials that follow the settlement driven reporting requirement *i.e.*, the need to check for successful settlement prior to regulatory reporting, is going to create several challenges for market participants.”⁵⁵

One commenter stated “that including settlement status as a contextual indicator will greatly increase reporting complexity and increase the odds that reported data will be unclear or confusing.”⁵⁶ This commenter stated that it is “generally accepted market practice to cancel loans that remain unsettled, and since the cancelation of a previously reported trade is already contemplated elsewhere within the reporting rules, [the commenter] believe[s] this additional settled/unsettled status indicator is unnecessary and can be removed.”⁵⁷

³⁴ See SIFMA Letter, at 3–4. See also EquiLend Letter, at 6–7; ISLA Letter 1, at 2.

³⁵ See, *e.g.*, SIFMA Letter, at 3–4; EquiLend Letter, at 6–7.

³⁶ ISLA Letter 1, at 8.

³⁷ ISLA Letter 1, at 8.

³⁸ ISLA Americas Letter, at 14.

³⁹ ISLA Letter 1, at 7.

⁴⁰ ISLA Americas Letter, at 15.

⁴¹ ISLA Letter 1, at 8.

⁴² ISLA Letter 1, at 5.

⁴³ ISLA Letter 1, at 9. The proposed FINRA rules do not use the acronym “UTI,” which the commenter did not define but may refer to the term “unique transaction identifier” and, under the proposed FINRA rules, “the unique identifier assigned by FINRA to the loan.”

⁴⁴ ISLA Letter 1, at 9.

⁴⁵ ISLA Letter 1, at 9.

⁴⁶ ISLA Letter 1, at 4.

⁴⁷ ISLA Letter 1, at 3–4.

⁴⁸ ISLA Americas Letter, at 6.

⁴⁹ ISLA Americas Letter, at 6.

⁵⁰ ISLA Americas Letter, at 6.

⁵¹ ISLA Americas Letter, at 6.

⁵² ISLA Letter 1, at 4.

⁵³ ISLA Letter 1, at 4.

⁵⁴ ISLA Letter 1, at 5.

⁵⁵ ISLA Letter 1, at 5.

⁵⁶ ISLA Americas Letter, at 11.

⁵⁷ ISLA Americas Letter, at 11.

C. Reporting of Intraday Loan Modifications

Several commenters stated that FINRA's proposed rules include a requirement that all intraday changes be reported as loan modifications, which commenters stated was not adopted as part of Rule 10c-1a because the Commission removed the proposed 15-minute intraday reporting requirement and replaced it with an end-of-day reporting requirement.⁵⁸ One commenter stated that it "understood the Commission to be saying that a securities loan, and any subsequent modification to such loan, is not required to be reported until the end of the day when the terms have been finally agreed to by the parties."⁵⁹ This commenter stated that FINRA's proposed rule "is inconsistent with the Commission's intent to eliminate the submission of 'incomplete' data that lacks 'any utility' and directly contradicts Rule 10c-1a as adopted"⁶⁰ and that the "inclusion of intraday activity as required reporting would be misleading to the public and inconsistent with the intent of the Commissioners who voted to adopt the final rule."⁶¹

Another commenter stated that FINRA's proposal "seeks to require covered persons to report information on all intraday adjustments to a new or existing covered securities loan—which would effectively reinstate the reporting of interim intraday terms . . . that the Commission removed from the final SEC Rule 10c-1a as a direct result of notice and comment rulemaking."⁶² This commenter "urge[d] that the reporting of intraday adjustments to initial covered securities loans or loan modifications be removed" from the proposal and that "FINRA instead implement the single, consolidated, end-of-day reporting requirement contemplated by SEC Rule 10c-1a."⁶³

One commenter stated that "[i]t is not clear that FINRA has adequately analyzed the costs and benefits of [this]" deviation from Rule 10c-1a.⁶⁴ Another commenter also stated that the intraday reporting requirements are "costly and burdensome"⁶⁵ and that "the costs and complexity of reporting these intraday

loan modifications greatly undermines any purported utility."⁶⁶ The same commenter stated that to differentiate from "other securities lending industry participants, such as prime brokers, engaged in intraday activities that could be reported as lifecycle events, . . . FINRA and the Commission . . . consider the inclusion of a flag that identifies a party as a lending agent, in which case, such intraday lifecycle events would not need to be reported."⁶⁷

One commenter requested clarification of whether an initial loan that is modified on the same day that it is effected could have both the initial loan and modification reported together at 6:00 p.m.⁶⁸ The commenter also requested clarification of whether the termination of a loan due to a change to the parties to the loan and corresponding initiation of a new loan due to a change in the parties would require intraday reporting.⁶⁹ The same commenter also asked for clarification of whether there is a specific sequence in which firms would need to report initial loans and modifications and suggested "sending all lifecycle events in chronological order for ease."⁷⁰

D. Disseminated Information

Two commenters addressed the granularity of the aggregated information that FINRA would disseminate pursuant to the proposed rule. Both commenters stated that the Commission had afforded FINRA deference to determine the aggregate information that should be published publicly.⁷¹ However, one of the commenters stated that such "deference is limited to the manner in which aggregate data at the level of the entire dataset of reported covered securities loans is reported, and does not permit FINRA to break down the dataset into smaller published subsets, or 'slices,' based on specific criteria" and that "the granularity of the smaller subsets of data that the Proposed Rule Change would intend to make publicly available (e.g., data broken down by borrower type) raises significant concerns that sensitive, proprietary trading strategy information may be disclosed."⁷² Both commenters addressed the publication of more granular aggregated data potentially allowing market participants to "extrapolate" or "back into"

individual loan amounts on a T+1 basis.⁷³ Further, one of the commenters stated that the proposed breakdown for aggregate transaction activity and distribution of loan rates "should have been included in the SEC Proposing Release and subjected to a cost-benefit analysis and formal SEC notice and comment period."⁷⁴ The commenter recommended "that FINRA reevaluate its proposed structure and instead propose a revised, less granular structure."⁷⁵

Two commenters stated that the proposed rule's *de minimis* threshold⁷⁶ is set too low.⁷⁷ One of the commenters stated that the application of the threshold "should be mandatory and not an optional exclusion for confidentiality reasons."⁷⁸ The other commenter requested clarification of whether "FINRA 'will omit' or 'may omit' *de minimis* loan details."⁷⁹

E. Data Confidentiality, Security, and Integrity

One commenter stated that "it is unclear what the fee-based service and data would look like" and that a "more customized or enhanced data set also raises confidentiality concerns."⁸⁰ One commenter stated there is "increased complexity that FINRA has introduced with its Proposed Rule Change by significantly increasing the number of reportable data fields, requiring the reporting of all intraday activity, and imposing a data validation process has created commercial opportunities for data service providers at the expense of market participants, and ultimately end investors."⁸¹

This commenter also stated that increased reliance on reporting agents raises data security issues and that "the expansion of the number of reportable fields from fifteen to over forty" could require covered persons "to share with a third party very sensitive transaction level details, including the identity of each party to the transaction."⁸² The

⁷³ SIFMA Letter, at 7; ISLA Americas Letter, at 16.

⁷⁴ SIFMA Letter, at 7.

⁷⁵ SIFMA Letter, at 7.

⁷⁶ Proposed Rule 6540 Supplementary Material .01 (De Minimis Loan Transaction Activity) would provide that FINRA may omit from the aggregate loan activity volume information for Reportable Securities for which there were three or fewer types of Initial Covered Securities Loan and Loan Modification events reported to SLATE in total on the prior business day. See Notice, 89 FR 38212 n.74.

⁷⁷ ISLA Letter 1, at 10; ISLA Americas Letter, at 16.

⁷⁸ ISLA Letter 1, at 10.

⁷⁹ ISLA Americas Letter, at 16.

⁸⁰ ISLA Letter 1, at 11.

⁸¹ ISLA Americas Letter, at 9.

⁸² ISLA Americas Letter, at 9.

⁵⁸ See ISLA Americas Letter, at 6-7; ISLA Letter 1, at 4; SIFMA AMG Letter 1, at 2; SIFMA AMG Letter 2, at 2; SIFMA Letter, at 5; ICI Letter 1, at 2; ICI Letter 2, at 5-6.

⁵⁹ ISLA Americas Letter, at 7.

⁶⁰ ISLA Americas Letter, at 8.

⁶¹ ISLA Americas Letter, at 8.

⁶² SIFMA Letter, at 5-6. See also ICI Letter 1, at 2; SIFMA AMG Letter 1, at 2.

⁶³ SIFMA Letter, at 6.

⁶⁴ ICI Letter 1, at 2.

⁶⁵ ISLA Americas Letter, at 8.

⁶⁶ ISLA Americas Letter, at 8.

⁶⁷ ISLA Americas Letter, at 8.

⁶⁸ ISLA Letter 1, at 9.

⁶⁹ ISLA Letter 1, at 9.

⁷⁰ ISLA Letter 1, at 9-10.

⁷¹ SIFMA Letter, at 7; ISLA Americas Letter, at 16.

⁷² SIFMA Letter, at 7.

commenter also stated that “[s]hould this data become exposed by a data security incident, we have significant concerns that lenders would choose to restrict lending, which could negatively impact lendable supply and market liquidity.”⁸³

Another commenter requested clarification of the use of fee and rebate adjustment modifiers for data validation, and whether “FINRA will be performing validation testing to a defined tolerance level and a rejection/correction process.”⁸⁴ The commenter stated that if FINRA will perform such validations “there is the potential for a large number of rejections that could result in a substantial amount of manual intervention.”⁸⁵

One commenter stated that “FINRA’s proposed rules introduce the concept of a Service Bureau that [it] understand[s] can provide the same service as a Reporting Agent without the oversight or regulatory responsibility of a Reporting Agent.”⁸⁶ The commenter stated that “the permissible activities of so-called ‘Service Bureaus’ demands further clarification and an express set of qualification criteria that distinguishes such permissible activities from those that are inherent in the formal ‘reporting agent’/Covered Person agency relationship” to avoid providing “a back door through which a ‘Service Bureau’ can escape SEC and FINRA oversight and liability as a ‘reporting agent.’”⁸⁷

F. Burdens, Costs, and RNSA Fees

Two commenters addressed Rule 6530(d)(4), which requires that if a “Reportable Security is not entered into the SLATE system, the Covered Person or Reporting Agent, as applicable, must promptly notify and provide FINRA Operations, in the form and manner required by FINRA.”⁸⁸ One commenter stated that “this is a highly manual process and could lead to a time-lag when setting up new static data that does not already exist within the SLATE system.”⁸⁹ The commenter stated that “the current process as outlined would be highly inefficient and open to manual error.”⁹⁰ The commenter also stated that it would “like to understand, what agreements are in place if a vendor does not report and what liability here is placed on the covered person.”⁹¹

Another commenter stated that “it is not an appropriate delegation of duties to require a covered person . . . to notify FINRA of reportable securities not included in FINRA’s SLATE system” and that it “would be an inefficient and burdensome manner in which to update FINRA’s record of covered securities.”⁹² The commenter recommended that the notification requirement either be “revised or removed.”⁹³ The commenter stated that “FINRA’s Proposed Rule deviates from the final rule in a manner that could impact the very point of engaging a reporting agent” because it “shift[s] reporting compliance (outside of a written agreement and timely access to data) back to the covered person creating a reconciliation loop that will be time consuming, costly and operationally intensive.”⁹⁴

Another commenter stated that it “remain[s] concerned about the disproportionate allocation of compliance costs [to lenders],” and urged FINRA to exempt lenders from any fees associated with accessing SLATE data for commercial purposes to “ensure that those who bear the primary costs of the SLATE system have equitable access to industry-wide data.”⁹⁵ The commenter also requested that any data trust organized by securities lenders also be exempt from fees for the commercial use of SLATE data.⁹⁶

One commenter stated that “FINRA has yet to provide any clarity on what the fees will be or how they will be allocated.”⁹⁷ The commenter also stated that the “RNSA fees should be borne by market participants more broadly and not just Covered Persons submitting data (primarily lending agents and direct lenders).”⁹⁸ Another commenter requested clarification regarding “contemplated fees for commercial use of data and the differences between the ‘fee’ data and the ‘free’ data.”⁹⁹ Another commenter stated that “the fees and fee structure associated with registering and reporting securities lending information to FINRA have yet to be defined” and “the fees associated with the disseminated outbound data to commercial users been divulged,” requesting that “the associated comment

period to allow for changes, should not be concluded until all the pieces required to understand the complexity of this regulation are revealed and understood.”¹⁰⁰ Another commenter stated that “[c]onsidering proposed RNSA fees and costs have not yet been published, any cost-benefit analysis is impossible.”¹⁰¹ This commenter recommended “that any final rule promulgated by FINRA be conditional upon publication of proposed costs and public comment.”¹⁰²

G. Foreign Securities and Jurisdictional Issues

One commenter requested clarification of the reporting requirements for foreign securities traded within and outside the U.S. Regarding foreign securities traded within the U.S., the commenter asked whether foreign securities that have “‘F-share’ tickers” are reportable.¹⁰³ The commenter stated its understanding that, “[a]n ‘F’ share is created in the US when a broker-dealer files a Form 211 with FINRA, to create a US ticker symbol in order to report trades in the US in a foreign company’s shares.”¹⁰⁴ The commenter also stated its understanding that “dual listed securities are in scope for reporting in SLATE (as they are required to be reported under CAT) and that foreign securities that are traded OTC in the US may also be reportable in SLATE.”¹⁰⁵ Regarding foreign securities traded outside the U.S., the commenter asked, “when a security has multiple Sedol’s/tickers, where only one of which is CAT reportable, and the securities lending trade references one of the other Sedol/tickers (*i.e.*, the foreign ticker traded on a foreign exchange, and thus not the ‘F’ shares ticker[]), would the securities lending trade be reportable under 10c-1a in the US?”¹⁰⁶ The commenter requested confirmation that such a transaction would not be reportable under Rule 10c-1a.¹⁰⁷ This commenter asked, “from a cybersecurity perspective what processes, policies or procedures . . . FINRA members have in place and [whether] this requirement [would] appl[y] to both domestic and non-US

¹⁰⁰ EquiLend Letter, at 7.

¹⁰¹ ISLA Americas Letter, at 5.

¹⁰² ISLA Americas Letter, at 11.

¹⁰³ Letter from Tony Holland, Director of Market Practice, International Securities Lending Assoc., to Vanessa Countryman, Sec’y, SEC (July 16, 2024) (“ISLA Letter 2”), at 2–3.

¹⁰⁴ ISLA Letter 2, at 3.

¹⁰⁵ ISLA Letter 2, at 4.

¹⁰⁶ ISLA Letter 2, at 4. The acronym “SEDOL” stands for “Stock Exchange Daily Official List,” which is a list of security identifiers used in the United Kingdom and Ireland for clearing purposes.

¹⁰⁷ ISLA Letter 2, at 5.

⁸³ ISLA Americas Letter, at 9.

⁸⁴ ISLA Letter 1, at 7.

⁸⁵ ISLA Letter 1, at 7.

⁸⁶ EquiLend Letter, at 1.

⁸⁷ EquiLend Letter, at 6.

⁸⁸ ISLA Letter, at 3; ISLA Americas Letter, at 15.

⁸⁹ ISLA Letter 1, at 3.

⁹⁰ ISLA Letter 1, at 3.

⁹¹ ISLA Letter 1, at 13.

⁹² ISLA Americas Letter, at 15.

⁹³ ISLA Americas Letter, at 15.

⁹⁴ ISLA Americas Letter, at 10.

⁹⁵ See Letter from David Schwartz, Executive Director, Center for the Study of Financial Market Evolution, to Vanessa Countryman, Sec’y, SEC (May 28, 2024) (“CSFME Letter”), at 2–3.

⁹⁶ CSFME Letter, at 4.

⁹⁷ ISLA Letter 1, at 12.

⁹⁸ ISLA Letter 1, at 12, 14.

⁹⁹ SIFMA Letter, at 8.

trading parties.”¹⁰⁸ This commenter requested clarity on FINRA’s proposed enforcement policy on non-FINRA members, specifically as it related to “being compliant for reporting to the SLATE system” and “violations or failures to pay when due and SLATE reporting fees.”¹⁰⁹

One commenter stated that there “has been no clarity or guidance provided in the FINRA Rule regarding extraterritoriality or requirement for reporting for non-US market participants engaging in securities lending of US securities.”¹¹⁰ The commenter requested that “FINRA confirm the extraterritorial scope requirements” of the proposed rules and “that FINRA confirm enforcement rules for non-US firms for incorrect reporting.”¹¹¹ Another commenter requested additional guidance on the jurisdictional scope of the rules, including the applicability to foreign entities and foreign securities.¹¹²

H. Emergency Authority

Many of these commenters addressed the suspension of reporting or dissemination of Covered Securities Loans under proposed Rule 6550 (Emergency Authority). Commenters stated that the proposed suspension of the reporting or dissemination of certain Covered Securities Loans or Data Elements for periods deemed necessary by FINRA would undermine the transparency that the proposed FINRA Rule 6500 Series aims to promote.¹¹³ These commenters stated that the proposed suspension “would inadvertently create an information asymmetry, thus disadvantaging end borrowers and beneficial owners who rely on this data for making prudent investment decisions” and “strongly advocate[d] for stringent guidelines governing the suspension of reporting requirements to avoid undermining these goals.”¹¹⁴ Another commenter “strongly advocate[d] for . . . the publication of the reasons and timeframe for suspension to avoid undermining [the proposed rule’s] goals.”¹¹⁵

I. SLATE Participant Reporting Specifications

One commenter provided recommendations for specific proposed reporting requirements in FINRA’s

proposed rules and the associated SLATE Participant Reporting Specs, including:

- *Lending Fees and Loan Rebate Rates:* The commenter stated that Covered Persons should be permitted “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 loans collateralized by cash regardless of the facts of the negotiation.”¹¹⁶

- *Benchmark Pricing:* The commenter stated that “[t]he Proposed Rule Change . . . requires the lending fee or the loan rebate rate to be reported as a percentage and does not afford covered persons the option to report pricing data as a spread to a reference rate.” This commenter requests, “flexibility in the reporting format of fees to allow covered persons to report loan fees as: (1) a lending fee, (2) a loan rebate rate, or (3) a spread to a benchmark rate along with the associated benchmark rate.”¹¹⁷

- *Other Fees or Charges:* The commenter requested the removal of “the requirements related to reporting of ‘other fees or charges,’” because, “it is not clear how these ‘fees or charges’ relate to the fees negotiated in respect of the particular loan” and “[Rule 10c-1a] does not contemplate the inclusion of additional fees or charges.”¹¹⁸

- *Rate Fee Modifier:* The commenter stated that the “addition of a Rate Fee Modifier expands the scope of reportable information under Rule 10c-1a and exceeds FINRA’s authority to ‘implement rules regarding the format and manner of its collection of information described’ in Rule 10c-1a(c) through (e),” and “such codes or modifiers should be removed.”¹¹⁹

- *Rate Fee Override Flag:* The commenter expressed concern “with a potential warning or rejection system regarding lending fees and/or loan rebate rates based on a tolerance level developed by FINRA from previously collected lending data that may or may not reflect the current market conditions.”¹²⁰ The commenter stated that “this requirement is not included in the final rule” and “urge[d] the Commission to recommend deletion of the requirement to report data validation flags.”¹²¹

- *Event Types:* The commenter recommended that the six event types listed in the SLATE Participant

Reporting Specs should be consolidated. The commenter specifically recommended consolidating the Modify and Correction Loan Events and the Cancel and Delete Loan Events. The commenter stated that such consolidations could make the reporting requirements less costly and onerous for market participants.¹²²

This commenter recommended that “FINRA develop the SLATE system so that it can accept files transmitted outside of [the SLATE system] hours for processing the following business day.”¹²³ The commenter stated that its recommended timeframe for the SLATE system to accept files could be helpful to market participants with non-U.S. staff.¹²⁴

J. Comment Period Extension

Commenters stated that the length of the comment period for FINRA’s proposed rule change was too short, requesting that the comment period be extended.¹²⁵ One commenter stated that a longer comment period is needed because certain information “ha[s] not been publicly shared yet, such as the technical specifications for reporting and fees for commercial use of published data.”¹²⁶ Another commenter stated that it needed more time to provide additional comments on “potential issues,” including FINRA’s proposal of rules relating to FINRA’s maintaining of the security and confidentiality of reported confidential information as required by Rule 10c-1a(h)(4); specific details of the technical specifications proposed by FINRA in order to understand the information that must be reported (e.g., how terminated loans are to be reported, including a partial termination; how “as of” modifications are to be reported; how changes to interest rate benchmarks should be reported; the categories for type of collateral to be reported); the proposed duty of covered persons to report to FINRA a reportable security not currently reflected in SLATE; that the “proposed *de minimis* exclusion is set too low and also should be mandatory rather than discretionary; adjusting the proposed cutoff times for reporting of initial covered securities loans and loan modifications; the effect of the new Rule 6500 Series on the existing FINRA short interest reporting regime; the treatment of impactful corporate actions under the new

¹⁰⁸ ISLA Letter 1, at 13.

¹⁰⁹ ISLA Letter 1, at 14.

¹¹⁰ ISLA Letter 1, at 2.

¹¹¹ ISLA Letter 1, at 2.

¹¹² SIFMA Letter, at 8.

¹¹³ See Form Letter A.

¹¹⁴ See Form Letter A.

¹¹⁵ Letter from Jennifer (May 15, 2024).

¹¹⁶ ISLA Americas Letter, at 12.

¹¹⁷ ISLA Americas Letter, at 12.

¹¹⁸ ISLA Americas Letter, at 12.

¹¹⁹ ISLA Americas Letter, at 13.

¹²⁰ ISLA Americas Letter, at 13.

¹²¹ ISLA Americas Letter, at 13–14.

¹²² ISLA Americas Letter, at 17.

¹²³ ISLA Americas Letter, at 17.

¹²⁴ ISLA Americas Letter, at 17.

¹²⁵ See, e.g., ISLA Letter 1, at 1–2; SIFMA AMG Letter 1, at 2; ICI Letter 1, at 3; SIFMA AMG Letter 2, at 2.

¹²⁶ See SIFMA AMG Letter 1, at 2.

reporting requirements; whether firms are expected to consume information from SLATE as part of their ordinary-course securities lending operations; and considerations regarding the reporting compliance date and firms' end-of-year code freeze.¹²⁷

One commenter stated, “[g]iven that FINRA’s proposed SLATE rules would implement and add to the requirements of Rule 10c–1a, it is especially important for the Commission to ensure it takes the time necessary to closely review FINRA’s proposed rules and obtain fulsome public feedback.”¹²⁸ Another commenter stated that it “hope[s] that the SEC will consider the extension request in order to appropriately address the challenges that the FINRA Rule 6500 Series presents.”¹²⁹

Following the Commission’s publication of its *Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change to Adopt the FINRA Rule 6500 Series*,¹³⁰ numerous commenters submitted comments stating their concerns about (what they called) a 45-day “delay” in implementing the FINRA Rule 6500 Series. Some commenters opposed the Commission’s designation of a longer period within which to take action on FINRA’s proposed rule change.¹³¹ Some commenters called the extension “unacceptable” or stated that the delay in the implementation of the FINRA rules could undermine transparency, weaken investor confidence, or undermine the market.¹³²

IV. Proceedings To Determine Whether To Approve or Disapprove SR–FINRA–2024–007 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2) of the Exchange Act¹³³ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate, however, that the Commission has reached any conclusions with respect to any of the

issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,¹³⁴ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest.¹³⁵ The Commission asks that commenters address the sufficiency of FINRA’s statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the scope and implementation of the proposed rules.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under

the Exchange Act,¹³⁶ any request for an opportunity to make an oral presentation.¹³⁷

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by August 30, 2024. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by September 13, 2024.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–FINRA–2024–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to file number SR–FINRA–2024–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of

¹²⁷ SIFMA Letter, at 7–8.

¹²⁸ ICI Letter 1, at 3.

¹²⁹ ISLA Letter 1, at 1.

¹³⁰ See Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change to Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)), Release No. 34–100305 (June 10, 2024), 89 FR 50644 (June 14, 2024).

¹³¹ See, e.g., Form Letter C.

¹³² See, e.g., Form Letter C.

¹³³ 15 U.S.C. 78s(b)(2).

¹³⁴ 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Exchange Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See *id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the self-regulatory organization consents to the longer period. See *id.*

¹³⁵ 15 U.S.C. 78o–3(b)(6).

¹³⁶ 17 CFR 240.19b–4.

¹³⁷ Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-FINRA-2024-007 and should be submitted on or before August 30, 2024. Rebuttal comments should be submitted by September 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³⁸

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100654; File No. SR-CboeBYX-2024-021]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Amend the Exchange's Fee Schedule Related to Physical Port Fees

August 5, 2024.

I. Introduction

On June 7, 2024, Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change (File Number SR-CboeBYX-2024-021) to increase fees for 10 gigabit ("Gb") physical ports ("Proposal"). The proposed rule change was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.³ The proposed rule change was published for comment in the **Federal Register** on June 21, 2024.⁴ Pursuant to section 19(b)(3)(C) of

the Act,⁵ the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Background and Description of the Proposed Rule Change

The Exchange proposes to amend its fee schedule relating to physical connectivity fees by increasing the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port.⁶ The Exchange states that, by way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located.⁷ Prior to this proposed rule change, the Exchange assessed the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 Gb circuit and \$7,500 per physical port for a 10 Gb circuit.⁸ The Exchange states the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁹ The Exchange also states that a single 10 Gb

physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BZX Exchange, Inc. (options and equities), Cboe EDGX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc. ("Affiliate Exchanges").¹⁰ The Exchange states that only one monthly fee applies per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.¹¹

III. Suspension of the Proposed Rule Change

Pursuant to section 19(b)(3)(C) of the Act,¹² at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to section 19(b)(1) of the Act,¹³ the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization ("SRO") if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. A temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

A. Exchange Statements In Support of the Proposal

In support of the Proposal, the Exchange states that it believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.¹⁴ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)¹⁵ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

⁵ 15 U.S.C. 78s(b)(3)(C).

⁶ See Notice, 89 FR at 52132-33. The Exchange initially filed the proposed fee changes on July 3, 2023 (SR-CboeBYX-2023-010). On September 1, 2023, the Exchange withdrew that filing and submitted SR-CboeBZX-2023-013. On September 29, 2023, the Exchange states that the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees. See Notice, 89 FR at 52133 n.3. On September 29, 2023, the Exchange filed the proposed fee change (SR-CboeBYX-2023-014). On October 13, 2023, the Exchange withdrew that filing and submitted SR-CboeBYX-2023-015. On December 12, 2023, the Exchange withdrew that filing and submitted SR-CboeBYX-2023-018. On December 12, 2023, the Exchange withdrew that filing and submitted SR-CboeBYX-2023-019. On February 9, 2024, the Exchange withdrew that filing and submitted SR-CboeBYX-2024-006. On April 9, 2024, the Exchange withdrew that filing and submitted SR-CboeBYX-2024-012. On June 7, 2024, the Exchange withdrew that filing and submitted SR-CboeBYX-2024-021.

⁷ See Notice, 89 FR at 52133.

⁸ See Notice, 89 FR at 52133.

⁹ See Notice, 89 FR at 52133 (citing The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port). See also *id.* (citing New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed \$22,000 per month, per port.).

¹⁰ See Notice, 89 FR at 52133. The Affiliate Exchanges are also submitted contemporaneous substantively similar rule filings.

¹¹ See Notice, 89 FR at 52133. The Exchange states that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See Notice, 89 FR at 52133 n.6 (citing Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR-MIAX-2024-016)).

¹² 15 U.S.C. 78s(b)(3)(C).

¹³ 15 U.S.C. 78s(b)(1).

¹⁴ See Notice, 89 FR at 52133; 15 U.S.C. 78f(b).

¹⁵ See Notice, 89 FR at 52133; 15 U.S.C. 78f(b)(5).

¹³⁸ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as "establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization." 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ See Securities Exchange Act Release No. 100342 (June 14, 2024), 89 FR 52132 (June 21, 2024) ("Notice").