Managed Funds Association
The Voice of the Global Alternative Investment Industry
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March 10, 2023

Via Electronic Submission

Michael Passante
Chief Counsel
Office of Financial Research
U.S. Department of the Treasury
717 14th Street NW
Washington, DC 20220

Re: Notice Collection of Non-Centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market; Docket No. TREAS-DO-2023-0001-0001

Dear Mr. Passante:

Managed Funds Association ("**MFA**")[1] submits these comments to the U.S. Department of the Treasury's Office of Financial Research ("**OFR**") in response to its request for comment on a proposed rule establishing a data collection covering non-centrally cleared bilateral transactions in the U.S. repurchase agreement market ("**Proposed Rules**").[2] Through the Proposal, OFR seeks daily reporting by certain entities with exposures to the non-centrally cleared bilateral repurchase ("**repo**") agreement market that exceed a specified dollar threshold.[3]

We support improving data collections by regulators to help them identify and monitor risks to financial stability, but we believe that regulatory requirements should not (1) impose burdens on market participants that are not outweighed by the benefits or which can be otherwise achieved through less costly and more efficient means or (2) drive trading and investment

[1] MFA represents the global hedge fund and alternative asset management industry and its investors by advocating for regulatory, tax, and other public policies that foster efficient, transparent, and fair capital markets. MFA's more than 150 member firms collectively manage nearly $2.6 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has a global presence and is active in Washington, Brussels, London, and Asia. www.managedfunds.org

[2] Collection of Non-Centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market, 88 Fed. Reg. 1154 (Jan. 9, 2023) ("**Proposal**"), available at: https://www.govinfo.gov/content/pkg/FR-2023-01-09/pdf/2022-28615.pdf.

[3] The collected data would be used to support the work of the Financial Stability Oversight Council ("**FSOC**"), its member agencies, and OFR to identify and monitor risks to financial stability.

decisions unless this is the intended purpose of the regulation and the costs and benefits have been carefully weighed.

Regarding the latter point, we believe regulations should be neutral and not create incentives for market participants to trade with certain counterparties rather than others, unless such a result is the intended purpose of the regulation and has been justified in the rulemaking. We are concerned that the Proposal will have just this unintended consequence: it will discourage certain market participants, particularly buy-side entities such as private funds, from entering into repo transactions with counterparties that do not have reporting obligations under the rule in order to avoid having to create and manage a costly new and complex reporting regime for repo transactions. As a result, the Proposal will have the unintended effect of reducing the potential number of counterparties of buy-side entities, leading to concentration in the repo market and reverse repo transaction market (collectively, "**repo market**").

Regarding the former point, as MFA has previously stated investment advisers to private funds are already subject to significant oversight and compliance obligations, and in the context of systemic risk, report extensive information on Form PF regarding collateral and counterparty exposures, among other information.[4] We also are concerned that the scope of entities caught by the Proposal would result in duplicative and costly reporting requirements on investment advisers, which will have the effect of diluting the quality of the data reported and increase costs to funds investors, which include public pension funds, charitable foundations, endowments, and family offices, among others.

In the following, we further explain our concerns with the Proposal.

I. Executive Summary

We appreciate the opportunity to share our views in connection with the Proposed Rules. The following is a summary of our recommendations, which we explain more fully below. MFA recommends that the Proposal should:

- Be limited to the reporting of repo transactions on U.S. government securities and postpone the reporting of other repo transactions until further analysis of the costs and benefits of doing so and experience with the new repo reporting regime;
- Impose a reporting obligation, not only on registered broker-dealers and government securities dealers, but also on banks and the affiliates of each of these entities;
- Create a reporting hierarchy—as in the swaps market—in which the reporting obligation is primarily on dealers rather than non-dealers;

[4] *See* MFA, Comment Letter on Notice of Proposed Rulemaking on Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer (May 27, 2022), available at: https://www.sec.gov/comments/s7-12-22/s71222-20129911-296085.pdf.

- Refrain from imposing dual-reporting obligations and allow parties the flexibility to assign the reporting obligation to one of the repo transactions counterparties, including to non-U.S. entities that are not otherwise covered by the rule;[5]
- Exclude repo transactions that are between affiliates or that occur outside the United States, and include a carve out for repo transactions with non-U.S. counterparties that are *de minimis* in amount and denominated in non-U.S. currency; and
- Give covered reporters 3 days to report repo transactions subject to the rule and allow at least 18 months for entities that become covered reporters to comply with any final rule.

II. Background

MFA's members are sophisticated assets managers, investing on behalf of pension funds, charitable foundations, endowments, and family offices, and have a strong interest in the robustness of the U.S. financial markets. They also are some of the most significant and active participants in the repo market. Private fund managers use the repo market both to borrow cash, by placing securities as collateral with dealers, and to borrow securities from dealers, offering cash in return. Our members value the repo market and want to ensure that it is efficient, fair, liquid, transparent, and low-cost.

In the past, MFA has submitted letters to regulators in response to requests for comment and other releases concerning the financial markets, including the U.S. repo market.[6] For example, we have recommended that FINRA, the Federal Reserve, and other policymakers enhance regulatory data collection to improve the quality of Treasury data reported through TRACE.[7] We also have supported increased public transparency in the U.S. repo market,

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[5] *See* note 9 *infra*.

[6] *See* MFA, Promoting Fair, Efficient, and Transparent Markets: 2022 Market Structure Recommendation (Feb. 8, 2022), available at: https://www.managedfunds.org/wp-content/uploads/2022/04/MFA-Market-Structure-Recommendations.pdf; MFA Comment Letter Responding to Treasury Market Practices Group White Paper on Clearing and Settlement in the Secondary Market for U.S. Treasury Securities (Nov. 28, 2018), available at: https://www.managedfunds.org/wp-content/uploads/2020/04/MFA_TMPG_Whitepaper.pdf; and MFA Comment Letter Responding to Notice Seeking Public Comment on the Evolution of the Treasury Market Structure Docket No. TREAS-DO-2015-0013 (Apr. 22, 2016), available at: https://www.managedfunds.org/wp-content/uploads/2020/04/MFA-Treasury-RFI-Final.Appendix-4.22.16-1.pdf.

[7] *See* MFA, Comment Letter on Regulatory Notice 20-43; Enhancements to TRACE Reporting for U.S. Treasury Securities (Feb. 22, 2021), available at: https://www.managedfunds.org/wp-content/uploads/2021/02/MFA-Comment-Letter-to-FINRA-Supporting-TRACE-Treasury-Reporting_2.22.21.pdf.

provided that such information is appropriately calibrated.[8] Real-time public reporting can deliver tangible benefits to investors, including by reducing transaction costs, improving liquidity conditions and improving competition, and generally increasing efficiency and resiliency. In this we appreciate that OFR's indication that it only would disclose aggregated data to the market, not individual positions, which could enable the public to identify the trading strategies of particular firms, resulting in potentially serious, deleterious effects on participation and liquidity in the repo and underlying sovereign debt markets.

We therefore appreciate the opportunity to comment on the Proposal. Properly calibrated regulatory reporting efforts can enable regulators to better monitor the financial markets to ensure they are efficient, fair, and liquid. Enhanced regulatory reporting can improve regulators' monitoring, surveillance, and analytical capabilities. More comprehensive data can also help regulators and other policymakers to evaluate potential changes to regulatory frameworks. However, we are concerned that, in certain respects, the potential benefits of the Proposal do not outweigh its costs to market participants and, furthermore, that the Proposal creates unintended consequences that could prove disruptive to the orderly operation of the repo market. Specifically, we are concerned that the Proposal would:

- Apply to all repo transactions, when applying the data collection requirements only to repos on U.S. government securities would largely fill the gaps in regulators' knowledge of the repo market and would significantly reduce the compliance burden of the Proposal;

- Require buy-side entities such as private funds, for the first time, to establish new and costly reporting infrastructure to gather and report detailed information regarding repo transactions, when such reporting obligations typically reside on broker-dealers, banks, and other sell-side intermediaries, which are regulated entities that are better equipped to establish reporting systems for repo transactions;

- Have a potentially expansive cross-border reach, as U.S. private fund advisers frequently manage foreign investment vehicles—either directly or indirectly through non-U.S. sub-advisers—that enter into repo transactions with non-U.S. banks or other non-U.S. counterparties outside the United States;[9] and

[8] *See* MFA, Comment Letter on Responding to Notice Seeking Public Comment on Additional Transparency for Secondary Market Transactions of Treasury Securities, available at: https://www.managedfunds.org/wp-content/uploads/2022/09/MFA-Comment-Letter-Treasury-RFI-as-submitted-on-8.26.22.pdf.

[9] Many repo transactions are already reported to non-U.S. regulators, particularly in the United Kingdom ("**UK**") and European Union ("**EU**"). The EU Securities Financing Transaction Regulation ("**SFTR**") was proposed in 2014 to foster transparency in repo and other SFT markets in Europe. In order to achieve this, SFTR has introduced, among other things, extensive transaction reporting requirements for SFTs. Since the end of the post-Brexit transition period on December 31, 2020, SFTR has been split into two

- Have a compliance deadline that is too short, particularly given that the Proposal does not specify the data collection agent or establish reporting protocols or other technical specifications for reporting and, unless revised, would require many entities that traditionally have not reported repo transactions to establish costly and complex new reporting systems.

In the following, we address these and other concerns in more detail.

III. Scope of the Proposal

A. Background

The Proposed Rules would require reporting for repo transactions that are not centrally cleared and have no tri-party custodian, in other words, non-centrally cleared bilateral repo transactions.[10] Specifically, the Proposed Rules would require a "covered reporter" (defined below) whose average daily total outstanding commitments to borrow cash and extend guarantees through non-centrally cleared bilateral repo contracts over all business days during the prior calendar quarter is at least $10 billion.[11] The Proposed Rules would establish two categories of "covered reporters":

- A securities broker, securities dealer, government securities broker, or government securities dealer that is registered with the Securities and Exchange Commission ("**SEC**") and whose average daily outstanding commitments to borrow and extend guarantees in non-centrally cleared bilateral repo agreement transactions with counterparties over all business days during the prior calendar quarter is at least $10 billion ("**Category 1**"); and

- Any other financial company with over $1 billion in assets or assets under management whose average daily outstanding commitments to borrow and extend guarantees in non-centrally cleared bilateral repo transactions, including commitments of all funds for which the company serves as an investment adviser, with counterparties that are not securities brokers, securities dealers, government securities brokers, or government securities dealers over all business days during the prior calendar quarter is at least $10 billion ("**Category 2**").

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separate reporting regimes for the EU (EU SFTR) and the UK (UK SFTR). *See* https://www.icmagroup.org/market-practice-and-regulatory-policy/repo-and-collateral-markets/regulation/regulatory-reporting-of-sfts/.

[10] OFR observes that cleared repo transactions and most triparty repo transactions are already subject to reporting regimes and therefore do not need to be covered by the Proposed Rules. Proposal at 1159.

[11] The thresholds in the Proposed Rules apply to outstanding commitments to borrow cash and extend guarantees rather than lend cash.

Under the Proposed Rules, Category 1 covered reporters do not include subsidiaries or other affiliates of a registered broker-dealer or government securities dealer, unless they are also registered broker-dealers or government securities dealers.

Category 2 covered reporters are other financial companies—*i.e.*, not registered broker-dealers or government securities dealers—that own or manage more than a $1 billion in assets, excluding from the $10 billion threshold calculation repo transactions with Category 1 covered reporters ("**Category 1 Exception**"). In other words, this exception is solely from the requirement to count the repo transaction toward the $10 billion outstanding commitment threshold. For purposes of this rule, the term "financial company" has the same meaning as in Title II of the Dodd-Frank Act, which limits the scope of the term "financial company" to entities that are "incorporated or organized under any provision of Federal law or the laws of any State."[12] Once a financial company becomes a Category 2 covered reporter, it becomes subject to the reporting obligations under the Proposed Rules regardless of whether its counterparty is a Category 1 covered reporter.

B. The Scope of the Proposal Should Be Better Calibrated

1. The Proposal Should Only Apply to Repo Transactions on U.S. Government Securities

We understand that the proposed collection is designed to fill a gap in regulators' information on the repo market by collecting data on the non-centrally cleared bilateral repo market, which the Proposal identifies as the last segment for which regulators do not have a transaction-level data source.[13] While we understand the desire of OFR to collect data on the remaining segment of the repo market that is not currently subject to regulatory reporting requirements, we believe the Proposal should only apply to repo transactions on U.S. government securities at this time. Repo transactions on other securities, particularly non-U.S. securities, pose more complicated reporting obligations because they are less standardized and represent a much smaller portion of the repo market.[14] Limiting the scope of the Proposal to U.S. government securities, at least as an initial matter, will provide OFR with a significant portion of the remaining segment of the repo market that it currently does not have information regarding, without imposing unduly burdensome reporting obligations on market participants. Such an approach will prove less disruptive to the orderly operation of the repo market and give OFR

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[12] *See* Section 201(a)(11) of the Dodd-Frank Act.

[13] Proposal at 1156.

[14] *See, e.g.*, Viktoria Baklanova, Isaac Kuznits, Trevor Tatum, *Primer: Money Market Funds and the Repo Market* (Feb. 18, 2021), available at: https://www.sec.gov/files/mmfs-and-the-repo-market-021721.pdf#page=1&zoom=100,0,776; and Federal Reserve Bank of New York, Staff Report No. 740, *Reference Guide to U.S. Repo and Securities Lending Markets* (Sep. 2015, rev. Dec. 2015), available at: https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr740.pdf.

valuable information regarding the compliance costs of implementing a repo reporting regime before it imposes additional reporting obligations.

2. The Proposal Should Not Apply to Buy-Side Entities Such as Private Funds

The Proposal indicates that financial companies that are not registered broker-dealers or government securities dealers, such as private funds, will rarely if ever be Category 2 covered reporters, presumably based on the assumption that such entities primarily enter into repo transactions with Category 1 covered reporters and therefore will be able to rely on the Category 1 Exception. According to the Proposal, OFR "currently expects few, if any, entities to meet the covered reporter definition thresholds under the provision that requires non-securities [b]roker, non-securities dealer, non-government securities broker, or non-government securities dealer financial companies to report. . . ."[15]

We respectfully disagree. Many buy-side entities, such as private funds, enter into repo transactions with counterparties that are not registered broker-dealers or government securities dealers. Contrary to the Proposal, this does not mean trades that do not go through a registered broker-dealer or government securities dealer are "peer-to-peer" trades that bypass "traditional intermediaries."[16] On the contrary, within the United States, private funds often enter into repo transactions with affiliates of a registered broker-dealer or government securities dealer rather than the registered entity itself. Large financial institutions book repo transactions in different corporate entities for a variety of reasons, including risk management and to maximize their balance sheet.[17]

Buy-side entities also frequently enter into repo transactions with non-U.S. banks and other non-U.S. counterparties. Such entities are rarely registered as broker-dealers or government securities dealers with the SEC.[18] Thus, such foreign counterparties are not Category 1 covered reporters for purposes of the Proposed Rules. In addition, such non-U.S. counterparties are also not Category 2 covered reporters because they do not fall within the definition of "financial company," which, as noted above, is limited to entities that are incorporated or organized under any provision of Federal law or the laws of any State. Accordingly, the reporting obligation would fall on private funds that are Category 2 covered reporters.

[15] Proposal at 1162. The Proposal does state that roughly 2,000 financial companies would need to determine whether they are covered reporters on a quarterly basis, noting that this number is based on OFR's estimate of the number of trusts, pension funds, and insurance funds that have over $1 billion in assets or assets under management. Proposal at 1163.

[16] *Id.*

[17] Of course, such counterparties could be Category 2 covered reporters even if they are not registered broker-dealers or government securities dealers that fall within the Category 1 definition.

[18] Even in the event they are engaged in broker-dealer activity in the United States, they typically rely on the exemption from registration in Rule 15a-6 under the Securities Exchange Act of 1934.

Therefore, contrary to the discussion in the Proposal, many private funds engaged in repo transactions will become Category 2 covered reporters under the Proposed Rules if it is adopted as proposed and they do not curtail their trading activity. As such, they will for the first time be subject to a reporting regime for repo transactions. The Proposal does not contemplate such an outcome, let alone include an analysis of the costs and benefits of such an approach. As noted above, we are concerned that the scope of entities caught by the Proposal would result in duplicative and costly reporting requirements on investment advisers, which will have the effect of diluting the quality of the data reported and increase costs to funds investors, which include public pension funds, charitable foundations, endowments, and family offices, among others.

Furthermore, we do not believe subjecting buy-side entities such as private funds, who predominantly enter into transactions with financial intermediaries like broker-dealers or banks or their affiliates, to a costly new reporting regime is warranted. We believe OFR should take an approach that is similar to the approach in the swaps market, where reporting obligations are allocated by statute and rule to the counterparty that is a swap dealer or major swap participant.[19] In other words, to avoid imposing a new and costly reporting obligation on private funds and other buy-side entities, the Proposal should instead impose the reporting obligation only on sell-side entities, which are accustomed to complying with reporting requirements. This approach would improve the quality of information that OFR receives because sell-side entities are better equipped to comply with reporting obligations that are on a T+1 basis (*e.g.*, with respect to reporting securities transactions), unlike buyside entities that typically report transaction and business information on a much more delayed basis.

To limit the application of the Proposed Rules on buy-side entities, the Proposal should take several steps. First, it should expand the scope of Category 1 entities to include affiliates of registered broker-dealers and government securities dealers. Financial organizations that include registered broker-dealers or government securities dealers are likely to already have a repo transaction reporting infrastructure within the organization and therefore will be able to comply with the Proposed Rules in a less costly and more efficient manner than buy-side entities that are not affiliated with registered broker-dealers or government securities dealers.

Second, for similar reasons, the Proposal should expand the scope of Category 1 to include banks and their affiliates.[20] In most cases, such entities likely will already have a registered government securities broker in the organization that is a Category 1 covered reporter. Unless OFR takes this approach, the Proposal will have the unintended consequence of incentivizing buy-side entities like private funds to limit their repo counterparties to just entities that are

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[19] *See* Section 729 of the Dodd-Frank Act (allocating reporting obligations to a swap dealer or major swap participant when only one counterparty to a swap is a swap dealer or major swap participant).

[20] *See* 12 U.S.C. 5341(2) (defining the term "financial company" as having "the same meaning as in subchapter II" and including "an insured depository institution and an insurance company").

Covered 1 covered reporters.[21] They may do this to avoid becoming a Category 2 covered reporter or otherwise having a reporting obligation under the Proposed Rules. This will result in buy-side entities having fewer counterparties to enter into repo transactions with if they want to avoid the cost of creating a reporting system. Such a result could affect the efficiency of the repo market and is not the intended purpose of the rulemaking, which we believe should be neutral with respect to creating trading incentives.

3. The Proposal Should Not Require Dual-Sided Reporting and Should Permit Repo Counterparties to Assign Reporting Obligations to One Counterparty

The Proposal appears to require dual-sided reporting when both counterparties to the repo transactions are covered reporters. Furthermore, in transactions between Category 1 covered reporters and Category 2 covered reporters, the Proposed Rules do not allocate the reporting obligation to the Category 1 covered reporter. Because the Proposal does not allow parties to assign reporting obligations to one counterparty, this would mean that in such transactions both the Category 1 and Category 2 covered reporters would be required to report the repo transactions.

We believe dual-sided reporting is inefficient and leads to inaccurate data sets, particularly when the transactions are voice-executed, which can make it difficult for regulators to reconcile trade information, as has been found in other jurisdictions. To avoid dual-sided reporting, we recommend that any final rule assign the reporting obligation to one party. Adopting such a reporting hierarchy would allow in a repo transaction between a Category 1 covered reporter and a Category 2 covered reporter for the reporting obligation to be on the Category 1 covered reporter.

Relatedly, we believe any final rule should allow parties to assign the reporting obligation to one of the counterparties to the trade. This would enable the party in the best position to comply with the rule to report the repo transaction. Such an approach would improve the data quality that OFR receives and decrease the burdens on market participants.

4. The Proposal Should Exclude Inter-Affiliate Repo Transactions From the Reporting and Counting Requirements

We believe the Proposal should exclude inter-affiliate transactions from the reporting and counting requirements in the Proposed Rules—that is, inter-affiliate repo transactions should not be required to be reported and should not count toward the Category 1 and Category 2 covered reporter thresholds. Reporting such transactions would not give OFR information that would enable it to better understand the repo market. These trades are typically risk transfers with no market impact. For example, certain investment funds clear transactions through the Fixed Income Clearing Corporation ("**FICC**") using an affiliated broker-dealer. The broker-dealer then

[21] To further address this point, OFR should consider including as Category 1 covered reporters clearing agencies that enter into bilateral, non-centrally cleared repo transactions. Such entities will be better positioned to provide OFR with quality data than their buy-side counterparties.

enters into a back-to-back repo transaction with the investment fund. Although the repo transaction is cleared and subject to regulatory reporting requirements, the back-to-back transaction could be required to be reported under the Proposed Rules. However, requiring reporting of such inter-affiliate repo transactions will not contribute to OFR's transparency goals but rather would distort market information.

5. The Proposal Should Not Apply to Repo Transactions Conducted Outside the United States

We do not think the Proposal was intended to require reporting of repo transactions that are conducted outside the United States. However, it is common for some U.S. private fund managers to use non-U.S. sub-advisers to manage non-U.S. funds. In this case, the repo transaction will occur outside the United States between the non-U.S. fund and a non-U.S. counterparty, such as a non-U.S. bank. Because the funds are under the management of a U.S. adviser, the repo transactions appear to be covered by the Proposed Rules, even though they occur outside the United States.[22] The final rule should make it clear that repo transactions conducted outside the United States, including transactions between non-U.S. sub-advisers of U.S. advisers and non-U.S. counterparties, should be excluded from the rule. This approach is warranted because such information is not relevant to regulators' understanding of the U.S. repo market.

Furthermore, the Proposal should include a carve out for repo transactions involving Category 2 covered reporters when the repo transactions are with non-U.S. counterparties and *de minimis* in amount and denominated in a non-U.S. currency. Such transactions pose little systemic risk to the United States and the burden of reporting the trade details regarding the transactions significantly outweighs the marginal benefit of regulatory reporting. Unless the final rule includes such a carve out, U.S. financial companies will have an incentive to avoid entering into repo transactions with non-U.S. counterparties to avoid triggering a reporting obligation. Among other things, this will negatively impact the ability of U.S. financial companies to get funding, particularly in non-U.S. markets.

Recommendations

In general, we believe the Proposed Rules should impose a reporting obligation for repo transactions on dealers rather than non-dealers such as private funds. To that end, we have the following recommendations:

- The Proposal should require reporting of repo transactions only on U.S. government securities;

[22] Alternatively, in the event OFR desires to obtain information regarding repo transactions involving a non-U.S. counterparty that is a dealer, it should rely on SFTR data collected in the UK and the EU. *See* note 9 *supra*.

- The definition of Category 1 covered reporter should be expanded to include banks and the affiliates of Category 1 covered reporters, and the Category 1 Exception should be expanded to exclude transactions between other financial companies and affiliates of Category 1 covered reporters;
- In repo transactions between Category 1 and Category 2 covered reporters, the reporting obligation should only be on the Category 1 covered reporter, not on the Category 2 covered reporter;
- In repo transactions between a Category 2 covered reporter and another Category 2 covered reporter, the counterparties should be able to assign the reporting obligation to one of the repo transaction counterparties;
- The Proposal should exclude inter-affiliate repo transactions from the reporting and counting requirements under the Proposed Rules;
- To address the overbreadth of the cross-border reach of the Proposed Rules, the Proposal should exclude from the rule's coverage repo transactions between non-U.S. funds and non-U.S. counterparties that occur outside the United States; and
- The Proposal should include a carve out for repo transactions involving Category 2 covered reporters when the repo transactions are *de minimis* in amount, particularly with respect to foreign-denominated repo transactions with non-U.S. counterparties.

IV. Compliance Considerations

A. Background

The Proposed Rules require information regarding repo transactions covered by the rule to be submitted no later than 11:00 a.m. on the business day following the transaction. OFR states that it expects that, if the Proposal is adopted, the final rule would go into effect 60 days after its publication in the Federal Register and is proposing that covered reporters begin to comply with the final rule 90 days after its effective date. At the time of the Proposal, OFR had not determined whether it would require submission through OFR or through a collection agent.[23]

B. The Reporting Deadline Should Be Extended

If the final rule puts a reporting obligation on buy-side entities such as private funds, then it will be extremely burdensome for such entities to report the terms of a repo transaction by 11:00 a.m. the day after the transaction is entered into. Private funds are not subject to any comparable reporting obligations under SEC or CFTC rules or under any other regulatory regime. Private funds do not currently have the infrastructure to report repo transactions within

[23] Proposed Rule § 1610.11(d).

such a short timeframe, and it would be extremely costly for them to develop such reporting infrastructure and hire the personnel to administer it. This problem is exacerbated by the fact that many repo transactions involving private funds are cross-border in nature, and therefore they often involve counterparties in different time zones. It is not realistic to expect such transactions to be reported by the next business day U.S. time.

Accordingly, we believe a more delayed reporting timeframe would serve OFR's needs without imposing unnecessary costs on market participants or creating disincentives to trade. A T+1 reporting requirement could discourage covered reporters from entering into non-centrally cleared bilateral repo transactions, particularly with respect to repo transactions with non-U.S. counterparties.

Recommendation

We recommend that:

- The Proposal should give covered reporters 3 days to report repo transactions captured by the rule, subject to the *de minimis* exception discussed above.

C. <u>The Implementation Period Should be Extended</u>

We do not believe the proposed implementation period would provide adequate time for covered reporters to comply with the proposed requirements. It will take time to develop a reporting infrastructure to comply with the rules, at least as proposed, as well as require time to add additional personnel to handle the increased reporting obligations once an entity becomes subject to a reporting obligation. The short implementation timeframe is particularly problematic at this time because OFR has not provided any clarity regarding what technical specifications will be used for reporting trades to OFR or specified who the designated collection agent will be.

We further think OFR should take an incremental approach to implementing a final rule by starting with imposing a reporting obligation on Category 1 covered reporters. Based on the data OFR receives, it may be that such transaction information gives OFR insight into a significant enough portion of the repo market to justify not extending the rule further, thus reducing the costs of complying with the final rule. This is particularly likely to be the case if OFR takes the recommendation above to extend the scope of Category 1 covered reporters to include affiliates of registered broker-dealers and government securities broker-dealers and banks and their affiliates.

Recommendations

We recommend that:

- OFR should allow at least 18 months for entities that become covered reporters to comply with any final rule; and

- OFR should take an incremental approach to implementing a final rule by starting with imposing a reporting obligation on Category 1 covered reporters before requiring other entities to report repo transactions.

V. Additional Considerations

A. Public Dissemination of Aggregated Transaction Information

According to OFR, the non-centrally cleared bilateral repo market currently lacks transparency, even to market participants, in a variety of ways. Therefore, OFR states that providing aggregated statistics on rates, haircuts, and volumes could provide greater clarity to market participants on characteristics of the market relevant to their risk-management and other decision making.[24]

MFA believes that making information regarding non-centrally cleared bilateral repo transactions public may benefit market participants, provided disclosure of such information is appropriately calibrated. In this, we appreciate OFR's indication that it would only disclose aggregated data to the market, not individual positions. The dissemination of aggregated information if properly calibrated could increase market transparency without harming investors, sacrificing the market benefits of repo transactions, or revealing proprietary trading strategies.

However, individual repo positions should not be publicly disclosed as it would harm individual market participants by allowing others to trade against them or engage in other predatory practices and decrease market efficiency. This information at an account or investor level could be used to manipulate markets and exacerbate volatility. Indeed, even in aggregated form, depending on the timing and nature of the disclosure, trading patterns and other proprietary information of firms may be inadvertently disclosed to other market participants, which could negatively impact on the firms whose trading activity is revealed. For this reason, we would appreciate the opportunity to weigh in further on public disclosure once the Proposal is finalized and OFR begins to assess whether, and if so how, to disclose aggregated data regarding repo transactions to the public.

Recommendations

We recommend that:

- OFR should only disclose information regarding repo transactions publicly in the aggregate and should only do so after consulting with market participants regarding the level of granularity and timing of such public disclosure; and

[24] Proposal at 1160.

- Where relevant, and to the extent feasible and practical, OFR employees and consultants should be subject to additional confidentiality provisions regarding the use or dissemination of such while employed by OFR and for a reasonable period of time following their departure from OFR.

B. <u>Sharing Data with Other Regulators</u>

Consistent with the Dodd-Frank Act, the Proposal states that OFR may share the data collection and information with FSOC, FSOC member agencies (*e.g.*, the SEC and CFTC), and the Bureau of Economic Analysis, and that OFR will also make the data available to FSOC and member agencies as necessary to support their regulatory responsibilities.[25] The Proposal emphasizes that when sharing this data, the information: "(i) must be maintained with at least the same level of security as used by [OFR]; and (ii) may not be shared with any individual or entity without the permission of [FSOC]."[26] The Proposal further notes that "such sharing will be subject to the confidentiality and security requirements of applicable laws, including the Dodd-Frank Act.[27]

MFA and its members are concerned about the high risk and threat of cyberespionage and data security at regulatory agencies. We understand that OFR has a statutory mandate to share data with FSOC, its member agencies, and other bodies, and appreciate that OFR recognizes the sensitivity of such information and the need to protect confidentiality of the information and maintain its security.

Recommendation

We recommend that:

- In any such information sharing, OFR should make clear that the information is confidential and subject to all applicable laws and regulations regarding subsequent sharing of the information.

C. <u>Disclosure of Collateral</u>

Noting that the collateral underlying a repo agreement is crucial to assessing the exposures and risk management in the repo market, the Proposal requires covered reporters to report information on which securities are delivered as collateral in connection with a repo transaction.[28]

[25] Proposal at 1161.

[26] *Id.*

[27] *Id.*

[28] *Id.*

We appreciate the desire of OFR to better understand the collateral used to manage the risk of transactions in the repo market in order to assess the potential spillovers from the repo market into underlying asset markets, with potential effects on liquidity and price efficiency. However, repo transactions are often included in global master netting arrangements, where the collateral for the transactions is not specific to the repo but tied to other instruments in the netting set, such as swaps and futures contracts. Such derivative instruments have significant margin requirements applicable to them. Accordingly, the trade data for the repo transaction may reflect, for example, a zero haircut, but the risk of the repo is addressed through the margin posted due to the other financial instrument in the netting set.

Recommendation

We recommend that:

- Rather than requiring specific disclosure of collateral information, OFR instead should require market participants to identify the types of collateral used in connection with repo transaction, in a "check the box" type approach (*e.g.*, diverse basket of equities, corporate bond basket, etc.).

* * *

MFA appreciates the opportunity to provide comments to OFR on the Proposed Rules. We welcome the opportunity to discuss our views with you in greater detail. Please do not hesitate to contact Matthew Daigler, Vice President & Senior Counsel, or the undersigned, at (202) 730-2600, with any questions that you may have regarding this letter.

Very truly yours,

/S/ Jennifer W. Han

Jennifer W. Han
Executive Vice President
Chief Counsel & Head of Global Regulatory Affairs

cc: James Martin, Acting Director
Cornelius Crowley, Deputy Director for Data and Chief Data Officer
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