

FINANCIAL INFORMATION FORUM

March 9, 2023

Submitted to the Federal eRulemaking Portal, <https://www.regulations.gov>

Office of Financial Research
717 14th Street NW
Washington, DC 20220
Attn: Mr. Michael Passante, Chief Counsel

Re: Office of Financial Research, Proposed Rule on Collection of Non-Centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market

Dear Mr. Passante,

The Financial Information Forum (“FIF”)¹ appreciates the opportunity to comment on the release issued by the Office of Financial Research of the Department of the Treasury (the “OFR”) titled “Collection of Non-Centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market”² (the “proposing release”) and the proposed Rule 1610.11³ set forth in the proposing release (the “proposed rule”). In the proposing release, the OFR requests comment “... on a proposed rule establishing a data collection covering non-centrally cleared bilateral transactions in the U.S. repurchase agreement (repo) market.”⁴ In this letter we sometimes refer to repurchase agreement transactions as “repos” or “repo transactions” and refer to reverse repurchase agreement transactions as “reverse repos” or “reverse repo transactions”.

A. Scope of firms subject to reporting requirement

Non-US entities

Under the proposed rule, reporting is limited to (1) securities brokers, securities dealers, government securities brokers, and government securities dealers (“Category 1 firms”), and (2) other financial companies (“Category 2 firms”), in each case, that exceed specified position thresholds in non-centrally cleared bilateral repos.⁵ In general, a firm would only be subject to the reporting requirement if its daily

¹ FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include broker-dealers, exchanges, back office service bureaus, and market data, regulatory reporting and other technology vendors in the securities industry. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

² 88 FR 1154 (Jan. 9, 2023) (“Proposing Release”).

³ Proposed 12 CFR 1610.11 (“Proposed Rule”).

⁴ Proposing Release, at 1154.

⁵ Proposed Rule 1610.11(b)(2); Proposing Release, at 1169.

average of outstanding transactions in non-centrally cleared bilateral repos for the prior calendar quarter was at least \$10 billion.⁶ For Category 2 firms, repo transactions with Category 1 firms are not included in this computation.⁷ As proposed, Category 2 firms are only subject to the reporting requirement if they have over \$1 billion in assets or assets under management.⁸ The OFR further provides in the proposing release that, “[F]or this proposed collection, the Office expects that covered reporters will be ‘financial companies’ as defined in Title II because they are incorporated or organized under Federal or state law ... and are companies ‘predominantly engaged’ in activities that the Federal Reserve Board has determined are financial in nature or incidental thereto.”⁹

Based on the above, FIF members understand that non-U.S. entities would not be subject to the proposed reporting requirement. Would a U.S. (federal or state) licensed foreign branch or foreign agency (i.e., a branch located in the U.S.) of a foreign banking organization (“FBO”) be subject to the reporting requirement if it were to exceed the applicable position and asset thresholds? If so, would the licensed foreign branch or foreign agency include its own positions and assets when determining whether it meets the reporting threshold and exclude positions and assets of the FBO that are held outside of the foreign branch or foreign agency? If a foreign branch or foreign agency were to exceed the reporting threshold, would the foreign branch or foreign agency only report its own positions and not the positions of the FBO that are held outside of the foreign branch or foreign agency? FIF members request clarification on these points.

Subsidiaries and affiliates

There are two references to subsidiaries in the proposing release. The first is a reference to the fact that the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 includes certain subsidiaries in its definition of “financial company”.¹⁰ The second is a reference to subsidiaries in data element 12 (Trade timestamp) in Table 1.¹¹ It is unclear why subsidiaries would be referenced for this data element but not for other data elements. FIF members request that the OFR provide clarification on whether there are any circumstances under which a firm would be required to aggregate its positions with those of a subsidiary for purpose of determining whether it meets the position and asset thresholds to be a covered reporter. FIF members also request that the OFR provide further guidance on whether there are any circumstances under which a firm that is subject to reporting (defined in the proposed rule as a “covered reporter”) would be required to report positions of a subsidiary. Apart from the isolated reference in data element 12, there is no evidence in the proposed rule or the proposing release that this type of aggregation would be required, but FIF members request clarification on this point.

The proposed rule does not reference affiliates, and the proposing release does not discuss affiliates. On that basis, FIF members understand that an entity would not be required to include positions and assets

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Proposing Release, at 1161-1162. Title II refers to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 124 Stat. 1376 (2010).

¹⁰ Proposing Release, at 1161-1162.

¹¹ Id. at 1170.

of its affiliates when determining whether the entity is a covered reporter. FIF members request confirmation on this point. FIF members further request confirmation that where an entity is a covered reporter, the entity would report its own positions and not the positions of any affiliate. The questions in this paragraph relate to affiliates other than subsidiaries, as subsidiaries are discussed separately in the preceding paragraph.

Guarantees

The reporting requirement applies to firms that “borrow and extend guarantees” in non-centrally cleared bilateral repos in excess of specified thresholds.¹² FIF members request clarification on the following points relating to reporting for repo guarantees:

- In many cases, a firm will guarantee only the uncollateralized portion of a repo (sometimes referred to as a “shortfall guarantee”). Should a firm, when determining whether it has met the position thresholds to be a covered reporter, only consider this shortfall portion when calculating its commitment for a shortfall repo? FIF members request clarification on this point.
- There are many repo guarantees that do not have a specified cap. For these repos, should a firm, for purposes of determining whether it has met the position thresholds to be a covered reporter, calculate its daily commitment based on the current cash amount of the repo? FIF members request clarification on this point.
- Is the OFR intending only to cover guarantees for unaffiliated third parties (sometimes referred to as a “Guaranteed Repo Product”), or is the OFR also intending to cover guarantees on behalf of affiliates?
- Should a firm, for purposes of determining whether it has met the position thresholds to be a covered reporter, aggregate the repos where the firm is a borrower together with the repos for which the firm is a guarantor on behalf of a borrower?
- Would a firm be a covered reporter if its repo borrowings exceed the applicable threshold for the prior quarter but the firm does not guarantee any repos (or the firm’s repo guarantees do not exceed the applicable threshold)?
- Should a covered reporter include in the same daily file the repos for which it is a borrower and the repos for which it is a guarantor?

FIF members further request that the OFR define within the rule what is meant by extending a guarantee for a repo.

Transactions where a firm is the cash lender

The proposed rule provides that a firm, when determining whether it qualifies as a covered reporter, should calculate its “... average daily outstanding commitments to borrow and extend guarantees.”¹³ Because the proposed rule references “outstanding commitments to borrow” and not outstanding commitments to lend, FIF members understand that a firm, when determining whether it qualifies as a

¹²Proposed Rule 1610.11(b)(2); Proposing Release, at 1171.

¹³ Ibid.

covered reporter, should not include transactions where the firm is the cash lender. FIF members request confirmation on this point.

B. Implementation timeframe and process; compliance date; testing; reporting time period; data privacy

The compliance timetable should not start to run until the OFR has published technical specifications and other applicable documentation

The OFR does not provide in the proposing release any detail relating to the required format for reported data other than a listing and description of the fields to be reported. Some of the proposed fields (such as File Observation Date) are file-level fields; other proposed fields (such as Transaction ID) are position-level fields. The OFR will need to provide guidance on how the different fields should be reported, including the required data type for each field, any format and length restrictions for each field, validations that the OFR will perform for each field, whether each field is optional or required, and whether a field is reportable at the file or position level. The proposing release also does not provide any technical detail relating to the file format requirements or the required method for file submissions and amendments. The compliance timetable (currently proposed as 90 days from the effective date) should not start to run until the OFR has published technical specifications, interpretive FAQs and other applicable documentation. As this is a new type of reporting for both the industry and the regulators, FIF members request that the OFR release the first version of the technical specifications in draft format with sufficient time for industry members to provide feedback.

FIF members recommend a compliance period of at least nine months

FIF members recommend a compliance period of at least nine months from the date that the OFR publishes technical specifications, interpretive FAQs and other applicable documentation. The proposed rule would require some firms to record and maintain certain data that they do not currently maintain. As one example, a Category 2 firm, when determining whether it meets the position threshold to be a covered reporter, is not required to include positions where the lending counter-party is a Category 1 firm.¹⁴ This means that a Category 2 firm would need to systematically identify and record for each repo that it enters into whether or not the lending counter-party is a Category 1 firm. Firms also will need to do work to capture and report pre-assigned and free text values that firms will be required to report, including netting set, trading platform, floating rate, securities identifier type, and special instructions notes or comments (please see the further discussion below of specific data elements).

Technical work that firms will need to perform to comply with the proposed reporting requirement could include changes to user interfaces, database changes, changes to front-end and back-end systems, establishing connectivity, automating the process for generating and reporting the daily position file to the OFR, and implementing systems for processing rejections, resubmissions and modifications. Some firms will seek to automate the process for generating and reporting the daily position file to the OFR and will need to confirm that their automated approach will conform to the rule. Firms need to schedule

¹⁴ Proposed Rule 1610.11(b)(2); Proposing Release, at 1171.

this work in line with other technical projects. Based on the work that will be required for firms to implement this reporting requirement, FIF members recommend a compliance period of at least nine months from the date that the OFR publishes technical specifications, interpretive FAQs and other applicable documentation.

Testing

FIF members request that the OFR provide detail as to the testing facilities and processes that it will make available to firms. FIF members recommend a testing period of at least one month.

Compliance date scenarios

Sub-section (e)(1) of the proposed rule provides for a compliance date that is 90 days after the effective date.¹⁵ The effective date would be 60 days after a final rule is published in the Federal Register.¹⁶ Sub-section (e)(2) of the proposed rule further provides that a financial company that becomes a covered reporter after the effective date “... shall comply with the reporting requirements pursuant to this section on the first business day of the third full calendar quarter following the calendar quarter in which such financial company becomes a covered reporter.”¹⁷

Assume that a final rule is published in the Federal Register on December 15, 2023. In this case, the effective date would be February 13, 2024, and the compliance date would be May 13, 2024. If a firm is a covered reporter as of February 13, 2024 based on its positions during Q4 2023, the firm presumably would be required to submit its first report on May 14, 2024 with respect to its positions on May 13, 2024. If a firm is not a covered reporter as of February 13, 2024 based on its positions during Q4 2023 but becomes a covered reporter for Q2 2024 based on its positions during Q1 2024, the firm presumably would be required to submit its first report on January 3, 2025 with respect to its positions on January 2, 2025. FIF members request confirmation that the indicated first reporting dates are correct for the examples provided (assume that all of these dates are business days). FIF members also request confirmation that a firm would be required to measure its positions for a full prior quarter (in the example above, this prior quarter would be Q4 2023) even though the final rule might not be published until near the end of such prior quarter (in the example above, the final rule is published on December 15, 2023).

If the OFR agrees to extend the implementation timetable as proposed above by FIF members, FIF members request that the OFR provide guidance with respect to the questions in the preceding paragraph based on this extended timetable. To implement the timeline proposed above by FIF members, the OFR could extend the period between the effective date and the compliance date.

¹⁵ Id. at 1170.

¹⁶ Id. at 1167.

¹⁷ Id. at 1170.

Compliance date for a prior reporter that became a non-reporter

Assume that a firm is a covered reporter as of the effective date (February 13, 2024) based on its positions during Q4 2023. The firm starts reporting on May 14, 2024 with respect to its positions on May 13, 2024. The firm falls below the position threshold for reporting for each of the four quarters of 2024. Based on the wording of the proposed rule, FIF members understand that in this scenario the firm would not be subject to position reporting during Q1 2025.¹⁸ If the firm were to exceed the position threshold for Q1 2025, would the firm be required to start reporting as of October 2, 2025 with respect to its positions on October 1, 2025? FIF members request clarification with respect to this scenario (assume that all of these dates are business days).

Date for determining assets or assets under management

A Category 2 financial company is only required to report if it has over \$1 billion in assets or assets under management. Should this be measured as of the last business day of the prior quarter or as of a different date?

Reporting time period

FIF members are concerned with a requirement to report on T+1. FIF members recommend that, at least initially, firms be required to report by T+3. Providing this additional time for reporting will enhance the accuracy of the submitted reports and reduce the number of correcting amendments that firms are required to submit. Firms also should have the ability to report on T+1 because for some firms the positions would have matured off their system after T+1, and it would be difficult to determine what was outstanding three days in the past.

Data privacy

Any publicly reported data should be anonymized and aggregated to ensure that such public reporting does not cause any covered reporter to be in violation of any privacy regulations or contractual confidentiality terms.

C. Data elements to be reported

FIF members have the questions and comments below relating to the data elements to be reported.

Time for determining positions; business days

FIF members request confirmation that when a firm reports for an observation date the firm should report its positions as of the close of business on that observation date. FIF members further request confirmation that a repo that is opened and closed on the same day would not be reportable. FIF

¹⁸ Ibid.

members also would like to confirm that reporting only applies to U.S. business days. If so, please provide the business calendar name and/or reference it.

Open repos

An open repo is a repo that does not have a maturity date but can be terminated by either party upon notice to the other party. FIF members request confirmation that, for an open repo, a firm would be permitted to leave the end date blank and only report the minimum maturity date.

Evergreen repos

An evergreen repo automatically renews unless either party provides prior notice to the other party that it does not elect to renew the repo after the currently scheduled end date. FIF members recommend that the currently scheduled end date be reported as the end date for this type of repo. The OFR could consider providing a flag that a firm could report to indicate that a repo is an evergreen repo.

Guarantees

FIF members request guidance on the following points relating to reporting for repos where the covered reporter is a guarantor:

- How should a covered reporter report the various data elements for a shortfall guarantee? FIF members note that reporting the full economic terms of the repo for a shortfall guarantee would overstate the amount being guaranteed.
- How should a covered reporter report the various data elements for a guarantee that does not have a specified cap?
- When reporting a guarantee on behalf of a non-U.S. entity, is it sufficient for a firm to indicate that it is guaranteeing this repo, or is the firm required to report all the required data elements?

Netting set (data element 8)

FIF members recommend that the OFR remove this field from the report. In contrast to the other fields in the report, which are fact-based (i.e., party names, financial terms), this field, given the various netting arrangements that could apply, would require firms to make subjective and complex interpretations for each reported position as to what the OFR expects firms to report.

If the OFR intends to require this field, FIF members request guidance as to whether this field is intended as a free text field or whether the OFR will provide specific values for a firm to select. If the OFR intends to provide specific values, FIF members request that the OFR clearly define each value. If the OFR intends this as a free text field, FIF members request that the OFR provide greater clarity as to the details that firms are required to report. In particular, there are various types of netting that could apply, such as payment netting, close-out netting, balance sheet netting and regulatory capital netting. Also, netting could be based on a written agreement or the course of dealing and policies and procedures of each party. FIF members request that the OFR provide additional clarity as to the specific

types of netting that the OFR is intending to cover and how any type of netting that the OFR is intending to cover should be reported. For example, the OFR could identify different netting scenarios and illustrate how they should be reported. This level of clarity also would be necessary to achieve consistent reporting across covered reporters, which would not be possible based on the current guidance.

Transaction id (data element 9)

What is meant by the reference to respondent?

Trading platform (data element 11)

Will this be a free text field or will the OFR provide specific values for a firm to select?

Cash lender internal identifier and cash borrower internal identifier (data elements 16 and 17)

FIF members do not believe that these two fields are necessary if firms are separately required to report the name and LEI of the lender and borrower.

Cash lender internal identifier (data element 16)

Data element 16 requires information to be reported if the covered reporter is not the cash lender. FIF members understand that reporting of this data element would be required where the covered reporter is the cash borrower or the covered reporter is acting as a guarantor on behalf of a borrower. FIF members request confirmation on the above reporting and also request guidance from the OFR whether there are any other scenarios in which this data element would need to be reported.

Cash borrower internal identifier (data element 17)

Data element 17 requires information to be reported if the covered reporter is not the cash borrower. FIF members understand that reporting of this data element would be required where the covered reporter is acting as a guarantor on behalf of a borrower. FIF members understand that a firm also would be required to report this data element where the firm is the cash lender. FIF members request confirmation on these points.

Start leg amount (data element 18)

FIF members recommend that this field be removed because some firms do not track this value on a historical basis. Please note that the OFR would have this information previously reported by the firm (and associated to the same transaction identifier reported by the firm) as long as the firm was a covered reporter as of the inception of the repo.

Close leg amount (data element 19)

FIF members request confirmation that the close leg amount would not be reportable for a variable rate repo.

Current cash amount (data element 20)

Some firms, when tracking repos where the interest rate updates on a periodic basis (for example, quarterly), do not include accrued interest in daily reporting. Accordingly, FIF members request that accrued interest not be reported in this field or, alternatively, that firms have the option whether or not to include accrued interest in this field (in which case a field could be added to the report for a firm to indicate whether or not it is including accrued interest). FIF members note that the OFR would have on file the start leg amount and the spread and benchmark for the applicable transaction identifier reported by the firm and could determine the accrued interest based on that data.

Rate (data element 22)

FIF members assume that this field would be reportable not just for a fixed rate transaction but also for a floating rate transaction and that, for a floating rate transaction, a firm would report the sum of the benchmark rate and the spread in this field. FIF members request confirmation on this point.

Floating rate (data element 23)

FIF members assume, based on the description provided by the OFR, that this field is intended for identifying the benchmark (for example, SOFR) that is used for determining the rate for the floating rate transaction. FIF members request confirmation on this point. If this assumption is correct, FIF members suggest that the OFR provide specific benchmark values for a firm to select to report this field. FIF members also recommend that the OFR rename this field to “floating rate benchmark”. More generally, FIF members request that the OFR provide an example of a floating rate repo position, the specific fields that would be reportable (i.e., rate, floating rate and spread) and how these fields should be reported.

Securities identifier type (data element 26)

Will this be a free text field or will the OFR provide specific values for a firm to select?

Securities value at inception (data element 30)

FIF members recommend that this field be removed because some firms do not track this value on a historical basis. Please note that the OFR would have this information previously reported by the firm (and associated to the same transaction identifier reported by the firm) as long as the firm was a covered reporter as of the inception of the repo.

Haircut (data element 32)

FIF members recommend that this field be removed because some firms do not track this value on a historical basis. Please note that the OFR would have this information previously reported by the firm (and associated to the same transaction identifier reported by the firm) as long as the firm was a covered reporter as of the inception of the repo. The OFR can determine the current haircut for any file observation date by comparing the securities value (data element 29) against the current cash amount (data element 20).

FIF appreciates the opportunity to comment on the proposed rule. If you would like clarification on any of the items discussed in this letter or would like to discuss further, please contact me at howard.meyerson@fif.com.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson
Managing Director, Financial Information Forum