

ALERTS

Securities Lending Update: SEC Approves Securities Lending Rules

February 5, 2025

Executive Summary

On Jan. 2, 2025, the US Securities and Exchange Commission (“**SEC**”) approved the Financial Industry Regulatory Authority, Inc.’s (“**FINRA**”) proposed new Rule 6500 Series (Securities Lending and Transparency Engine (“**SLATE**”)).^[1] The SEC’s approval of the FINRA Rule 6500 Series (“**SLATE Rules**”)^[2] represents one of the final steps in implementing (“**Rule 10c-1a**”) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”).^[3]

FINRA’s rulemaking was mandated by Rule 10c-1a.^[4] Importantly, Rule 10c-1a applies to any “covered person” or “reporting agent” (collectively, “**Reporting Persons**”), as such terms are defined therein, a group that includes registered broker-dealers, registered investment advisers, private funds, agent banks and registered clearing agencies and foreign (non-US) persons.^[5] While only FINRA members (a group that is limited to broker-dealers registered with the SEC pursuant to Section 15 of the Exchange Act) are directly subject to FINRA rules, Rule 10c-1a requires that *a//* Reporting Persons comply with the SLATE Rules.^[6] FINRA anticipates referring potential violations of the SLATE Rules by registered investment advisers and other non-FINRA members to the SEC. Accordingly, to protect against potential SEC enforcement investigations, registered investment advisers and private funds will need to comply with the SLATE Rules, as will broker-dealers directly subject to FINRA rules.

Rule 10c-1a and the SLATE Rules require *daily same-day* reporting to SLATE. FINRA will then publicly disseminate on T+1 both individual loan information and aggregated loan size information. This information, when coupled with the SEC's monthly public dissemination of Form SHO information, will materially impact the amount of publicly available information relating to short selling activity.[7]

Reporting to SLATE is scheduled to commence on Jan. 2, 2026, although a legal challenge regarding Rule 10c-1a is currently pending.[8] While it is difficult to assess the likely outcome of this litigation, oral arguments were heard in October 2024 and the litigation is expected to be resolved in the next few months. Even if the industry litigation is successful, Section 984(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank Act**") mandates that the SEC increase transparency of securities lending information available to brokers, dealers and investors. Accordingly, if successful in their litigation, industry groups will presumably press the SEC to propose and adopt less onerous securities lending rules.

Relevant Background

As further discussed in Schulte's Nov. 7, 2023, *Alert*,^[9] on Oct. 13, 2023, the SEC adopted Rule 10c-1a,^[10] which requires that Reporting Persons report each "**Covered Securities Loan**"^[11] to FINRA^[12] on the day on which the loan is entered into or modified. Rule 10c-1a separately mandates that FINRA make certain information regarding Covered Securities Loans publicly available by no later than the morning of the business day after the Covered Securities Loan was reported to FINRA, including (i) information regarding individual Covered Securities Loans and (ii) aggregate transaction activity, including the distribution of loan rates for each reportable security.^[13]

As further discussed in Schulte's Jun. 12, 2024, *Alert*,^[14] FINRA initially proposed the SLATE Rules on May 7, 2024.^[15] A number of commenters stated that FINRA's initial proposal exceeded FINRA's mandate under Rule 10c-1a and that, among other things, such an expansion of Rule 10c-1a's reporting requirements would require a cost-benefit analysis, as mandated for federal agency rulemaking.^[16]

FINRA filed a partial amendment to the original proposal, which was published by the SEC on Nov. 15, 2024,^[17] and eliminated most of the provisions cited by commenters as having exceeded FINRA's rulemaking

mandate. The SLATE Adopting Release approves the SLATE Rules as modified by the Partial Amendment.

While reporting to SLATE will not commence until Jan. 2, 2026, Reporting Persons should familiarize themselves with the SLATE Rules to ensure they have sufficient time to develop systems and processes to permit timely and accurate reporting to SLATE.

Reporting Persons Reporting Requirements

Under the SLATE Rules, Reporting Persons will need to report extensive information about Covered Securities Loans to SLATE on a loan-by-loan basis.

Certain information reported to SLATE, including the date and time at which the Covered Securities Loan was effected, the size of the loan, type of collateral, the rebate rate or fee (as applicable) and whether the borrower is a broker-dealer, customer (if the person lending securities is a broker-dealer), clearing agency, bank, custodian or other person, will be publicly disseminated by FINRA on a loan-by-loan basis (the “**Public Data Elements**”).^[18]

Other information reported to SLATE, including, where known, the legal name of each party to the covered securities loan (other than the customer from whom a broker-dealer borrows fully paid or excess margin securities), whether each party to the Covered Securities Loan is the lender, the borrower or an intermediary between the lender and the borrower (if known), whether the security is loaned from the broker’s or dealer’s securities inventory to a customer of such broker-dealer and, if known, whether the Covered Securities Loan is being used to close out a fail-to-deliver position pursuant to Rule 204 of Regulation SHO or to close out a fail-to-deliver position outside of Regulation SHO, will not be publicly disseminated (the “**Confidential Data Elements**”).^[19]

Loans agreed to prior to 7:00:00 p.m. Eastern Time (“**ET**”) must be reported to SLATE by 11:59:59 p.m. ET that business day. For loans effected on a business day after 7:00:00 p.m. ET, reporting must occur no later than 11:59:59 p.m. ET on the next business day. 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, must be reported by 11:59:59 p.m. ET on the next business day. Loan modifications must be reported on the same timeline.^[20]

Daily Public Dissemination by FINRA

FINRA will publish both individual and aggregated loan data *on a daily basis*. FINRA's public dissemination of loan data will include:

- next-day loan-level data dissemination of the Public Data Elements other than loan size for individual covered securities loans;
- T+20 dissemination of the loan size for individual Covered Securities Loans and
- aggregate loan activity and distribution of loan rates for Covered Securities Loans.[21]

Aggregate loan activity will include the “aggregate volume of securities” subject to an initial Covered Securities Loan or a modification to the amount of securities loaned reported on the prior business day.[22] To help avoid information leakage, FINRA has adopted a *de minimis* exception whereby aggregate loan activity will not be published unless reports for at least ten (10) distinct Covered Securities Loans were submitted to SLATE on the prior business day.[23]

Aggregated Loan Data and Distribution of Loan Rates

For aggregate loan data, FINRA will disseminate the aggregate volume of securities both in total and broken down by collateral type (i.e., cash collateral and non-cash collateral).[24]

The distribution of loan rates will separately be provided for (x) loans collateralized by cash and (y) loans not collateralized by cash.[25] For loans and modifications collateralized by cash, the highest rebate rate, lowest rebate rate and volume-weighted average of the rebate rates by US currency and non-US currency will be published.[26] For loans and modifications not collateralized by cash, FINRA will publish the highest lending fee or rate, lowest lending fee or rate and volume-weighted average of the lending fees or rates reported to SLATE.[27]

Material Changes from the Original SLATE Proposal

The SLATE Rules, as adopted, includes a number of welcome changes compared to the SLATE Rules as initially proposed.

Deletion of Certain Data Elements. As proposed, the SLATE Rules would have required that Reporting Persons report to SLATE certain data elements that are not required by Rule 10c-1a, including: (1) the expected settlement date of the Covered Securities Loan or modification; (2) “any other fees or charges” (i.e., the dollar cost of any other fees or charges *in addition to* the rebate rate or securities lending fee, which would have separately been reported); (3) whether the covered person is the lender, borrower or intermediary; (4) 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 Reporting Persons responsible for reporting the Covered Securities Loan to SLATE; (5) such modifiers and indicators otherwise required by the SLATE Rules or the SLATE specifications; and (6) the unique internal identifier assigned to the Covered Securities Loan by the Reporting Persons responsible for reporting the loan to SLATE.

Commenters expressed concerns that the reporting and public dissemination of information not mandated by Rule 10c-1a exceeded FINRA’s authority and increased the risk of information leakage.[28] As noted above, FINRA, in determining not to adopt such requirements, acknowledged commenters’ concerns, although it indicated that it did not agree with commenters’ views that it had exceeded its authority to adopt such requirements.[29]

Increased reporting time. As originally proposed, Reporting Persons would have been required to report each covered securities loan entered into between 12:00:00 a.m. and 7:45:00 p.m. to SLATE by no later than 8:00:00 p.m. (all times ET). Accordingly, Reporting Persons could have been subject to reporting windows as short as fifteen (15) minutes.

As adopted, Reporting Persons will need to report each covered securities loan entered into between 12:00:00 a.m. and 7:00:00 p.m. to SLATE by no later than 11:59:59 p.m. (all times ET). This should help alleviate commenters’ concerns, particularly as it relates to loans agreed to after the close of regular trading hours.

Reporting of Loan Rates. As originally proposed, where a fee or rebate was calculated as a spread to a reference rate or other benchmark, Reporting Persons would have been required to report the effective (calculated) loan rate. Accordingly, Reporting Persons would have been required to submit a modification whenever there was a change in the value of the reference rate.

In response to commenters' concerns, Reporting Persons may now report:

- the rebate rate or lending fee or rate as of the date the Covered Securities Loan was effected;
- the identity of the benchmark or reference rate; and
- the spread.

The ability to report a reference rate and agreed to spread (along with the effective rate on the day on which the loan was effected) should ease reporting burdens.

If preferred, Reporting Persons may instead report the effective rate, although they would be required to submit modification reports for any change in the effective rate. As further discussed below, FINRA's proposed fee schedule will assess a fee for each modification report submitted to SLATE; as such, we assume most (if not all) Reporting Persons will elect to report the benchmark rate and spread (and such other required information) to avoid such additional costs.

Open Questions

While the adoption of final SLATE Rules provides some clarity to Reporting Persons, a number of open questions remain, including what constitutes a "loan" for purposes of Rule 10c-1a and the SLATE Rules, the jurisdictional scope of Rule 10c-1a (and, as such, the SLATE Rules) and FINRA's authority to adopt reporting requirements not clearly contemplated by Rule 10c-1a and, separately, disseminate information regarding covered securities loans in a manner not contemplated by Rule 10c-1a.

What is a "Loan"? Commenters requested additional guidance regarding what constitutes a "loan" for purposes of Rule 10c-1a and the SLATE Rules.[30] FINRA noted that whether a particular transaction is a loan is "an issue that is not related to determinations that FINRA has made regarding the proposed reporting requirements or dissemination provisions of SLATE," and pointed commenters to the Rule 10c-1a Adopting Release.[31] However, the Rule 10c-1a Adopting Release provides limited guidance regarding the term, noting that it typically requires a facts-and-circumstances assessment.[32]

Jurisdictional Scope. In adopting Rule 10c-1a, the SEC provided limited guidance regarding the jurisdictional scope of Rule 10c-1a, only noting that reporting was triggered where a covered securities loan was “effect[ed], accept[ed], or facilitate[d] (in whole or in part) in the US.”^[33] The SEC, in approving the SLATE Rules, did not provide any additional context regarding these terms. However, FINRA indicated that foreign securities that have not, at the time of the loan, otherwise been reported to CAT may nevertheless be “reportable securities,”^[34] and, as such, loans in such securities may represent “covered securities loan” if “effect[ed], accept[ed], or facilitate[d] (in whole or in part) in the US.” While we highlighted this potential issue in our Nov. 7, 2023, *Alert*,^[35] FINRA’s “clarity” will likely increase concerns and confusion regarding Rule 10c-1a’s extraterritorial scope.

FINRA Authority. While the SLATE Rules, as adopted, walked back a number of the provisions that commenters viewed as exceeding Rule 10c-1a’s mandate,^[36] the extent of FINRA’s authority regarding the SLATE rulemaking and related requirements remains unclear. For instance, FINRA did not acknowledge any limitations on its authority to adopt reporting requirements that exceeded Rule 10c-1a’s express mandate; rather, FINRA noted that its decision to remove the provisions cited by commenters was done to ensure the SLATE Rules were adopted within the time frame established by the SEC.^[37] Accordingly, FINRA could attempt to adopt some or all of the removed provisions, or other provisions not plainly contemplated by Rule 10c-1a, in the future.

Recent Executive Order and New SEC Administration. President Donald Trump issued an Executive Order, “Regulatory Freeze Pending Review.” While the Executive Order requests that agencies consider postponing the “effective date” of rules that have yet to take effect, the effective date of Rule 10c-1a was Jan. 2, 2024. Notwithstanding Rule 10c-1a’s effective date preceding the Executive Order, there is an ongoing industry litigation aiming to vacate Rule 10c-1a and Exchange Act rule 13f-2 (which requires reporting on Form SHO) which may be successful. Further, as Rule 10c-1a’s *compliance date* is not until Jan. 2, 2026, the SEC may take other actions in the interim that impact Rule 10c-1a, although it is unclear what such actions would entail and whether Rule 10c-1a is currently on the SEC’s radar.

SLATE Fees – Proposed Rulemaking

On Nov. 21, 2024, FINRA proposed to establish new FINRA rule 7720, which would establish fees for: (1) SLATE system connectivity; (2) initial Covered Securities Loan reporting; (3) loan modification reporting; (4) late reporting; and (5) reporting cancellations, corrections and deletions (collectively, the “**SLATE Reporting Fees**”)[38]. Rule 7720 would also establish fees for access to certain SLATE loan-level data (i.e., data regarding individual covered securities loans reported to SLATE) and SLATE daily loan statistics (i.e., aggregate loan information published by SLATE, including information regarding the distribution of loan rates) and historic SLATE data (collectively, the “**SLATE Data Access Fees**”).

SLATE Reporting Fees. Under the SLATE Fee Proposal, the following reporting “fees” would apply.

- *Initial Covered Securities Loan Reporting.* SLATE Participants will be subject to a fee of \$0.07 per submission.
- *Loan Modification Reporting.* SLATE Participants will be subject to a fee of \$0.03 per modification submission.
- *Late Reporting.* SLATE Participants will be assessed a late fee of \$0.20 for each covered securities loan report that is not timely reported to SLATE as required under the SLATE Rules. This, effectively, would act as a penalty for late reporting.
- *Cancellations, Corrections and Deletions.* SLATE Participants will be assessed a fee of \$0.10 for each canceled, corrected or deleted Covered Securities Loan report.

Accordingly, each Covered Securities Loan will be subject to a minimum fee of \$0.10 (that is, each initial report will incur a fee of \$0.07 and each loan will require at least one modification in connection with its termination (and an associated \$0.03 fee), even if terminated in accordance with its terms).

Additionally, FINRA will charge a \$25 monthly fee, assessed at the User ID level, to connect to SLATE for reporting purposes. SLATE Participants using a third-party reporting intermediary will not be directly subject to such monthly fee.

SLATE Data Access Fees. Under the SLATE Fee Proposal, the following would be charged to access SLATE loan-level data, SLATE daily loan statistics and historic SLATE data.

- *SLATE Loan-Level Data and SLATE Daily Loan Statistics – Internal Use.* \$3,000 per month. While such data “is enabled for unlimited internal use through any number of display applications,”^[39] “bulk redistribution” is prohibited,^[40] although the SLATE Fee Proposal does not clearly define what “bulk redistribution” would entail.
- *SLATE Loan-Level Data and SLATE Daily Loan Statistics – Vendor Display Redistribution Fee.* \$10,000 per month. Notably, bulk redistribution is also prohibited under this subscription although, as noted above, the SLATE Fee Proposal does not clearly define what “bulk redistribution” would entail.
- *Historic SLATE Data.*^[41] A one-time single fee of \$2,000 for development and set-up, ongoing fees of \$5,000 per calendar year.

Persons wishing to subscribe to any of the above data offerings will be required to enter into agreements with FINRA, although FINRA will separately make the SLATE loan-level data and SLATE daily loan statistics available free of charge on its website for personal, non-commercial purposes.^[42] Further, certain tax-exempt organizations will be subject to fees that are half those of charged to other subscribers.^[43]

Conclusion

Reporting Persons and other interested parties should review FINRA’s SLATE Rules, Partial Amendment No. 1 and the SEC’s Notice adopting the SLATE Rules.^[44] Absent a ruling favorable to industry groups in the current litigation,^[45] Reporting Persons must begin reporting Rule 10c-1a information to FINRA starting on Jan. 2, 2026. FINRA will begin publicly reporting Rule 10c-1a information daily on April 02, 2026.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] Order Approving a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATETM)), Release No. 34-102093

(90 Fed. Reg. 1563) (Jan. 8, 2025) (“**SLATE Adopting Release**”) available here.

[2] Notice of Filing of a Proposed Rule Change to Adopt the FINRA Rule 6500 Series (Securities Lending and Transparency Engine (SLATE™)), Release No. 34-100046 (89 Fed. Reg. 38203) (May 7, 2024) (“**FINRA Proposal**”) available here.

[3] FINRA’s proposed fee schedule for SLATE participants and market participants wishing to use SLATE data awaits approval (“**SLATE Participants**”). FINRA’s proposed rulemaking is discussed herein.

[4] *Reporting of Securities Loans*, 88 Fed. Reg. 75644 (Nov. 3, 2023), (“**10c-1a Adopting Release**”) available here.

[5] A “covered person” is defined in Rule 10c-1a(j)(1) as: “(i) [a]ny person that agrees to a covered securities loan on behalf of a lender (“intermediary”) other than a clearing agency when providing [certain defined services]; (ii) [a]ny person that agrees to a covered securities loan as a lender when an intermediary is not used unless [clause (iii)] applies; or (iii) [a] broker or dealer when borrowing fully paid or excess margin securities pursuant to Rule 15c3-3(b)(3) of the Exchange Act. A “reporting agent” is defined in Rule 10c-1a(j)(4) as “a broker, dealer, or registered clearing agency that enters into a written agreement with a covered person under paragraph (a)(2) of this section.”

[6] *See, e.g.*, Rule 10c-1a(a)(1), noting that covered persons must “[p]rovide to [FINRA] the information in paragraphs (c) through (e) of [Rule 10c-1a] (“Rule 10c-1a information”), in the format and manner required by the applicable rule(s) of [FINRA].”

[7] That is, as the majority of short sales are settled with borrowed securities. Separately, while subject to ongoing litigation and potential SEC action delaying the compliance date, public dissemination of aggregated and anonymized Form SHO data is scheduled to commence in April 2025 and will thereafter occur approximately one month after the end of the month for which short positions are reported (e.g., reports reflecting short positions from June 2025 will be reported by the end of July 2025).

[8] The National Association of Private Fund Managers, the Alternative Investment Management Association, and the Managed Funds

Association have filed a lawsuit in the US Court of Appeals for the Fifth Circuit seeking to invalidate Rule 10c-1a (*Nat'l Assoc. Priv. Fund Mgr. v. SEC*, No. 23-60626 (5th Cir.)). This lawsuit is ongoing as of the date of this publication. The petition for review can be found [here](#).

[9] See Schulte's Nov. 7, 2023, *Alert*, available [here](#).

[10] 10c-1a Adopting Release.

[11] See Rule 10c-1a(j)(2). Subject to certain exceptions, a covered securities loan is defined as “[a] transaction in which any person on behalf of itself or one or more other persons, lends a reportable security to another person.” A reportable security is defined under Rule 10c-1a(j)(3) as “any security or class of an issuer’s securities for which information is reported or required to be reported to the consolidated audit trail as required by § 242.613 of the Exchange Act and the CAT NMS Plan (“**CAT**”), the Financial Industry Regulatory Authority’s Trade Reporting and Compliance Engine, or the Municipal Securities Rulemaking Board’s Real-Time Transaction Reporting System, or any reporting system that replaces one of these systems.”

[12] These reports are made to FINRA in its capacity as the current sole registered national securities association.

[13] See Schulte’s previous *Alert* regarding the substance of Rule 10c-1a, available [here](#).

[14] See Schulte’s Jun. 12, 2024, *Alert*, available [here](#).

[15] See FINRA Proposal, available [here](#).

[16] See SLATE Adopting Release at 28, fn. 111 (referencing ISLA Americas Letter 1, at 4–5; SIFMA AMG Letter 2, at 7–8; and Hagerty Letter, at 1–3).

[17] See Securities Exchange Act Release No. 101645 (Nov. 15, 2024), 89 FR 92228 (Nov. 21, 2024) (“**Partial Amendment**”), available [here](#).

[18] See FINRA Rule 6530(a)(2)(A) through (L) for a list of all Public Data Elements. As further discussed herein, loan size for individual covered securities loans will be disseminated on a delayed (T+20) basis, although information regarding aggregate loan size for each reportable security underlying Covered Securities Loans reported on the prior day will be disseminated on T+1.

[19] See FINRA Rule 6530(a)(2)(M) through (U) for a list of all Confidential Data Elements.

[20] Loan modifications are changes to any data element with respect to a covered securities loan. See SLATE Adopting Release at 9.

[21] See SLATE Adopting Release at 15.

[22] See SLATE Adopting Release at 17.

[23] See FINRA Rule 6540, Supplementary Material .01 (“notwithstanding paragraph (c)(1) of this Rule, FINRA will not include aggregate volume information for a Reportable Security unless there were reports submitted to SLATE on the prior business day for at least ten distinct Covered Securities Loans in the Reportable Security (represented by different FINRA-assigned unique loan identifiers”).

[24] See SLATE Adopting Release at 19.

[25] See FINRA Rule 6540(c)(2).

[26] See FINRA Rule 6540(c)(2).

[27] See FINRA Rule 6540(c)(2).

[28] See Partial Amendment at 92229.

[29] See Partial Amendment at 92232.

[30] See SLATE Adopting Release at 58.

[31] See SLATE Adopting Release at 58.

[32] See Rule 10c-1a Adopting Release at 85.

[33] See Rule 10c-1a Adopting Release at 165 (discussing jurisdictional triggers for Rule 10c-1a reporting requirements).

[34] FINRA noted that covered persons would need to apply for a security identifier in such instances. See SLATE Adopting Release at 60-61.

[35] Available at https://www.srz.com/en/news_and_insights/alerts/sec-securities-lending-rule-increased-transparency-and-the-risk-of-information-leakage.

[36] See SEC Schulte's previous *Alert* discussing the securities lending rules, available at https://www.srz.com/en/news_and_insights/alerts/securities-lending-update-sec-extends-review-period-for-proposed-securities-lending-rules.

[37] See SLATE Adopting Release at 80-81, 83.

[38] See Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Fees in FINRA Rule 7720 (Securities Lending and Transparency Engine (SLATETM)), Release No. 34-101697 (89 Fed. Reg. 93750) (Nov. 27, 2024) ("**SLATE Fee Proposal**") available here.

[39] See SLATE Fee Proposal at 93752.

[40] See SLATE Fee Proposal at 93752.

[41] Defined at proposed FINRA Rule 7720(e)(1) as "SLATE Loan-Level Data and [SLATE] Daily Loan Statistics from the beginning of SLATE data reporting through the end of the most recent calendar year."

[42] See FINRA Rule 6540, Supplementary Material .02.

[43] See SLATE Fee Proposal at 93753.

[44] Registered investment advisers and private funds will need to comply with the FINRA SLATE Rules.

[45] See footnote 7, *supra*.

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