

MEMO# 35702

May 15, 2024

FINRA Submits Rule Change to Implement Requirements of SEC's Securities Loan Reporting Rule

[35702]

May 15, 2024

TO: ICI Members

Derivatives Markets Advisory Committee

Equity Markets Advisory Committee

Investment Advisers Committee

SEC Rules Committee SUBJECTS: Disclosure

Fees and Expenses

Investment Advisers

Operations

Trading and Markets RE: FINRA Submits Rule Change to Implement Requirements of SEC's Securities Loan Reporting Rule

On May 7, 2024, the Securities and Exchange Commission (SEC or "Commission") published a notice to solicit comments on a proposed rule change filed, pursuant to Securities Exchange Act Rule 19b-4, by the Financial Industry Regulatory Authority (FINRA) to adopt a new rule series to require reporting of securities loans and provide for the public dissemination of loan information.[\[1\]](#) The new FINRA rule series would implement requirements of SEC Rule 10c-1a, which requires reporting and public dissemination of information on securities loans,[\[2\]](#) and would impose certain additional requirements. The proposed FINRA rule change will be effective within 45 days of the date of the publication of the Notice[\[3\]](#) or within such longer period as the SEC designates. Comments on the proposed rule change are due by May 28, 2024.

Background and Summary of Proposed Rule

On October 13, 2023, the SEC adopted Rule 10c-1a to require any "covered person" who agrees to a "covered securities loan" to provide specified information to a registered national securities association (RNSA).[\[4\]](#) The RNSA is required to make publicly available information regarding reported securities loans, as described in SEC Rule 10c-1a. The SEC's rule, which requires the RNSA to adopt rules to implement its requirements, is intended to increase transparency and efficiency in the securities lending market. ICI commented[\[5\]](#) on the initial SEC rule proposal and was pleased that the final rule was modified to reflect

many of ICI's comments.[\[6\]](#)

As required by Rule 10c-1a, FINRA proposes to adopt new FINRA Rule 6500 series (Securities Lending and Transparency Engine (SLATE))[\[7\]](#) 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.[\[8\]](#) The new proposed rule series 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.

The Notice states that FINRA intends to separately submit to the SEC a proposed rule change to establish covered securities loan reporting fees and securities loan data products and associated fees. FINRA states that it will, however, make certain data available on its website free of charge for personal, non-commercial purposes only.[\[9\]](#)

Reporting Initial and Modified Covered Securities Loans

"Initial covered securities loans" are defined in the Notice as any new "covered securities loan" not previously reported to SLATE.[\[10\]](#) "Loan modifications" include any change to a "data element" with respect to a covered securities loan (irrespective of whether such covered security loan was previously reported to SLATE).[\[11\]](#) Any initial covered securities loan or loan modification effected on a business day at or after 12 am Eastern Time (ET) through 7:45 pm ET must be reported to SLATE the same day before 8 pm ET. Any initial covered securities loan or loan modification effected on a business day after 7:45 pm ET must be reported no later than the next business day (i.e., T+1) before 8 pm ET, as well as any initial covered securities loan or loan modification effected on a Saturday, Sunday, any federal or religious holiday, or any other day on which SLATE is not open.

Data Required to be Reported to FINRA

The Notice outlines the confidential and non-confidential data that would be required to be reported to FINRA for initial and modified covered securities loans.

Data on Initial Covered Securities Loans (Non-Confidential Data Elements)

As prescribed by Rule 10c-1a, FINRA proposes to require that initial covered securities loan reports contain the following non-confidential data elements:

- Legal name of the issuer of the securities to be borrowed and the LEI, if any;
- The ticker symbol, ISIN, CUSIP, or FIGI of the security, if assigned, or other identifier;
- Time and date the loan was effected;
- Name of the platform or venue;[\[12\]](#)
- Amount of reportable securities loaned;
- Rates, fees, charges and rebates for the loan, as applicable;[\[13\]](#)
- Type of collateral used to secure the loan and the percentage of the collateral provided to the value of the loaned securities;
- Termination date of the loan, if applicable;[\[14\]](#) and
- Borrower type, e.g., broker, dealer, bank, customer, clearing agency, custodian.

In addition, however, FINRA proposes that a covered person also be required to report the expected settlement date of a covered securities loan and the dollar cost of any other fees or charges.[\[15\]](#)

Data on Initial Covered Securities Loans (Confidential Data)

Consistent with Rule 10c-1a, FINRA proposes to require that initial covered securities loan reports contain the following confidential data elements:

- The legal names of the parties to the loan and their identifiers (CRD, IARD, MPID, LEI, as applicable) and whether such person is the lender, borrower, or an intermediary between the lender and the borrower;[\[16\]](#)
- When the lender is a broker-dealer, whether the security loaned to its customer is loaned from the broker-dealer's inventory; and
- Whether the loan will be used to close out a fail to deliver pursuant to Rule 204 of Regulation SHO or whether the loan is being used to close out a fail to deliver outside of Regulation SHO.

Further, FINRA proposes to require the reporting of additional confidential data elements, such as:

- Whether the covered person is the lender, borrower or intermediary;
- The unique identifier assigned to the covered securities loan by the covered person responsible for reporting the loan to SLATE; and
- 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 submitting the loan to SLATE.

Data on Modified Covered Securities Loans

As prescribed by Rule 10c-1a, for modifications to covered securities loans, FINRA proposes that a covered person report the following information, if the modification results in a change to the information required to be reported to FINRA for a covered securities loan:

- The date and time of the modification; and
- The unique transaction identifier assigned to the original loan.[\[17\]](#)

In addition, however, FINRA proposes that a covered person also be required to report the following additional information:

- 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;
- The MPID of the covered person;
- 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);[\[18\]](#)
- Whether the covered person is the lender, borrower or intermediary;
- The modified data elements for a loan modification to a covered securities loan previously reported to SLATE or all data elements for a loan modification to a covered securities loan that was not previously reported to SLATE; and
- Such modifiers and indicators as required by FINRA or the SLATE participant specification.[\[19\]](#)

The Notice clarifies that if a covered securities loan (whether or not it was 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.^[20] If, however, a covered securities loan was not previously required to be reported (e.g., because the initial covered securities loan occurred prior to the effectiveness of the FINRA rule), a covered person must still report each loan modification that occurs on a given day and include all of the non-confidential data elements in the first instance, as well as the unique transaction identifier.^[21]

Additionally, the Notice states that a change to any party to a covered securities loan would constitute the termination of the prior covered securities loan and the initiation of a new loan requiring a covered person to submit two reports to SLATE: (1) the termination as a loan modification with respect to the prior loan and (2) an initial covered securities loan reflecting all of the confidential and non-confidential data elements with respect to the new loan.

Compliance with Reporting Obligations

The Notice states that covered persons, or their reporting agents, have an ongoing obligation to report initial covered securities loans and any modifications to those loans to FINRA in a timely, accurate, and complete manner. If a covered person employs a reporting agent, the covered person must take reasonable steps to ensure that the reporting agent is complying with the securities lending reporting requirements on its behalf. Consistent with Rule 10c-1a, any covered person relying on a reporting agent must enter into a written agreement with the reporting agent and agree to provide such reporting agent with timely access to securities lending reporting information.

Participation in SLATE

The Notice defines any person that reports securities loan information to SLATE, directly or indirectly, as a "SLATE Participant" and provides that participation in SLATE is mandatory for purposes of reporting covered securities loans. Participation in SLATE would be conditioned on the SLATE Participant's initial and continuing compliance with certain requirements, including obtaining an MPID for reporting covered securities loans, executing and complying with the SLATE Participant application agreement and all applicable rules and operating procedures of FINRA and the SEC, and maintaining the physical security of the equipment located on the premises of the SLATE Participant to prevent unauthorized entry of information into SLATE. Additionally, any SLATE Participant acting as a reporting agent is required 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 persons by the end of the day on which any change occurs.

Dissemination of Loan Information

Consistent with Rule 10c-1a, the Notice provides for the public dissemination of certain 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: next day (T+1) loan-level data dissemination for initial covered securities loans and loan modifications (except for the loan amount); T+20 dissemination of the loan amount for initial covered securities loans and modifications; and aggregated daily loan statistics.

T+1 loan-level data for initial covered securities loans and loan modifications includes the unique identifier assigned by FINRA to the covered securities loan, the security identifiers that FINRA determines are appropriate to disseminate, and the non-confidential data elements described above (excluding the loan amount and any modifier or indicator FINRA

determines not to publicly disseminate).

In addition to T+1 loan-level data, FINRA would also disseminate statistics regarding covered securities loans reported to FINRA, including aggregate loan activity and distribution of loan rebate rates and lending fees. Specifically, the aggregated data would include, for each reportable security, the aggregate volume of securities subject to an initial covered securities loan or modification to the amount of reportable securities loaned (1) both in total and broken down by collateral type; (2) subject to a rebate rate or fee modification (both in total and broken down by collateral type); (3) subject to either a term loan or open loan; and (4) broken down by borrower type. FINRA would also disseminate the aggregate number of initial covered securities loans and terminated securities loans (both in total and broken down by collateral type).

Moreover, for each reportable security for which an initial covered securities loan or loan modification is reported to SLATE, FINRA would also disseminate on a T+1 basis the securities identifier and information pertaining to distribution of loan rate rebates 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 and loan modifications collateralized by cash, separately. FINRA would also separately disseminate the highest lending fee, lowest lending fee, and volume weighted average of the lending fees reported for initial covered securities loans and loan modifications not collateralized by cash. The Notice states that the rate distribution metrics would provide market participants with both an overall view of the range of daily loan pricing for each reportable security, as well as insight into the relationship between loan rates/fees and loan amounts.

Compliance Dates

If the SEC approves FINRA's proposed rule change, absent any extension pursuant to an SEC order, the implementation date establishing the reporting requirements will be January 2, 2026, and the implementation date establishing the dissemination requirements will be April 2, 2026. If the SEC extends the compliance dates for Rule 10c-1a's reporting or dissemination requirements, FINRA's proposed rule change would become effective consistent with the SEC's extended timeframe for reporting and data dissemination, respectively.

Sarah A. Bessin
Deputy General Counsel - Markets, SMAs & CITs

Kimberly R. Thomasson
Assistant General Counsel - Markets, SMAs & CITs

Notes

[1] See Notice of Filing of a Proposed Rule Change To Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)), 89 Fed. Reg. 38,203 (May 7, 2024) available at <https://www.govinfo.gov/content/pkg/FR-2024-05-07/pdf/2024-09847.pdf> ("Notice"). FINRA published its proposed rule series within the four-month deadline established by the SEC despite a legal challenge to SEC Rule 10c-1a filed in March 2024 in the US Court of Appeals for the Fifth Circuit.

[2] For a summary of the SEC Rule 10c-1a, please see ICI Memorandum No. 35503 (Nov. 6, 2023) available at <https://www.ici.org/memo35503>.

[3] 45 days from the publication of the Notice in the Federal Register is June 21, 2024.

[4] At this time, FINRA is the only RNSA.

[5] See Letter to Ms. Vanessa A. Countryman, Secretary, SEC, from Susan Olson, General Counsel, and Sarah A. Bessin, Associate General Counsel, ICI (Jan. 7, 2022) available at <https://www.sec.gov/comments/s7-18-21/s71821-20111347-264956.pdf>.

[6] See ICI Memorandum No. 35503, *supra* note 2.

[7] SLATE is an automated system developed by FINRA that, among other things, will accommodate reporting and dissemination of loan reports in covered securities loans.

[8] The Notice indicates that FINRA may validate and reject submissions to SLATE that FINRA believes are non-compliant or otherwise inconsistent with SEC Rule 10c-1a or with the form and manner specified by FINRA for the data and may exclude any such information from disseminated SLATE data. FINRA may also block or reject any activity to the extent such activity puts the normal functioning of the SLATE system at risk.

[9] For example, the publicly available data would include next day loan-level data for initial covered securities loans and loan modifications (except for the loan amount), loan amount for initial covered securities loans and loan modifications on a 20-day delay, and aggregate loan activity and distribution of loan rates.

[10] The definitions of "covered person" and "covered securities loan" are the same as set forth in Rule 10c-1a.

[11] "Data element" refers to the required non-confidential data elements and modifiers.

[12] FINRA will make available a list of platforms/venues and their associated identifiers for reporting purposes. If a loan occurs on a platform/venue not yet included on the FINRA list, the covered person must enter the name of the platform/venue in the SLATE report.

[13] For a covered securities loan collateralized by cash, a covered person would report the rebate rate. For covered securities loans not collateralized by cash, the securities lending fee would be reported. When reporting a rebate rate or lending fee, respectively, a covered person must report the rebate rate or lending fee as a percentage, and separately report the dollar cost of any other fees or charges.

[14] This field would remain blank if reporting a covered securities loan without a specified term (i.e., an open-ended loan). Upon the termination of an open-ended loan, a covered person would be required to submit a loan modification appending the terminated loan indicator.

[15] For a description of the types of fees and rebates reported, see *supra* note 13.

[16] The legal name of customers from whom a broker or dealer borrows fully paid or excess margin securities pursuant to Rule 15c3-3(b)(3) would not be reported.

[17] This refers to the unique transaction 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.

[18] The Notice clarifies that decreases to the loan amount resulting from a return of securities are to be reported only once the securities have been delivered because returns are not considered "effected" until the securities are actually returned. All other loan modifications must be reported on the date that the loan modification was agreed upon and, in such instances, include the effective date unless the effective date is the same as the loan modification date.

[19] FINRA proposed to reserve discretion whether to publish any modifier or indicator it determines should not be made publicly available.

[20] For example, if Lender A and Borrower X agree at 10am ET to modify the rebate rate for a previously reported covered securities loan from 0.15% to 0.20%, and then decide at 3pm ET to modify the rate to 0.30%, two loan modifications must be reported. In this example, because the covered securities loan was previously reported to SLATE, the loan modification reports must also include the unique identifier assigned by FINRA to the loan.

[21] In the previous example, supra note 20, the loan modification report reflecting the 10am ET change in the rebate rate must also include all of the other required data elements, including the unique transaction identifier and, 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. The second loan modification report reflecting the 3pm ET change would not have to include all of the other data elements.