March 10, 2023

Submitted via regulations.gov

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

Re: ***SIFMA/BPI Comment Letter on the OFR Proposed Rule Change Relating to Collection of Non-Centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market; TREAS-DO-2023-0001-0001***

Dear Mr. Passante:

The Securities Industry and Financial Markets Association ("SIFMA")[1] and the Bank Policy Institute[2] ("BPI" and, collectively with SIFMA, the "Associations") appreciate the opportunity to comment on the Office of Financial Research's ("OFR") proposed rule change (the "Proposal") establishing a data collection covering non-centrally cleared bilateral transactions in the U.S. repurchase agreement ("Repo") market.[3] The Associations support OFR's proposal to collect data on the non-centrally cleared bilateral Repo market and its goal of identifying and monitoring risks to financial stability through data collection. The Associations have long recognized the importance of the official sector having the information necessary to carry out its market supervision function and believes the Proposal furthers this objective.[4]

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

[3] See 88 FR 1154 (January 9, 2023).

[4] See SIFMA, SIFMA AMG, IIB, ABASA letter to U.S. Department of Treasury, August 26, 2022, available here. Also see SIFMA letter to the OFR, September 10, 2018 on repo data collection in the cleared repo market, available here.

As noted in the Proposal, the regulatory community has limited data on the non-centrally cleared bi-lateral Repo market and collection of additional data would significantly improve the market data available for market supervision. The Associations support regulators' additional collection of information to improve supervision. The suggestions throughout this comment are submitted with a view towards enhancing the collection, providing market participants with needed clarity in some areas of the proposed rule, making the collection more efficient and allowing for sufficient time to build any necessary systems.

Executive Summary

Our key comments and recommendations are as follows:

- **Clarify whether extraterritorial branches of US entities are reporting entities:** The scope of reporting entities in the Proposal is sufficiently broad to cover this segment of the Repo market. Although we believe that branches of US entities located outside of the US are not within the scope of this Proposal, clarity on this issue would be helpful.
- **We generally agree with the scope of transactions covered:** The definition of repurchase agreement is appropriate and consistent with market understanding.
- **Exclude inter-affiliate transactions:** We urge OFR to create an exclusion from both threshold calculations and reporting for Repo transactions between affiliates, which do not provide a meaningful view of market conditions.
- **Clarify the data elements:** The final notice should provide additional explanation of the data elements, with worked examples in certain cases.
- **Extend the implementation timeline:** The proposed implementation period is insufficient for market participants to build reporting systems. The implementation period for reporting should be sufficiently long to allow for: (1) OFR or a third-party collector to finalize the reporting technical specifications, the data elements and connectivity protocols in consultation with the industry; (2) sufficient time for reporting entities (and those that may become reporting entities) to build reporting systems and develop procedures to track activities for purposes of this collection; and (3) comprehensive testing with OFR or a third-party collection agent. We believe that reporting should begin no earlier than 365 days from the finalization and release of the technical reporting details.

The Proposal should clarify the scope of reporting entities.

The Proposal would require any U.S. financial company that is party to a non-centrally cleared bilateral Repo and whose average daily total outstanding commitments to borrow cash and extend guarantees through non-centrally cleared bilateral Repos over all business days during the prior calendar quarter is at least $10 billion to report under the rule if it is:

(i) A Securities Broker, securities dealer, government securities broker, or government securities dealer; or

(ii) Certain other financial institutions with over $1 billion in assets or assets under management.

The Associations believe that the scope of the proposed reporting entities is sufficiently broad to capture the necessary transaction volume for regulatory supervision of this segment of the Repo market. We note that these reporting entities are limited to US entities so that there is no overlap with data collections in other jurisdictions, but we request greater clarity on whether non-US branches of US entities should be reporting.

We believe the Proposal would capture the vast majority of relevant transactions and do not believe that any category of significant market participants would be excluded by the proposed approach to reporting entities.

In addition, the $10 billion threshold is appropriate and will require the market participants with the most significant transaction activity to report without scoping in market participants with negligible activity in this segment. This will allow OFR to collect a sufficient volume of information for market supervisory purposes.

We generally agree with the scope of transactions covered.

The Proposal defines a non-centrally cleared bilateral Repo transaction as one in which one party agrees to sell securities to a second party in exchange for the receipt of cash, and the simultaneous agreement of the former party to later reacquire the same securities (or any subsequently substituted securities) from that same second party in exchange for the payment of cash; or an agreement of a party to acquire securities from a second party in exchange for the payment of cash, and the simultaneous agreement of the former party to later transfer back the same securities (or any subsequently substituted securities) to the latter party in exchange for the receipt of cash.

The Proposal notes that the collection will include (but not be limited to) transactions documented on a Master Repurchase Agreement ("MRA") or a Global Master Repurchase Agreement ("GMRA"). The Proposal explicitly would exclude transactions documented under a Master Securities Loan Agreement ("MSLA") or a Global Master Securities Lending Agreement ("GMSLA").

The Associations believe that the proposed definition of "non-centrally cleared bilateral repurchase transaction" is appropriate and consistent with market understanding. The reference to the MRA and the GMRA is also appropriate as these transactions are overwhelmingly documented through these industry-standard agreements.

We agree that securities loan transactions, including those documented on an MSLA or a GMSLA, should be excluded from this collection. Securities loan transactions are not Repos, are entered into for different purposes than Repos and have specific transaction details different from those proposed to be collected. Additionally, as noted in the Proposal, the Securities and Exchange Commission has proposed an extensive transaction reporting regime for the securities

lending market and including securities lending transactions in this OFR collection would result in duplicative and overlapping reporting.[5]

The Proposal should exclude inter-affiliate transactions.

As noted above, while the Associations generally agree with the definition of non-centrally cleared bilateral Repo as proposed, we strongly believe that Repos between affiliates ("Inter-affiliate Transactions") should be excluded specifically from both the $10 billion threshold calculation and from the transaction reporting requirement. Inter-affiliate Transactions may be used to achieve efficient risk and capital allocations, operational purposes, efficient use of collateral and flexibility in addressing customer demands. For example, a customer may have a written agreement that it trade exclusively with certain entities so that collateral must be moved to execute the trade from that entity. Because these transactions occur for operational reasons and reporting would capture the trade between the client and the dealer, we do not believe this information would be useful to supervisors and therefore it should not be required to be reported.

Including Inter-affiliate Transactions in the collection would not contribute to the information on systemic volumes and leverage that the OFR is seeking and, as a result, may skew the aggregate data that would be publicly reported. As noted in the Proposal, the OFR believes the proposed data collection will allow regulators to monitor better risks and vulnerabilities that could affect financial stability.[6] Reporting of Inter-affiliate Transactions will not meaningfully contribute to this information and should be excluded specifically from the proposed collection.

Clarify the data elements.

The Proposal's reporting requirements include detailed reporting about the securities used to collateralize these trades and contractual specifics of Repos. The collection would require covered reporters to submit both their Legal Entity Identifiers ("LEI") and their counterparty's LEI for each transaction, if available. The Proposal would also require covered reporters to submit Unique Transaction Identifiers ("UTI") for each reported transaction, whenever a UTI exists. As to underlying collateral, the Proposal would require reporting the quantity of securities delivered, the initial haircut and securities value at inception of a trade, the value of the securities as of the file observation date, and the currency these values are reported in.

For date and tenor information, the Proposal would require information on the start and end dates of transactions, the date and time that each transaction was agreed to, and whether a trade has optionality. It would also require a number of proposed fields regarding date and tenor information, like the trade timestamp. For trades with optionality, Treasury seeks to collect information on the minimum maturity of the trade, or first date in which either party has the option to terminate a trade, such as the call date for a callable trade or the next day for a daily open trade.

[5] Reporting of Securities Loans, December 8, 2021, 86 FR 69802.
[6] Proposal at pg. 1158.

The Proposal would include reporting of the cash borrower and the cash lender, and indicate whether the covered reporter is either of those parties. The reported fields would indicate whether the trade is guaranteed by the covered reporter. Additionally, the fields would indicate the amounts of cash lent and borrowed by the cash lender and cash borrower, respectively. The proposed table would also include two fields on the exchange of cash in these Repo transactions. Information would be required on the amount of cash exchanged by the cash borrowers and lenders at the initiation and close of the trade. Where trades do not have a defined close date, the Proposal would require that the amount that would be due at the first opportunity that either counterparty has the option to end the trade be reported as the close leg amount. The proposed table would also require information on the agreed-upon rate for the trade, which is the interest rate at which the cash provider agrees to lend to the securities provider. This rate must be expressed as the annualized rate based on an actual/360-day count.

The Proposal would require information on a covered reporter's netting practices. This field would indicate whether the covered reporter when acting as cash lender or cash borrower offsets, or nets, Repo exposures with the same counterparty across asset classes and instrument types not restricted to the non-centrally cleared bilateral repo market. Alternately, when netting occurs within the non-centrally cleared bilateral repo market, the field would indicate the Repo terms on which netting occurs.

Finally, for trades that are placed through electronic trading platforms, the proposed collection would require the name of the platform used.

While the data elements that would be required would provide the right information and necessary details about the non-centrally cleared Repo market, the following changes/clarifications are needed so that a clear and consistent approach is taken by all market participants and reporting entities.

Netting Set: The Proposal provides limited information about this data field but based on the available information, the Associations believe this item should not be included in the collection. Netting is not captured on a trade-by-trade basis and does not represent an economic term of a trade like the other reported fields in the Proposal. For these reasons, we believe reporting this field as proposed is unworkable. If OFR intends to review netting as it relates to capital, other existing rules govern the collections of that information by federal financial regulators.

Borrower/Lender names: The Proposal would require reporting of the LEI for both the borrower and the cash lender for each transaction. In addition, the Proposal would require the names of the borrower and lender. LEIs are unambiguous values and should be sufficient to identify the parties to the transaction. Names of the entities are not needed and could introduce some confusion as they may not be reported in the same way by all participants.

Guarantee: Both the specific data element covering guarantees and the description of guarantee arrangements throughout the Proposal are not clear on what is meant to be included in the calculation of guarantee and which guarantees are in scope for reporting. For example, is this element meant to cover any guarantees associated with the transaction---in some contexts firms may include limited guarantees to address short falls--- or only those where a full transaction

amount (i.e., full amount borrowed) is guaranteed? A clearer understanding of the scope of this calculation is required for both reporting and for determining whether the $10 billion threshold is exceeded. We would urge the OFR to develop specific examples of the arrangements this data element and concept is meant to capture.

Close Leg Amount: On Repos with a variable rate, the amount of cash to be transferred on the close may not be certain on a reporting date. We would suggest including some guidance on what to report in those circumstances so that a consistent approach is taken by all reporters.

Reporting procedures and use of data should be subject to further industry comment.

Since the Proposal does not identify the collecting entity or the technical specifications for reporting, we urge that prior to the effectiveness of any rule, technical specifications and procedures be subject to further comment from the industry. We would also urge continuing engagement with the industry as the specifications are developed on the specific data elements to ensure consistency and relevancy. This will aid in developing a consistent approach to reporting across the industry based on a collective understanding of requirements. We note the following items that we believe should be addressed in any technical/procedural comment request along with the issuance of proposed forms/instructions.

Third party collector: The Associations believe that existing providers used in securities financing transaction reporting may be well positioned to efficiently manage the collection of data on behalf of OFR, e.g., DTCC, which has developed reporting regimes for other regulatory reporting obligations, like ESMA's Securities Financing Transaction Regulation ("SFTR"). The use of existing providers would allow market participants to leverage systems and data collection processes.

Data Privacy Concerns: When technical/procedural specifications are proposed, either OFR or the third-party collector should make clear any IT security protocols that will be used to guarantee the security of the data that will be transmitted to the collector.

Aggregating data: In addition, the OFR should clarify how the aggregated data for public reporting will be anonymized to ensure compliance with privacy regulations and contractual confidentiality terms. Finally, public dissemination of the appropriately anonymized data should not occur prior to two business days from the date of the report (consistent with the approach taken with respect to tri-party Repo data).

Dual-sided Reporting Structure: OFR does not specify how it intends to handle dual-sided reporting. For example, some transactions, like those between two broker-dealers, will yield a dual-sided report to OFR or its designated collection agent. If OFR intends to have both parties report, policies to match and remove any double counting from the aggregated data set will need to be developed prior to implementation.

Extend the implementation and compliance period.

The Proposal notes that the final rule would go into effect 60 days after publication in the Federal Register and that covered reporters would then be required to comply with the rule 90 days after the effective date (i.e., within 150 days from publication in the Federal Register). Given several significant open questions in this Proposal and the potential required builds associated with reporting, we urge the OFR to include a longer implementation period and consider whether a tiered timeline is appropriate.[7] In addition, a significant number of rule changes with respect to the global regulatory reporting environment are currently being, or will be shortly, implemented (for example, changes to TRACE requirements, implementation of CAT reporting, MIFID RTS 1 & 2 changes, implementation of securities lending reporting) so sufficient lead time is necessary to allow firms to meet all their obligations.

Specifications/collection agent unknown: The Proposal does not contain details of the submission process and indicates that submissions may be to either the OFR or an unknown collection agent.[8] The Proposal contains no technical specifications on the methods for submission so it is difficult to assess the needed builds and enhancements that must be put in place to comply and thus it is difficult to dimension the timeline required for building, testing and implementation.

While a number of firms participated in the OFR's limited pilot project, the pilot did not include the modifications to the back-end systems required to report on an ongoing basis at T+1 and many firms that would be covered reporters did not participate in that effort. In addition, as the Proposal notes, it is not clear how many entities might be required to report as financial institutions and we would expect that firms that are included in that definition may not have the systems to report this data. Also, as noted in the Proposal, a significant number of institutions that would not be reporting entities initially will need to develop policies and procedures to monitor activity to determine whether they have exceeded the thresholds.

We believe that, once the collection agent is identified, it is important that the technical details of this collection be issued for notice and comment so that the expected submission mechanism benefits from reporter input and is, thus, efficient and consistent with reporting technologies that many covered reporters may currently have in place. We note as well that an earlier OFR Repo data collection of cleared transactions imposed a significantly longer implementation time frame, and that collection involved a single reporting entity as opposed to the multiple reporting parties expected under the Proposal. [9]

[7] We note that the collection under SFTR adopted a tiered approach to compliance that was spread over a number of years from its publication in 2015. See SFTR here.

[8] "The Office is currently reviewing options for the submission process and implementation of the collection and, if the proposed rule is adopted, may require submission either through the Office or through a collection agent." Proposal at 1167.

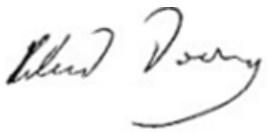
[9] See Ongoing Data Collection of Centrally Cleared Transaction in the U.S. Repurchase Agreement Market, Feb. 20, 2019, 84 FR 4975.

Given both the uncertainty of the technical specifications, the current global regulatory change environment and the scope of potential reporting entities, the Associations believe that reporters should be not required to comply until 365 days after finalization of the specifications.

In addition, we assume from the Proposal that an entity that exceeds the de minimis threshold for cash borrowing will be the sole reporter on any given transaction and that matching with counterparties of trade details (UTIs, for example) is not required. Should matching with counterparties be required, a longer implementation time frame should be considered once the specifications are finalized.

The Associations greatly appreciate the opportunity to submit this comment letter on the Proposal. If you have any questions or require additional information, please do not hesitate to contact the undersigned at rtoomey@sifma.org or brett.waxman@BPI.com.

Sincerely,



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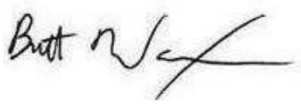

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