

# FINANCIAL INFORMATION FORUM

September 12, 2024

## By email

Office of Financial Research  
U.S. Department of the Treasury  
717 14<sup>th</sup> Street, NW  
Washington, DC 20220

Attn: Michael Passante, Chief Counsel  
Sriram Rajan, Associate Director of Financial Markets  
Laura Miller Craig, Senior Advisor  
Corey Garriott, Director of Research

**Re: U.S. Department of the Treasury, Office of Financial Research, Ongoing Data Collection of Non-Centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market, 12 CFR Part 1610**

Dear Mr. Passante, Mr. Rajan, Ms. Miller and Mr. Garriott,

Financial Information Forum (“FIF”) is submitting this letter on behalf of the members of FIF in response to the FAQs published by the Office of Financial Research of the U.S. Department of the Treasury (the “OFR”) titled “Frequently asked questions about NCCBR reporting” (the “FAQs”).<sup>1</sup> The FAQs relate to the rule adopted by the OFR (the “NCCBR rule”) to require firms that meet specified activity thresholds (“covered reporters”) to report to the OFR specified data relating to non-centrally cleared bilateral repurchase agreement transactions (“repos”).<sup>2</sup> FIF is submitting this letter as a supplement to the letters that FIF submitted to the OFR on June 20, July 17 and August 22, 2024.<sup>3</sup>

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<sup>1</sup> U.S. Treasury Department, Office of Financial Research, “Frequently asked questions about NCCBR reporting”, available at <https://www.financialresearch.gov/data/collections/nccbr-faq/> (“FAQs”).

<sup>2</sup> 12 CFR §1610.11 (Non-centrally Cleared Bilateral Repurchase Agreement Data).

<sup>3</sup> Letter from FIF to the OFR dated June 20, 2024, available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=2953:fif-letter-to-the-treasury-department-s-office-of-financial-research-relating-to-the-implementation-of-reporting-of-non-centrally-cleared-bilateral-repos&view=category> (“June 20 FIF Letter”). Letter from FIF to the OFR dated July 17, 2024, available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=2967:fif-supplemental-letter-to-the-treasury-department-s-office-of-financial-research-relating-to-the-implementation-of-reporting-of-non-centrally-cleared-bilateral-repos&view=category>. Letter from FIF to the OFR dated August 22, 2024, available at <https://fif.com/index.php/working-groups/category/271-comment-letters?download=2990:fif-second->

FIF and our members would like to thank the OFR for publishing the FAQs. The FAQs address many, but not all, of the issues and questions raised in the prior FIF letters. This letter is focused on two specific issues that are addressed in the FAQs: reporting for bunched transactions and allocations; and reporting for subsidiaries. Given the limited implementation timeframe, FIF members are submitting these follow-up comments and questions on an expedited basis. FIF members continue to review the FAQs and will likely have additional comments and questions relating to other topics covered in the FAQs. FIF members remain concerned about the implementation timeline given that FIF members continue to require guidance on various structural reporting issues. Given the complexity of the issues discussed in this letter and the prior FIF letters, FIF members request a call with OFR representatives to discuss these issues in further detail.

#### **A. Bunched transactions and allocations**

In this section, we are focused specifically on a bunched repo transaction scenario where an investment adviser or lending agent acts as agent on behalf of one or more lenders and will provide allocations to the counterparty after entering into a bunched repo transaction with the counterparty. This section does not relate to the scenario where an investment adviser or lending agent enters into a repo transaction as a principal.

Based on the FAQs,<sup>4</sup> FIF members understand that if a bunched repo transaction is executed and allocated on the same trading day, a covered reporter would report the allocations and not the bunched transaction. FIF members request confirmation on this point.

In the less common scenario where a transaction is allocated the day after execution, FIF members understand based on the FAQs that a covered reporter would report the allocation and not the bunched transaction.<sup>5</sup> FIF members further understand that a covered reporter would report the timestamp for the allocation as the trade timestamp. FIF members request confirmation on these points.

Additionally, in support of this interpretation, FIF members understand that if a covered reporter were to try to report a bunched transaction, this would result in various rejections by the OFR reporting system, including the following:

- The covered reporter would not be able to report a value for the Cash Lender LEI and Cash Lender Name fields. FIF members understand that this would result in a violation of Data Element Validation Check #1 (“No Null values unless permitted”).<sup>6</sup>

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[supplemental-letter-to-the-treasury-department-s-office-of-financial-research-relating-to-the-implementation-of-reporting-of-non-centrally-cleared-bilateral-repos&view=category.](#)

<sup>4</sup> See FAQ titled “Many repos are bunched, meaning an investment adviser negotiates a repo and then allocates it to one or more fund accounts. How should a covered reporter handle this case in terms of the Legal Entity Identifiers and the number of reports?”

<sup>5</sup> Ibid.

<sup>6</sup> Technical Guidance for Transmission of the Report of Non-centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market, Office of Financial Research, Report OFR SFT-2 (May 6, 2024) (“Technical

- The covered reporter would not be reported as either the borrower or the lender. FIF members understand that this would result in a violation of Data Element Validation Check #13 for the typical scenario where the covered reporter is not a guarantor of the transaction (“When Guarantee = FALSE, Covered Reporter LEI = either Cash Borrower LEI or Cash Lender LEI”).<sup>7</sup>

FIF members also request confirmation that while the FAQs, in certain cases, refer to a bunched trade executed by an investment adviser, the guidance in the FAQs would apply to any bunched trade, whether or not the party entering into a bunched trade for subsequent allocation is an investment adviser. For example, FIF members request confirmation that the guidance in the FAQs also applies if the party entering into a bunched trade for subsequent allocation is a lending agent rather than an investment adviser.

## **B. Subsidiaries**

The FAQs provide that a covered reporter must include in its daily reports repo transactions entered into by its subsidiaries.<sup>8</sup> For the reasons discussed in this section, FIF members do not agree that the NCCBR rule requires a covered reporter to report transactions of its subsidiaries. FIF members have always understood, based on the clear wording of the NCCBR rule, that a subsidiary of a covered reporter is required to report repo transactions to the OFR if the subsidiary itself qualifies as a covered reporter based on the subsidiary’s own repo activity and that a covered reporter is not required to report transactions of subsidiaries.

The NCCBR rule makes clear that the only entities that are subject to reporting are “financial companies.”<sup>9</sup> The definition of “financial company” under the NCCBR rule<sup>10</sup> makes explicit reference to 12 U.S.C. §5341(2), which is part of Subchapter I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“the “Dodd-Frank Act”). 12 U.S.C. §5341(2), in turn, makes reference to Subchapter II of the Dodd-Frank Act.<sup>11</sup> As discussed in detail below, neither the NCCBR rule nor any provision of the Dodd-Frank Act defines a financial company to include its subsidiaries (though a subsidiary of a financial company could be a separate financial company).

It is clear from the NCCBR rule that each entity should only consider and report its own transactions. In this regard, it is important to distinguish between a “branch” of a covered reporter, which is part of the same entity as the covered reporter, and a subsidiary, which is a different entity from the covered reporter. If the OFR wants a covered reporter to include transactions of subsidiaries in its reporting, the OFR should propose a rule amendment for public comment. This rule amendment should take into account the costs to be incurred by these subsidiaries (see discussion below), which is not accounted for

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Guidance”), available at <https://www.financialresearch.gov/data/collections/files/nccbr-technical-guidance.pdf>, at 7.

<sup>7</sup> Ibid.

<sup>8</sup> See FAQ titled “Which repos by a covered reporter are in scope to be reported?”

<sup>9</sup> 12 CFR §1610.11(b)(2).

<sup>10</sup> 12 CFR §1610.11(a).

<sup>11</sup> 12 U.S.C. §5341(2).

in the NCCBR rule, the associated adopting release (the “adopting release”),<sup>12</sup> or the OFR’s Notice of Proposed Rulemaking.<sup>13</sup> Accordingly, FIF members request that the OFR update the FAQs to conform to the NCCBR rule and make clear that a covered reporter is not required to report transactions of its subsidiaries.

Except where expressly stated otherwise, we assume for purposes of this section that the covered reporter is not a guarantor or otherwise a party to the repo transaction entered into by its subsidiary.

***The NCCBR rule and associated adopting release do not provide for a covered reporter to report repos of subsidiaries***

The NCCBR rule and the associated adopting release do not provide for a covered reporter to report transactions of a subsidiary. To the contrary, the adopting release provides that “... the covered reporter should report all transactions that occur within the larger organization (including affiliates and subsidiaries of the covered reporter) **to which the covered reporter participates** (emphasis added).”<sup>14</sup> In this sentence, the adopting release makes clear that a covered reporter should only report a transaction involving a subsidiary if the covered reporter participates in the transaction.

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The adopting release also provides that, “As noted in the NPRM, the definition of ‘financial company’ includes only entities that are incorporated or organized under Federal or state law, including subsidiaries.”<sup>15</sup> FIF members understand that the phrase “including subsidiaries” is a reference to the definition of “financial company” in the Dodd-Frank Act at 12 U.S.C. §5381(a)(11).<sup>16</sup> This section of the Dodd-Frank Act provides that a firm is only considered a financial company if it meets **all three** of the following criteria:

1. The firm is incorporated under U.S. Federal or state law;
2. The firm is one of the following:
  - Bank holding company;
  - Nonbank financial company supervised by the Federal Reserve;
  - Predominantly engaged in activities that the Federal Reserve has determined are financial in nature or incidental thereto; **or**
  - A subsidiary of one of the above three types of company; **and**
3. The firm is not a governmental entity or a federal agency (i.e., FNMA, FHMLC or FHLB).

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<sup>12</sup> 89 FR 37091 (May 6, 2024) (Ongoing Data Collection of Non-Centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market) (“Adopting Release”).

<sup>13</sup> 88 FR 1154 (Jan. 5, 2023) (Collection of Non-Centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market).

<sup>14</sup> Adopting Release, at 89 FR 37101.

<sup>15</sup> *Ibid.*

<sup>16</sup> 12 U.S.C. §5381(a)(11). The NCCBR rule (at 12 U.S.C. 1610.11(a)(2)) references the definition of “financial company” in 12 U.S.C. §5341(2). 12 U.S.C. §5341(2), in turn, references the definition of “financial company” in 12 U.S.C. §5381(a)(11).

FIF members interpret the phrase “including subsidiaries” in the adopting release for the NCCBR rule to mean that a subsidiary of one of the three types of firms listed in the 2<sup>nd</sup> condition of 12 U.S.C. §5381(a)(11) could be a financial company that is subject to reporting as a covered reporter if the subsidiary by itself exceeds the applicable reporting threshold. FIF members do not interpret this phrase to mean that a covered reporter must report repo transactions entered into by a subsidiary. There is nothing in the section of the Dodd-Frank Act discussed above or in the NCCBR rule or the associated adopting release that requires a firm to attribute transactions of a subsidiary as its own transactions.

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The NCCBR rule defines “Trade timestamp” as “The timestamp that the trade became an obligation of the covered reporter or the covered reporter’s affiliate or subsidiary.”<sup>17</sup> It is clear that the NCCBR rule does not provide for a covered reporter to include transactions of affiliates in the covered reporter’s report unless the covered reporter itself is also a party to the transaction, and the OFR has further clarified this point in the FAQs.<sup>18</sup> Accordingly, FIF members interpret this reference to a covered reporter’s affiliate or subsidiary (consistent with the statement in the adopting release discussed above) to apply only to the scenario where the affiliate or subsidiary is also a party to the repo transaction.

If the OFR wants covered reporters to include transactions of subsidiaries, the OFR should propose a rule amendment for public comment. The rule amendment should include an updated Table 1 to 12 CFR §1610.11(c)(3) (“Table 1”) because the current Table 1 does not allow for proper reporting by a covered reporter of subsidiary transactions.<sup>19</sup>

***The Technical Guidance and Reporting Instructions further support the position that a covered reporter is not required to report repos of its subsidiaries***

The Technical Guidance published by the OFR in May 2024 contains no reference to subsidiaries and affiliates. Further, the Reporting Instructions, also published by the OFR in May 2024, contain only one reference to affiliates and subsidiaries, and that reference merely defines “trade timestamp” to include transactions of affiliates or subsidiaries.<sup>20</sup> As discussed above, since the OFR has made clear that a covered reporter is not required to report transactions of affiliates unless the covered reporter itself is

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<sup>17</sup> 12 CFR §1610.11(c)(3), Table 1 (“Table 1”).

<sup>18</sup> See FAQ titled “Does a covered reporter report the repos of its affiliates?”

<sup>19</sup> For example, Table 1 defines “Cash lender internal identifier” as “The internal identifier assigned to the cash lender by the covered reporter, if the covered reporter is not the cash lender.” Table 1 similarly defines “Cash borrower internal identifier.” In many cases for transactions by subsidiaries, the cash lender and cash borrower would not be customers of the covered reporter, in which case there would be no reason for the covered reporter to assign identifiers to the lender and borrower. Accordingly, the OFR would need to update Table 1 to clarify that where a subsidiary is a party to a repo transaction and the covered reporter is not a party to the transaction, the covered reporter should report the internal identifiers assigned by the subsidiary rather than the internal identifiers assigned by the covered reporter. Additional complexity is involved if a transaction is entered into between a covered reporter and a subsidiary or between two subsidiaries. In any proposed rule amendment, the OFR would need to consider and propose how these transactions should be reported.

<sup>20</sup> Reporting Instructions for Preparation of the Report of Non-centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market, Office of Financial Research, Report OFR SFT-2 (May 6, 2024), available at <https://www.financialresearch.gov/data/collections/files/nccbr-reporting-instructions.pdf>, at 9.

also a party to the transaction, FIF members interpret the reference to affiliates and subsidiaries in this definition to refer to the specific scenario where a covered reporter is also a party to the repo transaction. This interpretation is consistent with the discussion in the adopting release, as discussed above.<sup>21</sup>

FIF members further note that the OFR system will reject a covered reporter's attempt to submit a repo transaction on behalf of a subsidiary in the common scenario where the covered reporter itself is not a party to the transaction. For example, if a covered reporter attempts to report a transaction between a subsidiary and another party, the covered reporter will not be reported as the lender or the borrower. As a result, the OFR system will reject the transaction record based on Data Element Validation Check #13: "When Guarantee = FALSE, Covered Reporter LEI = either Cash Borrower LEI or Cash Lender LEI."<sup>22</sup> This is further evidence that the OFR did not intend for covered reporters to report transactions of subsidiaries.

It is also unclear how a covered reporter would report a transaction between itself and its subsidiary or between two subsidiaries of the covered reporter. Would the covered reporter be required to report the transaction twice in the same file? If so, this would result in a rejection of the records based on Data Element Validation Checks #14 ("Transaction ID is unique and non-repeating in the file") and #16 ("When not 'NA', Unique Transaction ID must be unique and non-repeating in the file").<sup>23</sup>

***Requiring covered reporters to include transactions of subsidiaries effectively imposes the Category 1 reporting timeframe on certain firms that are not Category 1 firms***

It is important to understand that the most significant work involved in reporting is not the actual submission of the daily file but is instead updating systems to capture the data that must be reported, capturing this data in the required format for reporting (or converting this data to the required format for reporting), reviewing and interpreting the reporting requirements, collecting and processing the data into the required file format, and conducting internal testing. The OFR is effectively imposing all of these requirements onto non-broker-dealer subsidiaries of Category 1 covered reporters even though these subsidiaries are not, in fact, Category 1 covered reporters. This is directly contrary to the rule and the adopting release. These subsidiaries also will be required to troubleshoot issues in any daily filing where the issue relates to transactions of the subsidiary.

Many of these subsidiaries have previously reviewed the rule and made the determination that they are not subject to reporting within the reporting timeframe for Category 1 covered reporters. Based on the FAQs, these firms, which are not Category 1 covered reporters, are now effectively subject to the reporting timeframe for Category 1 covered reporters. As noted above, while these subsidiaries are not required to submit their own reports as Category 1 covered reporters, these subsidiaries must effectively do the same work as is required for a Category 1 covered reporter.

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<sup>21</sup> Adopting Release, at 89 FR 37101.

<sup>22</sup> Technical Guidance, at 7.

<sup>23</sup> Ibid.

The OFR effectively imposing a reporting requirement on subsidiaries also brings into question the OFR's estimates of the number of firms that will be subject to reporting. As noted above, while these subsidiaries technically are not subject to reporting, from the perspective of analyzing implementation costs and the costs of ongoing compliance, these subsidiaries will need to incur costs that are equivalent to the costs incurred by any covered reporters.

***Application of the requirement to report transactions of subsidiaries will be problematic for Category 2 covered reporters***

Category 2 covered reporters will include certain financial holding companies. These financial holding companies could have large numbers of direct and indirect subsidiaries. Does the OFR intend these financial holding companies to report on behalf of every direct and indirect subsidiary? This will impose a significant burden on these financial holding companies and their subsidiaries.

Further, if a financial holding company has a broker-dealer subsidiary that is itself a Category 1 covered reporter, does the OFR intend for the financial holding company and the broker-dealer subsidiary to report every transaction of the broker-dealer (and every transaction of any subsidiary of the broker-dealer) in duplicate?

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FIF and our members appreciate the OFR's attention to the items set forth in this letter. Please contact me at [howard.meyerson@fif.com](mailto:howard.meyerson@fif.com) if you have any questions or would like further clarification as to any of the items above.

Very truly yours,

/s/ Howard Meyerson

Howard Meyerson  
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