Training of Individuals Handling Wild or Exotic Animals

We are also contemplating adding regulations regarding the training of licensees and staff of exhibitors who handle Category 1 and 2 animals at any time (including, but not limited to, handling during public contact activities). We welcome comments regarding training requirements that licensed exhibitors should be required to meet. We are particularly interested in comments regarding the nature of training that currently exists in the absence of APHIS requirements, including, but not limited to, the required duration and content of training, any particular training requirements for exhibitors who handle particular categories or species of animals, any differences in training requirements based on the extent or nature of the employee or volunteer's interaction with the animal, and any challenges that may exist in obtaining the necessary training. We are also seeking public comment on the costs that could be associated with training, if we were to require it, including the length of time that would be required to complete the training.

Environmental Enrichment for Animals

As noted earlier, the regulations currently only contain requirements for the environmental enrichment of non-human primates and marine mammals. We are contemplating adding regulatory requirements to address species-specific environmental enrichment for all regulated animals. Enrichments may address the psychological needs of species known to exist in social groups; species-specific feeding, foraging, and food acquisition behaviors; and enclosure space, lighting, and design that allow for species-typical behaviors.

Environmental enrichment requirements could be implemented as performance standards, and licensees and registrants would be able to use their own expertise to determine the specific measures that they would implement to meet the proposed requirements. If this approach were adopted, we would require licensees and registrants to develop and implement a written plan specifying the measures that they would take to provide for the environmental enrichment of the animals in their care that would be signed and approved by an attending veterinarian and made available to APHIS officials upon request. We anticipate that the licensee/registrant would be required to monitor the plan on an ongoing basis in order to ensure compliance with the plan and to make adjustments if warranted.

We are seeking comment on this approach to regulating environmental enrichment for regulated animals. Particularly, we are interested in receiving comments on the following questions:

- What, if any, general environmental enrichments should be required for all species?
- What environmental enrichments addressing psychological needs should be required for social species (in general or for particular species)?
- What environmental enrichments addressing natural feeding, foraging, and food acquisition behaviors should be required for animals in general, for certain taxa of animals, or for particular species?
- What environmental enrichments addressing enclosure space, lighting, and design to allow for species-typical behaviors should be required for animals in general, for certain taxa of animals, or for particular species?
- Are there other components or types of environmental enrichments we should consider when developing environmental enrichment requirements for certain taxa of animals or for particular species?
- If we choose to require a written plan, what specific requirements should the attending veterinarian consider when reviewing and/or approving the written plan?
- If environmental enrichment requirements were presented as performance standards, what guidance could APHIS provide to assist licensees and registrants to meet the performance standards?
- What direct costs may be associated with providing environment enrichment for the potentially affected animals in each category?
- Are there any reasonably foreseeable indirect costs (*e.g.,* opportunity costs or overhead) that stem from these direct costs?

Environmental Impacts

APHIS seeks public comment on whether the changes being considered may require the preparation of an environmental assessment or environmental impact statement pursuant to the National Environmental Policy Act (NEPA). Comments will help inform APHIS as to the applicability of NEPA to modifications to the regulations regarding the handling of wild or exotic animals and environmental enrichment for animals.

Economic Considerations

APHIS seeks public comment on economic cost considerations for businesses, and in particular small businesses, associated with the amendments being considered. Specifically, we invite public comments on the number of entities that would be potentially impacted by the amendments to the regulations should we proceed to a proposed rule, and the costs associated with these amendments, and detailed comments on any additional costs that could be associated with the amendments to the regulations.

We welcome all comments on the issues outlined above and encourage the inclusion of supporting data.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 21st day of December, 2022.

Jennifer Moffitt,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2023–00021 Filed 1–6–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

12 CFR Part 1610

Collection of Non-Centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of the Treasury's Office of Financial Research (the Office) is requesting comment on a proposed rule establishing a data collection covering non-centrally cleared bilateral transactions in the U.S. repurchase agreement (repo) market. This proposed collection would require daily reporting to the Office by certain brokers, dealers, and other financial companies with large exposures to the non-centrally cleared bilateral repo market. The collected data would be used to support the work of the Financial Stability Oversight Council (the Council), its member agencies, and the Office to identify and monitor risks to financial stability.

DATES: Comments must be received by 60 days after the date of publication in the **Federal Register**.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

- *Mail:* Michael Passante, Chief Counsel, Office of Financial Research, 717 14th Street NW, Washington, DC 20220.

Instructions: Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. In general, all comments received will be posted without change at *https://www.regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, visit *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: John Zitko, Senior Counsel, OFR, (202) 594–9658, *john.zitko@ofr.treasury.gov;* or Sriram Rajan, Associate Director of Financial Markets, OFR, (202) 594–9658, *sriram.rajan@ofr.treasury.gov.*

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

The Office of Financial Research (Office) is requesting comment on a proposed rule establishing a data collection covering non-centrally cleared bilateral transactions in the U.S. repurchase agreement (repo) market (proposed collection). This proposed collection would require reporting by certain U.S. covered reporters for repo transactions that are not centrally cleared and have no tri-party custodian. This proposed collection would enhance the ability of the Financial Stability Oversight Council (Council), Council member agencies, and the Office to identify and monitor risks to financial stability. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Office is authorized to issue rules and regulations in order to collect and standardize data to support the Council in fulfilling its duties and purposes, such as identifying risks to U.S. financial stability. In a 2022 statement on nonbank financial intermediation, the Council supported a recommendation made by the Council's Hedge Fund Working Group that the Office consider ways to collect non-centrally cleared bilateral repo data.[1] Additionally, in July 2022 the Office consulted with the Council on efforts to collect non-centrally cleared bilateral repo data, including work on this proposed rule.[2] As a part of this consultation, the Office described the structure and objectives of a pilot study of the non-centrally cleared bilateral repo market conducted in the summer of 2022. This pilot study critically informed the Office's collection efforts.

This proposed collection would require reporting on non-centrally cleared bilateral repo transactions, which comprise the majority of repo activity by several key categories of institutions such as primary dealers and hedge funds.[3] In line with the Council's discussions on July 28, 2022, this proposed collection would provide visibility and transparency into a crucial segment of the U.S. repo market and, as explained below, the one remaining segment for which transaction-level data is not available to regulators.

Collection of information on the non-centrally cleared bilateral repo market is critical to the understanding of financial stability risks. The data proposed to be collected under this proposal will enable the Office to monitor risks in this market. Further, as the Council's duties relate to monitoring and responding to potential financial stability risks, the proposed collection supports the Office's statutory mandate to support the work of the Council.

II. Repurchase Agreement Market Background

The multitrillion-dollar market for repo transactions allows financial institutions to lend or borrow cash, usually overnight, using securities as collateral. A repo transaction is the sale of assets, combined with an agreement to repurchase the assets at a future date at a prearranged price. Repos are commonly used as a form of secured borrowing. The assets underlying the repo are used as collateral to protect the cash lender against the risk that the securities provider fails to repurchase the assets underlying the repurchase agreement. Market participants use repos for many reasons, such as to finance securities holdings or to borrow specific securities for use. Central banks also use repos as an important monetary policy tool.[4] The interest rate on repo borrowing is calculated based on the difference between the sale price and the repurchase price of the assets underlying the repo.

Cash lenders typically require over-collateralization from borrowers to protect themselves against a decline in the value of the securities subject to repurchase. In the non-centrally cleared bilateral repo market, the value of the securities pledged as collateral is discounted, which is referred to as a haircut. Margin requirements provide additional buffers for the variation in the value of collateral. Initial margin is a buffer meant to cover the costs of early termination of repo contracts. Drawn upon contingently, initial margin differs from a second type of periodically adjusted margin. If the market value of the collateral falls during the life of the repo, the cash lender has the right to call on its counterparty to deliver additional collateral, known as variation margin, so that the loan remains over-collateralized against future adverse price movements.

Repo transaction documentation specifies the agreement terms, including the types of securities that are acceptable to the cash lender as collateral, and risk management

[1] Financial Stability Oversight Council. ''Statement on Nonbank Financial Intermediation.'' Press Release, February 4, 2022: FSOC. *https://home.treasury.gov/news/press-releases/jy0587.*

[2] Financial Stability Oversight Council. Meeting minutes. FSOC, July 28, 2022, pg. 7. *https://home.treasury.gov/system/files/256/FSOC_20220728_Minutes.pdf.*

[3] Hempel, Samuel, R. Jay Kahn, Vy Nguyen, and Sharon Y. Ross. 2022. ''Non-centrally Cleared Bilateral Repo.'' OFR Blog. Office of Financial Research. August 24, 2022. *https://www.financialresearch.gov/the-ofr-blog/2022/08/24/non-centrally-cleared-bilateral-repo/.*

[4] Logan, Lorie K. ''Operational Perspectives on Monetary Policy Implementation: Panel Remarks on 'The Future of the Central Bank Balance Sheet.' '' Speech, Policy Conference on Currencies, Capital, and Central Bank Balances, Stanford University, Stanford, California, May 4, 2018. *https://www.newyorkfed.org/newsevents/speeches/2018/log180504.*

protocols. These protocols include haircuts and margin requirements, which address the costs related to variation in collateral value underlying repo transactions. Participants may have arrangements with each other to offset repo borrowing and lending agreements according to certain conventions. These arrangements, referred to as netting practices, relate to risk management considerations and the economic terms on which repo transactions are negotiated. Firms may employ netting practices across asset classes and instrument types outside of repo markets, on a portfolio basis. Stated differently, a repo market participant may manage netting practices on a repo counterparty across a range of financial exposures. Alternatively, a pair of counterparties may also manage their netting practices only within the context of repo transactions.

Repos can be entered into with a range of fixed maturities, though repos are often overnight transactions. For term repos, repo rates can be negotiated on either a fixed or floating basis. There are also open-tenor repos, which do not have a fixed maturity and are instead renewed by mutual agreement. A lender and a borrower may also write a repo contract to give the option to recall cash or collateral early or extend trades, especially for longer-tenor agreements with less-liquid collateral.

a. Structure of the Repurchase Agreement Market

The repo market can be divided into four segments based on whether the transactions are cleared by a central counterparty and whether a tri-party custodian is used to settle transactions.[5] Central counterparties novate trades onto their balance sheets, interposing a common counterparty for all transactions that allows participants to better manage counterparty risk. Central counterparties also provide netting benefits for both balance sheet and settlement purposes. Tri-party custodians are banks that provide collateral valuation, margining, and management services to the counterparties in a repurchase agreement. The tri-party custodian provides back-office support to both parties in the trade by settling the repo on its books and confirming that the terms of the repo, such as eligible collateral and haircuts, are met.

The four segments of the repo market span the different combinations of centrally cleared and non-centrally cleared, tri-party and bilateral. For three of these segments, data are currently collected by regulators. For the U.S. non-centrally cleared tri-party repo market, Bank of New York Mellon serves as the tri-party custodian and transaction-level data is collected under the supervisory authority of the Federal Reserve Board of Governors (Federal Reserve Board). For the centrally cleared tri-party repo market and bilateral repo market, the Fixed Income Clearing Corporation (FICC) serves as the central counterparty. The centrally cleared bilateral repo market is provided by FICC's DVP Service and includes a sponsored service, which offers eligible clients the ability to lend cash or eligible collateral via FICC-cleared delivery-versus-payment (DVP) repo transactions in U.S. Treasury and agency securities on an overnight and term basis settled on a DVP basis.[6] The centrally cleared tri-party repo market is operated through FICC's GCF Repo Service, which also includes the Centrally Cleared Institutional Tri-Party Service, through which institutional counterparties (other than investment companies registered under the Investment Company Act of 1940) can participate as cash lenders in general collateral finance repo on a specified-counterparty basis. In 2021, FICC also began a cleared tri-party service for sponsored members known as the Sponsored General Collateral Service.[7] For all centrally cleared segments, data is collected through the Office's cleared repo collection, which has given financial regulators greater visibility into this segment of repo activity.[8]

The final segment of the market is the non-centrally cleared bilateral repo market. This segment has no central counterparty or tri-party custodian, and all trades within this segment are agreed to bilaterally and are settled on a DVP basis. Unlike other segments of the market, less information is known to financial regulators about the non-centrally cleared bilateral segment. While some aggregate data are available from various regulatory filings, there is no transaction-level collection covering the market. However, research by the Office finds that this segment represents 60% of total repo lending by primary dealers and 37% of total repo borrowing.[9]

This proposed collection is designed to fill a critical gap in regulators' information on the repo market by collecting data on the non-centrally cleared bilateral repo market, the last segment for which regulators do not have a transaction-level data source. The need for a collection of data on this segment of the market to assist policymakers' understanding of how the aggregate repo market operates has been recognized by the Council since 2016, when it first called for the Office to establish a permanent repo data collection.[10] This lack of visibility was felt acutely following recent episodes in repo markets, which are described in greater detail below. These episodes included a spike in repo market rates in September 2019 and events related to the use of repo with respect to Treasury collateral in March 2020. For both of these events, substantial portions of activity in these crucial funding markets could not be observed. In the wake of these episodes of stress, market participants and regulators have pointed to this segment as a critical blind spot in a market that plays a key role in financial stability.[11]

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[5] Kahn, R. Jay, and Luke Olson. ''Who Participates in Cleared Repo?'' Brief no. 21–01, Washington, DC: Office of Financial Research, 2021. For more background, see Baklanova, Viktoria, Adam Copeland, and Rebecca McCaughrin. ''Reference Guide to U.S. Repo and Securities Lending Markets.'' Working Paper no. 15–17, Washington, DC: Office of Financial Research, U.S. Department of the Treasury, 2015.

[6] Depository Trust and Clearing Corporation. ''Deposit Trust and Clearing Corporation Sponsored Service.'' Fact sheet, page 1: 2018. *https://www.dtcc.com/-/media/Files/Downloads/Clearing-Services/FICC/GOV/Sponsored-Membership-Fact-Sheet.pdf,* page 1.

[7] Depository Trust and Clearing Corporation. ''DTCC's FICC Launches New Sponsored General Collateral Service as BNY Mellon, Federated Hermes and J.P. Morgan Securities Execute First Triparty Repo Trades.'' Press release, September 7, 2021: DTCC. *https://www.dtcc.com/news/2021/september/07/dtccs-ficc-launches-new-sponsored-general-collateral-service.*

[8] 12 CFR part 1610.

[9] Hempel, Samuel, R. Jay Kahn, Vy Nguyen, and Sharon Y. Ross. 2022. ''Non-centrally Cleared Bilateral Repo.'' OFR Blog. Office of Financial Research. August 24, 2022. *https://www.financialresearch.gov/the-ofr-blog/2022/08/24/non-centrally-cleared-bilateral-repo/.* See also Infante, Sebastian, Lubomir Petrasek, Zack Saravay, and Mary Tian. 2022. ''Insights from revised Form FR2004 into primary dealer securities financing and MBS activity.'' FEDS Notes. Federal Reserve Board. August 5, 2022. *https://www.federalreserve.gov/econres/notes/feds-notes/insights-from-revised-form-fr2004-into-primary-dealer-securities-financing-and-mbs-activity-20220805.html.*

[10] Financial Stability Oversight Council. 2016 Annual Report page 14, Washington, DC: FSOC, 2016. *https://home.treasury.gov/system/files/261/FSOC-2016-Annual-Report.pdf.*

[11] Logan, Lorie K. ''Treasury Market Liquidity and Early Lessons from the Pandemic Shock.'' Remarks, Brookings-Chicago Booth Task Force on Financial Stability Meeting, 2020; International Monetary Fund. 2020. ''United States: Financial Sector Assessment Program Technical Note: Risk Oversight and Systemic Liquidity;'' Liang, Nellie, and Pat Parkinson. ''Enhancing Liquidity of the U.S. Treasury Market Under Stress.'' Working Paper no. 72, Washington, DC: Brookings Hutchins Center on Fiscal and Monetary Policy, 2020; BlackRock. 2020. ''Lessons from COVID–19: Market Structure Underlies Interconnectedness of the Financial Market Ecosystem.'' BlackRock ViewPoint; Bank Policy Institute. 2020. ''Necessary Dimensions of a Holistic Review of the Meltdown of U.S. Bond

b. Importance of Repurchase Agreement Markets and Associated Vulnerabilities

All four segments of the multitrillion-dollar repo market allow financial institutions to lend or borrow cash, usually overnight, with securities as collateral. A stable and well-functioning repo market is critical to U.S. financial markets and the U.S. economy and, thus, U.S. financial stability. The repo market is the largest short-term wholesale funding market in the U. S. Research has identified this market as subject to risks akin to bank runs that have systemic consequences.[12] While more recent distress in repo markets is discussed below, the most salient example of run risks in repo markets occurred during the Global Financial Crisis. In 2008–09, runs on repos contributed to the financial crisis. Distressed financial institutions reliant on borrowing through repo markets found their counterparties unwilling to extend credit. Similar to bank runs from earlier times, counterparties reduced the amounts lent, increased rates at which they lent, and reduced maturities of repo contracts available to distressed financial institutions. These events led to the Federal Reserve Board's collection of data on the non-centrally cleared tri-party repo market. Gaps in data and understanding yet remained. In support of its proposed cleared repo rule, the Office laid out a framework for understanding activity in the repo market and associated vulnerabilities across five functions that repo provides: a low-risk cash investment, monetization of assets, transformation of collateral, facilitation of hedging, and more generally as a support for secondary market liquidity and pricing efficiency.[13] These functions remain today, as do the associated vulnerabilities.

These underlying vulnerabilities may generally be considered in the following manner. As a deposit substitute, repo is subject to runs by cash lenders, which may withdraw funds suddenly. This occurred in 2008 as fears of Bear Stearns' collapse led to a run against its repo borrowing secured by high-quality collateral.[14] As a means of monetizing assets, the repo market is vulnerable to changes in the valuation of securities and can transmit stress into the market for securities used as collateral through fire sales of the assets as haircuts increase. This occurred in 2007, as haircuts rose on private-label mortgage-backed securities, forcing a cycle of fire sales and deleveraging that further undermined this market.[15] As a means for the transformation of collateral, the repo market is vulnerable to difficulties in sourcing securities and can transmit stress to leveraged traders who enforce basic arbitrage relationships across assets, allowing for the propagation of shocks throughout the securities financing, derivatives, and securities markets. Because repurchase agreements are used to hedge financial market risks, a loss of function in the repo market can make it more difficult for investors and financial institutions to protect themselves from risks. Finally, because the repo market is a critical piece of secondary capital markets, stress in the repo market can easily translate into broader dysfunction and liquidity spirals in secondary markets, as large portfolios of longer-term securities in the hands of levered entities are funded daily in the repo market, and an inability to roll these securities over could be disastrous for secondary markets.

Events in late 2019 and early 2020 only served to reinforce the systemic importance of the repo market and the vulnerabilities it faces. On September 17, 2019, overnight repo rates spiked to 5.3% from 2.4% the previous day.[16] Though the size of this rate increase was extraordinary, it was only one of a number of similar episodes of sudden spikes in the preceding years.[17] Several studies have found these spikes were caused by occasions when the cash available to the repo market was too small relative to the demand for funding, illustrating that demand for repo funding can be very inelastic, with rates suddenly rising in response to small changes in available funding.[18] These episodes highlight the vulnerabilities that come from repo as a deposit substitute exposed to sudden withdrawals, as well as the risks involved in rolling over large portfolios of securities through repo. Moreover, the 2019 spike in the repo market propagated into unsecured markets, including foreign exchange markets, the Federal funds market, and the market for cash Treasuries, highlighting the ability of shocks originating in the repo market to propagate across the financial system.[19]

In March 2020, during the initial phases of the COVID–19 crisis, the repo market again played an important role during a general breakdown in Treasury market functioning. Early that month, dealers and other intermediaries were overwhelmed by Treasury sales as part of a generalized ''dash for cash'' from

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Markets in March;'' Citadel Securities. 2021. ''Enhancing Competition, Transparency, and Resiliency in U.S. Financial Markets;'' Feldberg, Greg. ''Fixing financial data to assess systemic risk.'' Brookings Economic Studies, 2020; ''Brookings Hutchins Center on Fiscal and Monetary Policy. 2021. ''Report of the Task Force on Financial Stability.''

[12] Gorton, Gary B., and Andrew Metrick. 2012. ''Securitized Banking and the Run on Repo.'' Journal of Financial Economics (June): pg. 425–451.

[13] 83 FR 31896, 31897–31898 (July 10, 2018).

[14] The maturity of Bear Stearns' repo funding deteriorated over several months before the firm experienced a run that first occurred on its bilateral repos secured by lower-quality assets, and then spread to its repos backed by U.S. Treasury securities. A similar dynamic occurred at a major European bank during the crisis, where the institution's bilateral repos backed by government securities dried up and only repos that were centrally cleared remained available to the firm. See also Bank for International Settlements. 2013. ''Liquidity Stress Testing: A Survey of Theory, Empirics and Current Industry and Supervisory Practices.'' October 2013. *https://www.bis.org/publ/bcbs_wp24.htm.*

[15] Gorton, Gary B. ''Information, Liquidity, and the (Ongoing) Panic of 2007.'' Working Paper no. 14649, Cambridge, Massachusetts: National Bureau of Economic Research, January 2009. *http://www.nber.org/papers/w14649;* and Iyer, Rajkamal, and Marco Macchiavelli. 2017. ''Primary Dealers' Behavior During the 2007–08 Crisis: Part II, Intermediation and Deleveraging.'' FEDS Notes. Federal Reserve Board. June 28, 2017. *https://www.federalreserve.gov/econres/notes/feds-notes/primary-dealers-behavior-during-the-2007-08-crisis-part-ii-intermediation-and-deleveraging-20170628.htm.*

[16] Afonso, Gara, Marco Cipriani, Adam Copeland, Anna Kovner, Gabriele La Spada, and Antoine Martin. 2021. ''The Market Events of Mid-September 2019.'' Economic Policy Review, Federal Reserve Bank of New York, vol. 27, no. 2 (August): 1–26. *https://www.newyorkfed.org/research/epr/2021/epr_2021_market-events_afonso.html;* Anbil, Sriya, Alyssa Anderson, and Zeynep Senyuz. 2021. ''Are Repo Markets Fragile? Evidence from September 2019.'' Finance and Economics Discussion Series 2021–028. FEDS Notes. Federal Reserve Board. *https://doi.org/10.17016/FEDS.2021.028.*

[17] Copeland, Adam, Darrell Duffie, and Yilin Yang. ''Reserves Were Not So Ample After All.'' Working Paper no. 29090, Cambridge, Massachusetts: National Bureau of Economic Research, 2021.

[18] The September 17 spike in particular appears to have been the result of a confluence of factors that restricted the supply of cash and increased the demand for cash, including a Treasury settlement, withdrawals from money market funds due to a tax deadline, and a low level of reserves. See sources in footnote 14.

[19] Tran, H. 2020. ''EM banks exposed to stress in FX swaps, a spillover from U.S. repo markets.'' Financial Times (January 8, 2020). *https://www.ft.com/content/5f8237cf-0e90-4f7d-9a0d-e4430f6fc7a1;* Afonso, Gara, Marco Cipriani, Adam Copeland, Anna Kovner, Gabriele La Spada, and Antoine Martin. 2021. ''The Market Events of Mid-September 2019.'' Economic Policy Review, Federal Reserve Bank of New York, vol. 27, no. 2 (August): 1–26. *https://www.newyorkfed.org/research/epr/2021/epr_2021_market-events_afonso.html;* Department of the Treasury, Federal Reserve Board, Federal Reserve Bank of New York, Securities and Exchange Commission, Commodity Futures Trading Commission. ''Recent Disruptions and Potential Reforms in the U.S. Treasury Market: A Staff Progress Report.'' Washington, DC: Department of the Treasury, Federal Reserve Board, Federal Reserve Bank of New York, Securities and Exchange Commission, Commodity Futures Trading Commission, 2021.

mutual funds and foreign investors.[20] Research suggests that these sales reduced large financial institutions' capacity to intermediate in the repo market given regulatory constraints on their balance sheets.[21] The pullback of these institutions from repo market intermediation was associated with increasing volatility and spreads in the repo market, again providing an example of the risks from repo as a deposit substitute.[22] Moreover, rising rates likely contributed to sales of Treasuries by leveraged funds in arbitrage trades that rely on repo financing, illustrating risks associated with monetization of assets and the transformation of collateral.[23] In order to address distress within repo markets, the Federal Reserve expanded its overnight and term repo facilities, rapidly bringing down rates in overnight repo and gradually lowering rates in term repo.[24]

Both of these episodes illustrate that the repo market is still subject to the vulnerabilities highlighted previously and perhaps has become more central to the functioning of U.S. securities and short-term funding markets. These vulnerabilities are present to a greater or lesser extent across the four different segments of the repo market. In addition, certain features of the non-centrally cleared bilateral repo market may exacerbate the risks in other segments of the market.

c. Characteristics of the Non-Centrally Cleared Bilateral Repurchase Agreement Market That Underlie Financial Stability Risks

Several characteristics of the non-centrally cleared bilateral repo market increase the potential for risks to financial stability and, thus, the Office's interest in collecting data on this segment of the overall repo market. This market is largely unobserved by financial regulators, resulting in data gaps that limit how well financial regulators can monitor risks and vulnerabilities that could affect financial stability. During a crisis, these gaps can delay analysis, understanding, and responses. While market participants may have access to some market information, the absence of inter-dealer brokers and the execution of trades through unstructured protocols such as telephone or chat systems creates challenges for financial regulators to understand market structure, market participation, and distribution of risk in real time. Since abrupt changes can have financial stability consequences, addressing data gaps is of high importance.

It is also important that the Office more deeply understand collateral risk, another market characteristic with implications for financial stability. The non-centrally cleared bilateral repo market generally contains riskier collateral than other market segments, since cleared markets are limited to Fedwire-eligible collateral such as Treasuries and agency bonds. Data from the Federal Reserve Bank of New York's Primary Dealer Statistics show that 95% of primary dealer repo lending against non-Fedwire-eligible collateral (including asset-backed securities, corporate debt and other securities) is conducted through the non-centrally cleared bilateral repo market. These collateral types have more risk factors than those that drive Treasury and agency bonds. Additionally, non-centrally cleared bilateral repo made up over 81% of primary dealer lending against agency collateral, and 100% of primary dealer lending against agency commercial mortgage-backed securities (MBS) and non-MBS debt. Supported by riskier collateral, the non-centrally cleared bilateral repo market is potentially more exposed to the risks associated with monetizing assets.

The non-centrally cleared bilateral repo market also has counterparty complexity that warrants focus. Many counterparties are institutions that do not appear in the cleared or tri-party markets that financial regulators know more about. It is likely that the non-centrally cleared bilateral market features a large amount of borrowing by highly leveraged actors such as hedge funds.[25] Financial regulators may not have information on the complexity and extent of hedge fund repo borrowing. For instance, Long-Term Capital Management (LTCM), a hedge fund that failed in 1998, built up large counterparty exposures through non-centrally cleared bilateral repo.[26] Its repo and reverse-repo transactions were conducted with 75 different counterparties, many of which were reportedly unaware of the fund's total exposure.[27] These large exposures built up through repo were a key source of potential stress from LTCM's failure, as liquidations of the underlying collateral in bankruptcy could have resulted in significantly depressed prices and broader disruptions to markets.[28]

The non-centrally cleared bilateral repo market is exposed to varying risk management conventions that require

[20] Group of Thirty Working Group on Treasury Market Liquidity U.S. Treasury Markets: Steps Toward Increased Resilience. Washington, DC: Group of Thirty, 2021. *https://group30.org/publications/detail/4950;* Liang, Nellie, and Pat Parkinson. ''Enhancing Liquidity of the U.S. Treasury Market Under Stress.'' Working Paper No. 72, Washington, DC: Brookings Hutchins Center for Fiscal and Monetary Policy, 2020; Financial Stability Board. ''Holistic Review of the March Market Turmoil.'' Basel, Switzerland, FSB, 2020; Financial Stability Oversight Council. 2020 Annual Report, Washington, DC: FSOC, 2020; Office of Financial Research. 2020 Annual Report, Washington, DC: OFR, 2020; Duffie, Darrell. 2020. ''Still the world's safe haven? Redesigning the U.S. Treasury market after the COVID–19 crisis.'' Brookings Hutchins Center for Fiscal and Monetary Policy. June 22, 2020. *https://www.brookings.edu/research/still-the-worlds-safe-haven/;* Barth, Daniel, and R. Jay Kahn. ''Hedge Funds and the Treasury Cash-Futures Disconnect.'' Working Paper no. 21–01, Washington, DC: Office of Financial Research, 2021.

[21] Financial Stability Board. Holistic Review of the March Market Turmoil. Basel, Switzerland, FSB, 2020; He, Zhiguo, Stefan Nagel, and Zhaogang Song. 2022. ''Treasury inconvenience yields during the COVID–19 crisis.'' Journal of Financial Economics, vol. 143, no. 1: pg. 57–79.

[22] Financial Stability Board. Holistic Review of the March Market Turmoil. Basel, Switzerland, FSB, 2020; He, Zhiguo, Stefan Nagel, and Zhaogang Song. 2022. ''Treasury inconvenience yields during the COVID–19 crisis.'' Journal of Financial Economics vol. 143, no. 1: pg. 57–79; Office of Financial Research. 2020 Annual Report. Washington, DC: OFR, 2020; Clark, Kevin, Antoine Martin, and Timothy Wessel. 2020. ''The Federal Reserve's Large-Scale Repo Program.'' Liberty Street Economics. Federal Reserve Bank of New York. August 3, 2020; Barth, Daniel, and R. Jay Kahn. ''Hedge Funds and the Treasury Cash-Futures Disconnect.'' Working Paper no. 21–01, Washington, DC: Office of Financial Research, 2021.

[23] Aramonte, Sirio, Andreas Schrimpf, and Hyun Song Shin. ''Non-bank financial intermediaries and financial stability.'' Working Paper no. 972, Basel, Switzerland: Bank for International Settlements, 2021; Barth, Daniel, and R. Jay Kahn. ''Hedge Funds and the Treasury Cash-Futures Disconnect.'' Working Paper no. 21–01, Washington, DC: Office of Financial Research, 2021; Kruttli, Mathias, Phillip J. Monin, Lubomir Petrasek, and Sumudu W. Watugala. ''Hedge Fund Treasury Trading and Funding Fragility: Evidence from the COVID–19 Crisis.'' Finance and Economics Discussion Series 2021–038, Board of Governors of the Federal Reserve System, 2021.

[24] Barth, Daniel, and R. Jay Kahn. ''Hedge Funds and the Treasury Cash-Futures Disconnect.'' Working Paper no. 21–01, Washington, DC: Office of Financial Research, 2021; Clark, Kevin, Antoine Martin, and Timothy Wessel ''The Federal Reserve's Large-Scale Repo Program.'' Liberty Street Economics. Federal Reserve Bank of New York. August 3, 2020.

[25] Hempel, Samuel, R. Jay Kahn, Vy Nguyen, and Sharon Y. Ross. 2022. ''Non-centrally Cleared Bilateral Repo.'' August 24, 2022. The OFR Blog. Office of Financial Research. *https://www.financialresearch.gov/the-ofr-blog/2022/08/24/non-centrally-cleared-bilateral-repo/.*

[26] Parkinson, Patrick M. *Report on Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management.* Testimony, U.S. House, May 6, 1999, Cong., Washington, DC: Federal Reserve Board, 1999. *https://www.federalreserve.gov/boarddocs/testimony/1999/19990506.htm;* Dixon, Lloyd, Noreen Clancy, and Krishna B. Kumar. 2012. *Hedge Funds and Systemic Risk.* Santa Monica, California: RAND Corporation. *http://www.jstor.org/stable/10.7249/j.ctt1q60xr.11.*

[27] Parkinson, Patrick M. *Report on Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management.* Testimony, U.S. House, May 6, 1999, Cong., Washington, DC: Federal Reserve Board, 1999.

[28] Ibid.

greater insight. These conventions include but are not limited to margining and settlement. For instance, the variation in margining practices across competing intermediaries may create competitive pressures that drive margins to lower levels than justified by prudent risk management.[29] Similarly, the Treasury Market Practices Group found settlement practices vary widely and expressed concern that ''bespoke bilateral processes may reflect differences in the level of understanding among market participants of the inherent risks of SFT clearing and settlement.'' [30]

III. Data Available on U.S. Repurchase Agreement Activity

As demonstrated during the Global Financial Crisis and the COVID–19 pandemic, high-quality information is one of the best tools for identifying the build-up of risk. While improvements have been made, especially through the Office's collection of cleared repo data, a full transaction-level picture of all segments of the U.S. repo market is still unavailable. This proposed collection would cover certain non-centrally cleared bilateral repo transactions, allowing the Office to gather data on a mandatory basis on what it estimates to be a substantial share of the total U.S. repo market. This proposed collection, in combination with the Office's other repo collections, would provide visibility and transparency into every major segment of the U.S. repo market, in line with the Council's recommendations. This section reviews data provided to regulators on other segments of the repo market and describes the pilot collections of repo data preceding this proposed rule.

a. Tri-Party Repurchase Agreements

The Federal Reserve Board has supervisory authority over the Bank of New York Mellon, the major tri-party custodian bank and, on a mandatory basis pursuant to its supervisory authority, collects daily data on transactions in tri-party repo markets through the Federal Reserve Bank of New York.[31] The data include information on the interest rate, the counterparties, the collateral pledged, the type of transaction, the transaction initiation date, the transaction effective date, the transaction maturity date, whether the transaction is open-ended, the value of the funds borrowed, whether the transaction includes an option (*e.g.,* the ability to extend or terminate early), and, if the transaction includes an option, the minimum notice period required to exercise it.[32] Aggregated data from this collection is made available through the Federal Reserve Bank of New York's reference rates (including the Secured Overnight Financing Rate (SOFR); the Broad General Collateral Rate (BGCR); and the Tri-Party General Collateral Rate (TGCR); the Federal Reserve Bank of New York's Tri-Party Statistics; and the Office's U.S. Repo Markets Data Release.

b. Centrally Cleared Repurchase Agreements

The Office collects transaction-level data on cleared repo markets pursuant to the Office's rule on cleared repo. For general collateral repurchase agreements through FICC's GCF Repo Service and the Sponsored General Collateral Service, the data collected under the rule include the interest rate; details on the collateral pledged; the date and time the transaction is initiated, becomes effective, and matures; the value of funds borrowed; the identities of the counterparties; and the net value and collateral identifier for collateral delivered. For specific collateral repurchase agreements through FICC's DVP Service, the data includes the same fields as well as the broker. For both these segments, aggregates of the data are made public through the Federal Reserve Bank of New York's reference rates noted above and the Office's U.S. Repo Markets Data Release. In addition, transaction-level data has been used by the Office and the Federal Reserve Bank of New York in briefs and working papers, as well as to inform regulators on developments in short-term funding markets and in the Office's annual reports.[33]

c. Non-Centrally Cleared Bilateral Repurchase Agreements

Unlike the other three repo market segments, the wholly bilateral nature of non-centrally cleared repo means there is no central source for comprehensive transaction-level data on activity in this segment. To better understand the bilateral repo market, determine the value of a potential data collection, and gain insights into the design of such a collection, the Office conducted a pilot in 2015 in partnership with the Federal Reserve and the Securities and Exchange Commission (SEC), to collect information on both centrally cleared and non-centrally cleared bilateral repo transactions. The 2015 pilot gathered data from a subset of U.S.-based brokers and dealers. The results and lessons learned were published in January 2016.[34] In order to update and expand upon the 2015 pilot and address the Council's more recent recommendations, in 2022 the Office conducted another pilot on the non-centrally cleared bilateral repo market.[35] Significant lessons were learned about the non-centrally cleared bilateral repo market from both pilots. These have been incorporated into the design of this proposed collection, which would provide data on this final segment of the market of comparable granularity to what is collected on tri-party and cleared repo.

IV. Justification for Proposed Collection

a. Collection of Non-Centrally Cleared Bilateral Repurchase Agreement Data

The collection of data on the non-centrally cleared bilateral segment of the repo market marks a significant step in carrying out the Council's recommendation to expand and make

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[29] The Group of Thirty report cited above notes competitive pressures in the repo market ''driving haircuts down (sometimes to zero).'' See also Group of Thirty Working Group on Treasury Market Liquidity. *U.S. Treasury Markets: Steps Toward Increased Resilience.* Washington, DC: Group of Thirty, G30, 2021. *https://group30.org/publications/detail/4950.*

[30] Treasury Market Practices Group. ''*TMPG Releases Updates for Working Groups on Clearing and Settlement Practices for Treasury SFTs, Treasury Market Data and Transparency.*'' Press Release, November 5, 2021.

[31] The Bank of New York Mellon currently serves as the sole tri-party custodian in the United States. See 82 FR 41259, 41260 (August 30, 2017).

[32] 82 FR 41259, 41260 (August 30, 2017).

[33] Briefs and working papers using data from the Office's cleared repo collection include Barth, Daniel, and R. Jay Kahn. ''Basis Trades and Treasury Market Illiquidity.'' Brief no. 20–01, Washington, DC: Office of Financial Research, 2020; Clark, Kevin, Adam Copeland, R. Jay Kahn, Antoine Martin, Matthew McCormick, Will Riordan, and Timothy Wessel. ''How Competitive are U.S. Treasury Repo Markets?'' New York, New York: Liberty Street Economics, Federal Reserve Bank of New York, February 18, 2021; Kahn, R. Jay, and Luke Olson. ''Who Participates in Cleared Repo?'' Brief no. 21–01, Washington, DC: Office of Financial Research, 2021; Clark, Kevin, Adam Copeland, R. Jay Kahn, Antoine Martin, Mark E. Paddrik, and Benjamin Taylor. ''Intraday Timing of General Collateral Repo Markets,'' Liberty Street Economics, Federal Reserve Bank of New York, 2021; Hempel, Samuel, and R. Jay Kahn. ''Negative Rates in Bilateral Repo Markets.'' Brief no. 21–03, Washington, DC: Office of Financial Research, 2021; Barth, Daniel, and R. Jay Kahn. ''Hedge Funds and the Treasury Cash-Futures Disconnect.'' Working Paper no. 21–01, Washington, DC: Office of Financial Research, 2021.

[34] Schreft, Stacey. 2016. ''Lessons from the Bilateral Repo Data Collection Pilot.'' The OFR Blog. Office of Financial Research. January 13, 2016.

[35] Falaschetti, Dino. *Remarks by Director Falaschetti at the Open Session of the Meeting of the Financial Stability Oversight Council.* February 4, 2022; Martin, James. August 1, 2022. ''OFR Continues Efforts to Fill Key Gap in Financial Data.''; Hempel, Samuel, R. Jay Kahn, Vy Nguyen, and Sharon Y. Ross. 2022. ''Non-centrally Cleared Bilateral Repo.''

permanent the collection of data on the U.S. repo market. The Council first recommended a collection of non-centrally cleared bilateral repo data in its 2016 annual report.[36] The Office noted in its 2018 rulemaking on cleared repo that it was considering subsequent rulemaking on the non-centrally cleared bilateral segment of the repo market.[37] In the wake of the March 2020 illiquidity in the Treasury market, both the Office's 2020 Annual Report and the Council's 2020 Annual Report highlighted the non-centrally cleared bilateral repo market as an important blind spot in financial stability monitoring. The Council again recommended a collection of non-centrally cleared bilateral repo data in its 2021 annual report to Congress.[38] Similarly, in a 2022 statement on nonbank financial intermediation, the Council expressed support for the recommendation by the Hedge Fund Working Group that the Office consider ways to collect non-centrally cleared bilateral repo data.[39]

The collection of transaction-level data on non-centrally cleared bilateral repos is key to the Council's effective identification and monitoring of emerging threats to the stability of the U.S. financial system and would fill in the remaining gap in coverage following the Office's previous rulemaking on the cleared repo market. If the proposal to collect from certain brokers, dealers, and other financial companies with over $10 billion in the sum of extended guarantees and outstanding non-centrally cleared bilateral repo borrowing is adopted, the Office expects to observe over 90% of the total non-centrally cleared bilateral repo market by volume, with approximately 40 reporters. The Office also proposes additional provisions below to capture any other financial companies with over $10 billion in extended guarantees and non-centrally cleared bilateral repo borrowing from non-broker, non-dealer lenders, to cover any major potential data gaps that currently exist or could develop in this market segment. With this collection, in combination with the Office's collection of cleared repo data and the collection of tri-party data by the Federal Reserve, substantially all of the activity in the repo market would be observed on outstanding commitments.

From a financial stability perspective, it is important to monitor transactions in the non-centrally cleared bilateral repo segment for several reasons. Importantly, activity across the different segments of the repo market is linked. The non-centrally cleared bilateral market, for instance, serves as a close substitute for centrally cleared bilateral repo, particularly in the sponsored segment of the market, where customers that are not direct clearing members of FICC, such as hedge funds and money market funds, can participate in transactions with clearing members and have such transactions submitted to FICC for clearing.

Migration to and from sponsored repo is also an area of interest. In times of stress, activity may move between sponsored repo and non-centrally cleared bilateral repo. Dealers' decisions to engage in sponsored repo may be affected by factors that affect their outstanding commitments. Examples include changes in the supply of cash to money market funds and the size of netting benefits provided by sponsored repo. In order to understand these shifts to and from sponsored repo, data on outstanding commitments in the non-centrally cleared bilateral repo market are required.

Another factor that may affect flows into and out of sponsored repo is the development of guaranteed repo. Customers may move from non-centrally cleared bilateral repo to the same with guarantors as an alternative to transacting though tri-party repo or sponsored repo. Tri-party and sponsored repo platforms offer, through design, risk-reducing characteristics for cash lenders and cash borrowers.

Additionally, as guaranteed repo replicates the profile of offsetting legs of the same repo transaction with different counterparties, yet has different balance sheet implications, guaranteed repo may be an alternative to traditional repo market financial intermediation. This provides incentives for some financial institutions to participate in repo markets when financial intermediaries are economically constrained. For all these reasons, guaranteed repo addresses various needs in the non-centrally cleared bilateral repo market. A data collection regarding this final segment of the repo market is therefore essential to providing regulators with a complete picture of repo market activity and to realizing the full potential of existing data collections on other segments of the repo market.

As noted above, because the non-centrally cleared bilateral repo market has no central counterparty or custodian, because of the nature of collateral underlying trades in non-centrally cleared bilateral repo, and because of the types of counterparties that have large exposures to non-centrally cleared bilateral repo, these data would provide insights into a market that may be a particularly salient financial system vulnerability. Many of the counterparties involved in the market, such as non-bank and non-primary dealers, are difficult to monitor with existing regulatory collections. Transaction-level data would provide regulators with the granularity necessary to monitor exposures of individual counterparties on a high-frequency basis, which is essential in a market where crises are often too short-lived for other monthly or quarterly reporting to capture. Moreover, data on collateral would allow regulators to monitor exposures on particular classes of securities, margining practices that protect participants from movements in the value of collateral, and the potential transmission of repo market stress into securities markets. Timestamps and details of trading venues would allow regulators to monitor activity in a market which is often segmented, and where intra-day liquidity concerns play a key role in the creation of stress.

The non-centrally cleared bilateral repo market currently lacks transparency, even to market participants, on a variety of dimensions. 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. This could take a form similar to the Office's current disclosure of aggregated cleared repo data through the Office's U.S. Repo Markets Data Release. Introducing data standards through the rule's reporting process into this decentralized market may also improve the ability to reconcile records between firms in the event of a crisis.

Questions

1. How could aggregated data on non-centrally cleared bilateral repo be used to foster greater transparency and improve price discovery in the repo market?

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[36] Financial Stability Oversight Council. *2016 Annual Report, p. 111.* Washington, DC: FSOC, 2016. *https://home.treasury.gov/system/files/261/FSOC-2016-Annual-Report.pdf.*

[37] **Federal Register**. 2018. Vol. 83, no. 132, pg. 31898, July 10, 2018.

[38] Office of Financial Research. *2020 OFR Annual Report,* Washington, DC: OFR, 2020. *https://www.financialresearch.gov/annual-reports/files/OFR-Annual-Report-2020.pdf;* Financial Stability Oversight Council. *2020 Annual Report.* pg. 38–41, Washington, DC. FSOC, 2020. *https://home.treasury.gov/system/files/261/FSOC2020AnnualReport.pdf;* Financial Stability Oversight Council; *2021 Annual Report,* pg. 160, Washington, DC: FSOC, 2021. *https://home.treasury.gov/system/files/261/FSOC2021AnnualReport.pdf.*

[39] Financial Stability Oversight Council. ''Nonbank Financial Intermediation.'' Press Release, February 4, 2022: FSOC. *https://home.treasury.gov/news/press-releases/jy0587.*

2. How should the Office regard and collect information on the risks of bank guaranteed repo?

b. Uses of the Data Collection

This proposed collection would be used by the Office to fulfill its purpose, responsibilities, and duties under Title I of the Dodd-Frank Act, including improving the Council's and Council member agencies' monitoring of the financial system and in identifying and assessing potential financial stability risks. The additional daily transaction data this proposed collection would provide would facilitate identification of potential repo market vulnerabilities and would also help identify shifting repo market trends that could be destabilizing or indicate stresses elsewhere in the financial system. Such trends might be reflected in indicators of the volume and price of funding in the repo market at different tenors, differentiated by the type and credit quality of participants and the quality of underlying collateral. Analyzing the collateral data from this collection together with other data available to the Office, the Council, and Council member agencies would enable a clearer understanding of collateral flows in securities markets and potential financial stability risks.

Wholesale funding rates critically relate to financial stability, as they describe the borrowing costs financial institutions may be subject to or convey through periods of distress. It is important for wholesale funding rates to reflect actual borrowing costs. Repo markets provide this relationship under collateralized terms. SOFR is a benchmark wholesale funding rate recommended by the Alternative Reference Rates Committee and is computed based on cleared repo transactions on Treasury collateral. The Office's 2022 pilot study demonstrated that non-centrally cleared bilateral repo markets constitute a large portion of wholesale funding in repo markets. Consequently, another potential use of the Office's proposed collection is to enrich the calculation of SOFR with the information obtained.

The Office may also use the data to sponsor and conduct additional research.[40] This research may include the use of these data to help fulfill the duties and purposes under the Dodd-Frank Act relating to the responsibility of the Office's Research and Analysis Center to develop and maintain independent analytical capabilities to support the Council and relating to the programmatic functions of the Office's Data Center. For example, access to data on non-centrally cleared bilateral repos would allow the Office to conduct research related to the Council's analysis of potential risks arising from securities financing activities and nonbank financial companies.

Consistent with the Dodd-Frank Act, the Office may share the data collection and information with the Council, Council member agencies, and the Bureau of Economic Analysis[41] and will also make the data available to the Council and member agencies as necessary to support their regulatory responsibilities.[42] When sharing the data as referenced above, the data and information: (i) must be maintained with at least the same level of security as used by the Office; and (ii) may not be shared with any individual or entity without the permission of the Council.[43] In addition, such sharing will be subject to the confidentiality and security requirements of applicable laws, including the Dodd-Frank Act.[44] Pursuant to the Dodd-Frank Act, the submission of any non-publicly available data to the Office under this proposed collection will not constitute a waiver of, or otherwise affect, any privilege arising under federal or state law to which the data or information is otherwise subject.[45]

After consultation with the member agencies as required under the Dodd-Frank Act, certain data, including aggregate or summary data from this proposed collection, may be provided to financial industry participants and to the general public to increase market transparency and facilitate research on the financial system, to the extent that intellectual property rights are not violated, business confidential information is properly protected, and the sharing of such information poses no significant threats to the U.S. financial system.[46]

c. Legal Authority

The ability of the Office to collect non-centrally cleared bilateral repo data in this proposed collection derives in part from the authority to promulgate regulations regarding the type and scope of financial transaction and position data from financial companies on a schedule determined by the Director in consultation with the Council.[47] The Office consulted with the Council on the proposed permanent collection of non-centrally cleared bilateral repo data at the Council's July 28, 2022 meeting.[48]

The Office also has authority to promulgate regulations pursuant to the Office's general rulemaking authority under section 153 of the Dodd-Frank Act, which authorizes the Office to issue rules, regulations, and orders to the extent necessary to carry out certain purposes and duties of the Office.[49] In particular, the purposes and duties of the Office include supporting the Council in fulfilling its duties and purposes, and supporting member agencies, by collecting data on behalf of the Council and providing such data to the Council and member agencies, and standardizing the types and formats of data reported and collected.[50] The Office must consult with the Chairperson of the Council prior to the promulgation of any rules under section 153.[51] As noted above, the Office consulted with the Council on July 28, 2022.

This proposed collection would support the Council and member agencies by addressing the Council's recommendation to expand and make permanent the collection of data on the non-centrally cleared bilateral repo market; helping the Council and member agencies identify, monitor, and respond to risks to financial stability; and identifying gaps in regulation that could pose risks to U.S. financial stability. The Office has verified that transaction information on the non-centrally cleared bilateral repo market required to fulfill the purposes of this proposed collection is not currently available to the Council or member agencies.

The Office's statutory authority allows for the collection of transaction and position data from financial companies. ''Financial company,'' for purposes of the Office's authority, has the same meaning as in Title II of the Dodd-Frank Act.[52] For this proposed collection, the Office expects that covered reporters will be ''financial companies'' as defined in Title II because they are

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[40] 12 U.S.C. 5343(b)(2).

[41] 12 U.S.C. 5343(b)(1).

[42] 12 U.S.C. 5343(b), 12 U.S.C. 5344(b)(5).

[43] 12 U.S.C. 5333(b)(5).

[44] 12 U.S.C. 5343(b), 5344(b)(3).

[45] 12 U.S.C. 5343(b), 5322(d)(5).

[46] 12 U.S.C. 5344(b)(6).

[47] 12 U.S.C. 5344(b)(1)(B)(iii).

[48] Financial Stability Oversight Council. Meeting Minutes, pg. 7. July 28, 2022. *https://home.treasury.gov/system/files/256/FSOC_20220728_Minutes.pdf.*

[49] 12 U.S.C. 5343(a), (c)(1).

[50] 12 U.S.C. 5343(a). The Council's purposes and duties include identifying risks and responding to threats to U.S. financial stability; monitoring the financial services marketplace to identify potential threats to U.S. financial stability; making recommendations that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets; and identifying gaps in regulation that could pose risks to the financial stability of the United States. 12 U.S.C. 5322(a).

[51] 12 U.S.C. 5343(c)(1).

[52] 12 U.S.C. 5341(2).

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 for purposes of section 4(k) of the Bank Holding Company Act of 1956 [53] (or they are a subsidiary thereof). For a company to be ''predominantly engaged'' in activities that are financial in nature or incidental thereto, either (1) at least 85% of the total consolidated revenues of the company (determined in accordance with applicable accounting standards) for either of its two most recently completed fiscal years must be derived, directly or indirectly, from financial activities; or (2) based upon all the relevant facts and circumstances, the consolidated revenues of the company from financial activities must constitute 85% or more of the total consolidated revenues of the company.

Dodd-Frank Act section 201(b) required the Federal Deposit Insurance Corporation (FDIC) to issue a rule establishing the criteria for determining whether a company is predominantly engaged in activities that are financial in nature or incidental thereto for purposes of Title II. The final rule adopted by the FDIC indicates that the determination of whether an activity is financial in nature is based upon section 4(k) of the Bank Holding Company Act of 1956, and that since the Federal Reserve Board is the agency with primary responsibility for interpreting and applying section 4(k), the FDIC coordinated its rulemaking pursuant to § 201(b) of the Dodd-Frank Act with the Federal Reserve Board's rulemaking defining the term ''predominantly engaged in financial activities'' for purposes of Title I of the Dodd-Frank Act.[54]

Consistent with the Federal Reserve Board's final rule, the FDIC's final rule interpreting how to evaluate whether an entity is a ''financial company'' for purposes of Title II of the Dodd-Frank Act includes the activities of the types of entities proposed to be covered reporters, including underwriting, dealing in or making a market in securities; and lending, exchanging, transferring, investing for others, or safeguarding money or securities. Given the level of experience, expertise, and market credibility necessary for the exposure thresholds proposed under this rule, such entities will likely be financial companies and thus covered reporters. While the Office currently expects few, if any, entities to meet the covered reporter definition thresholds under the provision that requires non-Securities Broker, non- securities dealer, non-government securities broker, or non-government securities dealer financial companies to report, this provision is explicitly limited to financial companies as defined in 12 U.S.C. 5341(2).

V. Collection Design

The proposed regulatory text lists the requirements specifically relevant to this proposed collection. It also includes a table that describes the data elements that covered reporters would be required to submit. The Office expects to publish filing instructions regarding matters such as data submission mechanics and formatting in connection with any final rule on the Office's website.

a. Scope of Application

This proposed collection would require the submission of transaction information by any covered reporter 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. This materiality threshold is inclusive of both overnight and intraday commitments. For example, for a given day, a reporter may have two outstanding commitments to borrow beginning on the same day with an overnight maturity:

- First, the reporter has outstanding commitments to borrow $100 million from customer A in exchange for $100 million of securities.
- Second, the reporter has commitments to lend customer B $100 million in exchange for $100 million of securities.

In this example, the reporter's total gross outstanding commitments for these two trades is $200 million and total outstanding commitments to borrow cash is $100 million.

The Office proposes a focus on borrowing for reasons related to both principle and practice. In principle, borrowers are the sources of leverage in the financial system and are consequently naturally linked to financial stability. From a practical standpoint, the same market coverage can be achieved by sampling fewer borrowers than lenders. Within a choice of market coverage on lenders, the diversity of lending institution types is also greater and creates consequent operational challenges in supporting a collection. Diversity in composition and familiarity with reporting standards could also challenge the success of a daily collection. Based on the above, the Office believes that the focus on borrowers rather than lenders is an appropriate approach.

This proposed rule would require reporting under this materiality threshold from two categories of financial companies:

- *Category 1:* securities broker, securities dealers, government securities brokers, and government securities dealers, all as defined by and registered pursuant to the Securities Exchange Act of 1934 (Exchange Act),[55] and
- *Category 2:* any financial company that is not a Securities Broker, securities dealer, government securities broker, or government securities dealer, whose average of daily total outstanding commitments to borrow cash from or extend guarantees to lenders is at least $10 billion—through non-centrally cleared bilateral repo with any other entity that is not in category 1—over all business days during the prior calendar quarter. Additionally, the financial company in category 2 has assets or assets under management exceeding $1 billion if it meets any one of the following criteria:

A. If an investment adviser registered pursuant to the Investment Advisers Act of 1940 provides continuous and regular supervisory or management services to securities portfolios valued at $1 billion or more in assets under that law; or

B. If the firm is not an ''investment adviser,'' but it files a required disclosure of its balance sheet with a primary financial regulatory agency,[56] and has more than $1 billion in assets under that disclosure; or

C. If the firm does not file a required disclosure of its balance sheet with a primary financial regulatory agency but it does file a required disclosure with any other Federal financial regulator, and has more than $1 billion in assets under that disclosure; or

D. If the firm does not file a required disclosure of its balance sheet with any primary financial regulatory agency but it does file a required disclosure with any state regulator, and has more than $1 billion in assets under that disclosure; or

[53] 12 U.S.C. 1843(k).

[54] A ''financial company'' also includes a bank holding company or a nonbank financial company supervised by the Federal Reserve Board. 12 U.S.C. 5381(a)(11).

[55] The terms broker and dealer are defined in 15 U.S.C. 78c(a)(4), and (5), respectively. Broker and dealer registration requirements are contained in 15 U.S.C. 78o. The terms government securities broker and government securities dealer are defined in 15 U.S.C. 78c(a)(43) and (44), respectively. Government securities broker and government securities dealer registration requirements are contained in 15 U.S.C. 78o–5.

[56] 12 U.S.C. 5301(12).

E. If the firm does not file a required disclosure of its balance sheet with any state regulator or primary financial regulatory agency but its stated assets to outside investors or creditors in audited financial statements, and has more than $1 billion in assets under that disclosure; or

F. If the firm has not done any of the above but has disclosed assets in filings with the Internal Revenue Service and has more than $1 billion in assets under that disclosure.

The Office distinguishes between assets and assets under management in the above sequence, because of how an agent acts on the part of other parties. Investment advisers primarily provide investment management services as fiduciary agents, using a wide variety of models and vehicles. They engage in activities such as entering into repurchase agreements, acting as cash borrowers, and buying and selling derivatives on behalf of clients. These activities can take place at the portfolio level or at the adviser level and then subsequently allocated to their managed funds or portfolios. Unlike other financial companies, the value of these services is not fully reflected on the balance sheet of the adviser, except in advisory fee receivables. As a result, the use of assets under management better represents the market value of investment activities provided and should be used in the threshold computation.

The Office is proposing the asset size threshold for financial companies that are not Brokers, Dealers, government securities brokers or government securities dealers in order to limit the set of financial companies required to calculate their repo exposures to a grouping of entities whose activities are consequential to the non-centrally cleared bilateral repo market. Only financial companies included within these categories and that meet the transaction volume threshold discussed below would be required to report as covered reporters under this proposed collection.

The Office believes the proposed $10 billion outstanding commitments threshold indicates sufficient transactional volume for a Securities Broker, securities dealer, government securities broker, or government securities dealer to be considered material in the repo market. In particular, the Office believes this threshold would cover over 90% of the non-centrally cleared bilateral repo market, with approximately 40 reporters. However, because of the lack of transparency in this market noted above, there is necessarily some uncertainty on the number of reporters and breadth of the market this definition would include. As such, the Office is seeking comment on the nature and level of the threshold.

By collecting from certain brokers, dealers, and financial companies with large exposures to the repo market, the Office proposes to leverage the existing structure of the repo market, where nearly all trades are intermediated by either dealers, or financial companies who play a similar role to brokers and dealers, based on the Office's research. However, it is possible that some trades in the repo market do not go through securities broker, securities dealers, government securities brokers, or Government securities dealers. Due to the lack of transparency in the non-centrally cleared bilateral repo market, the market share of these ''peer-to-peer'' trades, which bypass traditional intermediaries, is not knowable without an existing comprehensive collection. Moreover, it is possible that peer-to-peer repo could expand in the future as market structure evolves.

As a result, the Office is also proposing to include, in addition to the categories of financial companies noted above, any financial company that is not a Securities Broker, securities dealer, government securities broker, or government securities dealer with over $1 billion in assets or assets under management whose average of daily total outstanding commitments to borrow cash (inclusive of both overnight and all intraday transactions) through non-centrally cleared bilateral repo from other entities that are not a Securities Broker, securities dealer, government securities broker, or government securities dealer is also at least $10 billion over all business days during the prior calendar quarter. This formulation is intended to be flexible enough to cover future developments in the market, including the emergence of new entities replacing existing repo intermediaries. The Office is requesting comment as to how prevalent the case of financial companies fitting this definition would be.

Though the Office believes that few financial companies are likely to fit this definition, it would require all financial companies with greater than $1 billion in assets or assets under management to determine whether they are covered reporters on a quarterly basis. Since many financial companies have limits on their ability to borrow, we believe that this requirement would apply to roughly 2,000 financial companies.[57] Assuming it takes three hours per quarter to determine which counterparties to the firm are non-Securities Broker, non-securities dealer, non-government securities broker, or non-government securities dealer institutions and to calculate the average open borrowings from these institutions, and using an estimated hourly wage of $126, the Office estimates the cost for a single firm to determine its reporting obligations on an ongoing annual basis of this provision would be $1,512. This would lead to a total cost of $3.024 million across all financial companies that would need to determine whether they are covered reporters. The Office is also requesting comment on whether these calculations are reasonable and in particular whether there might be adjustments needed to its estimates of either the ongoing annual cost per financial company or the total number of financial companies that would need to make this determination on a quarterly basis.

The brokers, dealers, or other financial companies meeting the thresholds above would be required to start submitting data under this rulemaking beginning on the first business day of the third full calendar quarter after the calendar quarter in which the firm meets the relevant materiality threshold. For example, if such brokers, dealers, or other financial companies were to surpass the threshold beginning with the quarter ending on March 31 of a given year, those institutions would become subject to the reporting requirements of the rule on the first business day of the calendar quarter that begins after two intervening calendar quarters—in this case, October 1.

A covered reporter whose volume falls below the $10 billion threshold for at least four consecutive calendar quarters would have its reporting obligations cease. For example, if a broker, dealer, or other financial company that is a covered reporter ceases to meet the $10 billion threshold beginning with the quarter ending June 30 of a given year, and remains below the $10 billion threshold in each of the following three quarters (in this example, March 31 of the following year), its reporting obligations would cease as of April 1.

Questions

1. Is the $10 billion materiality threshold for identifying securities broker, securities dealers, government

[57] This number is based an Office estimate of the number of private funds, real estate investment trusts, pension funds, and insurance funds that have over $1 billion in assets or assets under management.

securities brokers, and government securities dealers as covered reporters clear and appropriate for ensuring the Office collects the vast majority of transactions in the non-centrally cleared bilateral repo market? Would a higher or lower threshold better accomplish the goals of the collection? Would a threshold based on gross activity (repo borrowing plus repo lending) be more appropriate for capturing relevant brokers and dealers?

2. Please estimate the volume that would be missed by limiting the collection to only capture transactions in which at least one of the counterparties is a Securities Broker, securities dealer, government securities broker, or government securities dealer.

3. How many non-Securities Broker, non-securities dealer, non-government securities broker, or non-government securities dealer financial companies would be included as covered reporters under the provisions described above? Is the $1 billion in assets or assets under management threshold an appropriate measure? What characteristics, other than the ones defined, describe these financial companies?

4. Does the two-quarter phase-in period for certain brokers and dealers that become covered reporters after the effective date of the rule provide sufficient time to comply with the data reporting requirements?

5. Are the Office's estimates of the ongoing annual cost of determining whether a financial company with greater than $1 billion in assets or assets under management is a covered reporter on a quarterly basis and the number of companies that would likely be required to make this determination reasonable? How could they be improved?

6. Are there other sources of assets or assets under management which should be included in the threshold criteria?

b. Scope of Transactions

The Office is defining a non-centrally cleared bilateral repurchase agreement 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. In all cases the agreement does not involve a tri-party custodian nor is cleared with a central counterparty. This definition includes, but is not limited to, transactions that are executed under a Master Repurchase Agreement (MRA) or Global Master Repurchase Agreement (GMRA), or which are agreed to by the parties as subject to the provisions of 11 U.S.C. 559. The rights established in this code relate to contractual characteristics of interest to the Office. Notwithstanding the above, transactions conducted under a Securities Lending Agreement (SLA) or a Master Securities Lending Agreement (MSLA) are not considered repurchase agreements, nor are repurchase agreements arising from either participation in a commercial mortgage loan or the initial securitization of a residential mortgage loan. The reasons for exclusion of all such transactions relate to their greater use to support specific demands for securities. By contrast, repurchase agreements more specifically relate to loan provisions. Additionally, the Office has chosen to exclude MSLA and Global Master Securities Lending Agreement (GMSLA) transactions from the proposed rule due to the SEC's proposed Reporting of Securities Loans.[58] As a result and depending upon the form and timing of any final SEC rule, reporting these transactions to the Office could be duplicative. Sell/buy-back agreements have also been excluded because in lacking the contractual documentation characteristics of other repo transactions, collateral sales and repurchases are separated from borrowing and lending commitments, respectively. While sell/buy-back agreements accomplish similar goals to repo transactions, these agreements are recorded differently from MRA, GMRA, MSLA, and GMSLA agreements and may have contractual characteristics and names that are different from the preceding types. The Office seeks comment on such assertions.

The Office has noted that some transactions that would be covered under the proposed rule are likely to be with counterparties outside of the United States (U.S.). Based on a review of relevant foreign supervisory reporting requirements and outreach to industry, the Office believes that because the proposed rule would only require reporting by U.S. financial companies, there would be no intersection with the financial companies covered by foreign collections. As a result, the Office does not believe the proposed collection would require duplicative reporting from financial companies that would be covered under its rule.

Covered reporters would be required to report on all transactions that meet the above-described characteristics. This would include transactions by the covered reporter settled internationally or denominated in currencies other than in U.S. dollars. Excluding transactions settled outside of the U.S. would allow for covered reporters to avoid reporting by choosing to conduct the same transaction but settling that transaction outside the U.S. Meanwhile, collecting data on repurchase agreements denominated in foreign currencies would give the Office greater information on cross-border exposures associated with repo borrowing.

Questions

1. The proposed rule text currently covers agreements under an MRA or GMRA. The Office's experience with the 2015 OFR Bilateral Repo Pilot yielded findings that equivalent trades to repurchase agreements are often instead contractually executed under Securities Lending Agreements or Master Securities Lending Agreements for reasons of convenience.[59]

a. How would potential reporters view the burden associated with the inclusion of trades contractually executed on a principal basis (*i.e.,* not as a securities lending agent for another party) under an SLA or MSLA? What burden would be associated with excluding trades contractually executed under SLAs or MSLAs?

b. How do you view the economic comparability of repurchase agreements and securities lending agreements executed against cash on a principal basis?

c. Would it be useful to restrict the definition of repurchase agreement to transactions under an GMRA or MRA? Would the volume of reported transactions be substantially narrower under that definition?

d. What is the effect of referencing transactions agreed to by the parties as being subject to 11 U.S.C. 559?

2. If the Office decided to collect information on sell/buy-back transactions, do potential reporters foresee any burdens in reporting those in the same format as repo transactions?

3. Are there other types of transactions the Office should consider collecting in this or future collections?

[58] Release No. 34–93613, Reporting of Securities Loans, 86 FR 69802, 69803, fn. 2. December 8, 2021.

[59] Baklanova, Viktoria, Cecilia Caglio, Marco Cipriani, and Adam Copeland. ''The U.S. Bilateral Repo Market: Lessons from a New Survey.'' Brief no. 16–01, Washington, DC: Office of Financial Research, January 13, 2016. *https://www.financialresearch.gov/briefs/files/OFRbr-2016-01_US-Bilateral-Repo-Market-Lessons-from-Survey.pdf.*

4. How would reporting repo transactions also reported to foreign supervisory authorities affect the reporting burden for covered reporters?

5. How would reporting repurchase agreements denominated in currencies other than dollars affect the reporting burden for covered reporters?

c. Information Required

This proposed collection would require reporting on non-centrally cleared bilateral repo trades, including detailed reporting about the securities used to collateralize these trades and contractual specifics of repurchase agreements. The required data elements are listed in the table in § 1610.11(c) of the proposed regulatory text. This table is tailored to capture information regarding covered transactions in a manner that the Office believes largely reflects the data generated by covered reporters in the ordinary course of business. This table lists each required element and a brief description of that element. Below is a description of the general categories of information covered by the proposed collection and further detail on certain key data fields, including financial data standards and identifiers. The definitions of these data elements are based on the Office's research and experience in both the 2015 and 2022 pilots and, as described in detail in the subsections below, have been adapted to the Office's purposes for financial stability monitoring in the repo market. Proposed required information is also intended to promote the use of financial data standards, in line with the Office's mandate under the Dodd-Frank Act to collect and standardize data to support the Council in identifying risks to U.S. financial stability.

ISO 20022

As an alternative to data element definitions developed by the Office through direct consultation with market participants, the Office is considering adopting the field definitions used in the repo reporting messages in ISO 20022.[60] Promoting these data standards has advantages in terms of providing for greater consistency with other potential collections in the future and with potential developments in market practices. However, the Office believes that in their current form, use of the relevant ISO 20022 definitions would not result in reported data that is fit for the Office's financial stability monitoring purposes. In some cases, this is because the current ISO 20022 field definitions are too broad. In other cases, the ISO 20022 field definitions focus only on information associated with the transaction at the time of the trade, whereas the Office needs information on transaction characteristics since inception (*e.g.,* outstanding commitments). Reporting of outstanding commitments is essential to the Office's focus on financial stability, since it allows the Office to establish a full picture of the current leverage of covered reporters and their counterparties. To that end, the Office is proposing field definitions in the table in § 1610.11(c) of the proposed regulatory text.[61]

The Office is seeking comment on the extent to which the ISO 20022 standard is already used in the repo market, especially with respect to those entities that would be required to report under the proposed rule, and the potential utility of aligning the required data submissions to the standard.

Questions

1. To what extent are financial companies already assigning and using ISO 20022 standards in repo market transactions?

2. Are there advantages to be gained in the Office's ability to monitor the repo market for purposes of financial stability analysis by aligning the proposed data elements and definitions with the ISO 20022 standards?

3. Are there other voluntary consensus standards the Office should consider to enhance its ability to monitor the repo market for purposes of financial stability analysis?

4. How might the Office use this rule to improve data standards in the non-centrally cleared bilateral repo market?

Legal Entity Identifier Usage

Authorities from around the world, including those in the U.S., have established a global legal entity identifier (LEI) system, with oversight effected by a Regulatory Oversight Committee, composed of those same authorities. A Swiss nonprofit foundation, the Global LEI Foundation, was established to provide operational governance and management of local operating units that issue LEIs.

The LEI is a 20-character identifier standard, established as ISO 17442, that identifies distinct legal entities engaging in financial transactions. An LEI allows for unambiguous identification of firms and affiliates.

In both the 2015 pilot and the 2022 pilot, the Office experienced difficulties working with the non-centrally cleared bilateral repo market data due to the absence of standardized counterparty information. Identification of the entities involved in a covered repo transaction is important to enhance the ability of the Council and the Office to identify risks to U.S. financial stability by allowing it to understand repo market participants' exposures, concentrations, and network structures.

This proposed collection includes fields for submitting the LEI of each covered reporter and counterparty involved in a covered transaction. Collecting the LEIs of these entities would facilitate evaluation of the covered transactions and reduce the need for manual intervention in matching identical participants that supply different naming conventions depending on the reporting, and help identifying parent and affiliate relationships. Finally, collecting the LEI would allow the Office to form consistent mappings from the data collected under this rulemaking to other existing data sets such as data collected under the Office's centrally cleared data collection.

The Office's proposed rule would require covered reporters to submit their LEI for each transaction. The proposed rule would also require covered reporters to submit the counterparty's LEI for each transaction, if available. The Office believes that all covered reporters are likely to already possess valid LEIs.

LEIs must be properly maintained, meaning they must be kept current and up to date according to the standards implemented by the Global LEI Foundation. The proposed inclusion of the LEI as a mandatory data field for such purposes, according to the defined standard, was widely supported for the centrally cleared repo collection and continues to be the globally accepted standard for legal entity identification.

Requiring the reporting of LEIs is consistent with the Office's statutory purposes and duties of collecting data on behalf of the Council, providing such data to the Council and member agencies, and standardizing the types and formats of data reported and collected.

Mandatory reporting of the LEI would also benefit firms and regulators by improving the ability to combine repo information with other information necessary to monitor system or firm risk. This is particularly so given that more than 2 million firms have obtained an LEI and are therefore becoming capable of obtaining these benefits. The

[60] The business component and its elements are described under Repurchase Agreement in the ISO 20022 universal financial industry message schema at *https://www.iso20022.org/standardsrepository/type/RepurchaseAgreement.*

[61] *https://www.iso20022.org/standardsrepository/type/RepurchaseAgreement.*

aggregate cost savings for the financial service industry upon broader adoption of the LEI have been estimated in the hundreds of millions of dollars.[62]

Questions

1. Do participants in non-centrally cleared bilateral repo markets anticipate challenges obtaining, maintaining, and reporting LEIs?

Unique Transaction Identifier Usage

The Unique Transaction Identifier (UTI) is a globally unique identifier for individual transactions in financial markets. Beginning in 2014, regulators and other stakeholders across major financial jurisdictions, including the Office, worked to harmonize transaction reporting standards to be available for use across all financial transactions, including repo transactions. The output of this work was the UTI, ISO 23897, which was published in 2020 and allocates a unique number to a financial transaction as agreed among the parties and/or within the regulatory system under which it is formed. Since the UTI's publication as an ISO standard in 2020, adoption has steadily increased, including in new U.S. rulemaking.[63] Looking forward, UTI adoption across financial market sectors could allow for wider systemic risk monitoring.

Adoption of the UTI as a reported element in this collection could improve data quality by reducing the need for manual intervention in matching identical transactions across counterparties, allowing the Office to more effectively monitor and evaluate financial risk. The Office has seen adoption of UTIs in data submitted under its 2022 non-centrally cleared bilateral repo collection pilot. The Office believes that requiring UTIs to be reported, whenever available, will promote UTI use over the long term, conferring the anticipated benefits to data quality, monitoring, and evaluation described above, without imposing reporting costs on those market participants that do not currently assign UTIs to their transactions. The Office's proposed rule therefore requires covered reporters to submit UTIs for each reported transaction, whenever a UTI exists. UTIs should only be reported for new transactions covered under this proposed rule.

[62] Office of Financial Research. Legal Entity Identifier—Frequently Asked Questions. *https://www.financialresearch.gov/data/legal-entity-identifier-faqs/.*

[63] *https://www.sec.gov/rules/other/2021/ddr/exhibit-n-technical-specifications-narrative.pdf;* and *https://www.cftc.gov/LawRegulation/FederalRegister/finalrules/2020-21569.html.*

Questions

1. Do participants in the non-centrally cleared bilateral repo market anticipate challenges assigning, recording, and sharing UTIs on a transaction-level basis, including increased costs? If so, please provide estimates of those costs.

2. Should the Office set construction criteria for the generation of UTIs or is there sufficient existing market practice guidance for expansion to the non-centrally cleared bilateral repo market?

Collateral Information

The collateral underlying a repurchase agreement is crucial to assessing the exposures and risk management in the repo market. Information on which securities are delivered into repo would allow the Office to track common risk exposures across counterparties. The fields proposed would also allow the Office to assess the extent to which specific securities are tied to the repo market, and therefore potential spillovers from the repo market into underlying asset markets, with potential effects on liquidity and price efficiency.

Further details on valuation and quantities delivered would provide the Office with information on margining practices. Knowing the quantity of securities delivered would help determine levels of over-collateralization in the market and the flow of securities as firms engage in security transformation and acquire specific securities for delivery or sale. The initial haircut and securities value at inception of a trade gives further information on the initial over-collateralization of trades. Knowing the value of the securities as of the file observation date allows for computation of details on current margins maintained by the firm. Finally, knowing the currency these values are reported in allows for comparison across trades and allows the Office to assess potential cross-border exposures through non-centrally cleared bilateral repo. The Office proposes that these values be reported in the currency of issuance of the underlying security, since this value corresponds to the underlying price market participants are likely to reference in their regular course of business. However, there could be advantages in reporting securities values in the same currency as used to denominate the start and end leg cash of the repurchase agreement, since it may align with margining practices.

Questions

1. Should the Office mandate reporting securities value in the currency of issuance of the collateral or in the currency of the repurchase agreement?

2. How are variation margin payments against non-centrally cleared bilateral repurchase agreements determined? How do they regard offsetting conventions and put in place netting practices? How may these conventions and practices be reported in this collection?

Date and Tenor Information

This proposed collection 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. The trade timestamp is the date and time on which a transaction was agreed to. This field is critical for differentiating same-day-start trades from forward-settling trades. Information from this field is also essential to understanding how a transaction is priced, and for determining whether intra-day liquidity is scarce in the market. Intra-day liquidity management has been linked to broader lack of liquidity in September 2019 and March 2020.[64]

Additionally, the proposed collection would define the start date as the date on which a settlement obligation related to the exchange of cash and securities for a transaction first exists. The end date refers to the date on which the cash lenders to the transaction are obliged to return the cash and securities. For trades with optionality, the Office 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. For trades with optionality the end date would represent the date at which the trade would terminate if no option were exercised and would be left blank for open trades which have no prespecified end date.

For repos with optionality, the optionality field indicates how the maturity of a transaction can be changed after initial agreement. This information is important for determining the pricing of repurchase agreements, since repo rates often depend on the options offered in the agreement. Therefore, without data on optionality, comparisons may be made between two

[64] Copeland, Adam, Darrell Duffie, and Yilin Yang. ''Reserves Were Not So Ample After All.'' Working Paper no. 29090, Cambridge, Massachusetts: National Bureau of Economic Research, 2021.

transactions with fundamentally different pricing, leading to erroneous inferences by regulators.

Questions

1. Would there be any advantages to reporting end date and minimum maturity separately? Would the inclusion of this additional field impose significant costs on covered reporters?

2. Are there alternative definitions of trading timestamps that would better capture the economics of the trade or correspond to industry practice?

Trade Direction, Trade Size, and Rate

The proposed rule would involve reporting of the cash borrower and the cash lender, and indicate whether the covered reporter is either of those. 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. This information is critical for determining the net exposures of covered reporters to individual securities as well as their overall cash position.

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 proposed rule 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. In addition, the current cash amount field tracks the current amount of cash in the trade after any adjustments to principal and the accrual of interest, which allows researchers to assess the balance outstanding on open trades for which the start leg may no longer be relevant.

The 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. Since some term trades in non-centrally cleared bilateral repo are based on floating rates, additional information is required for these trades. This information includes the underlying benchmark interest rate used for the trade, the spread used above this benchmark rate, and the reset frequency of the benchmark. These fields give necessary detail on how the trade has been priced, and on the reliance of repo trades on specific benchmarks, which could lead to spillovers from the markets used to calculate benchmarks into the repo market.

Risk Management

The proposed rule 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. These terms can include a variety of terms including, but not limited to, repo maturity, collateral security, counterparty, and optionality. Regarding these netting practices, the field would indicate whether netting occurs across asset classes and instruments outside of the non-centrally cleared bilateral repo market, or at a transactional level within this market and when so, on what repo terms.

Trade Venue

Finally, for trades which are placed through electronic trading platforms, the proposed collection would require the name of the platform used. This field allows the Office to capture information on material service providers in the repo market. It also allows the Office to assess the extent to which electronic platforms have been adopted, since these platforms potentially allow for greater price transparency and may lead to more flexibility in counterparty relationships in the event of a crisis.

Questions

1. Are the proposed reporting fields generally appropriate? Do any particular proposed reporting fields raise specific questions or concerns?

2. Are there any additional fields not currently being requested that the Office should consider including in order to better accomplish the Office's or Council's goals presented in this proposal?

3. Are the definitions in the proposed regulatory text clear, or should any definitions be modified or added?

d. Submission Process and Implementation

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.

The Office proposes to require submissions no later than 11:00 a.m. on the business day following the transaction. The proposed submission process would allow for the secure, automated transmission of files. The Office 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. The Office believes this implementation period would provide adequate time for covered reporters to comply with the proposed requirements.

Questions

1. Does the proposed 90-day compliance period for a financial company that is a covered reporter on the effective date of the rule provide sufficient time to comply with the data reporting requirements?

2. Are there any additional costs associated with data reporting as contemplated by this proposed collection? If so, please provide estimates of those costs.

3. Would increasing the time period between the effective date of a final rule and the subsequent compliance date substantially reduce burdens for covered reporters or repo market participants, or improve the quality of the data reported under this proposed collection? Are there any aspects of the proposed collection that a phased-in reporting requirement would be particularly useful for?

4. What, if any, difficulties could a non-centrally cleared bilateral repo collection pose for placing non-centrally cleared bilateral repo transactions? What, if any, consequences would this collection have for repo market volumes or rates?

VI. Administrative Law Matters

a. Paperwork Reduction Act

The collection of information contained in this proposed collection has been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (PRA).[65] Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury/Office of Financial Research, Office of Information and Regulatory Affairs, Washington, DC 20503 (or by email to *oirasubmission@omb.eop.gov*), with copies to the Office of Financial

[65] 44 U.S.C. 3501, *et seq.*

Research at 717 14th Street NW, Washington, DC 20220.

The proposal would establish the permanent collection of certain information on repo transactions and is a ''collection of information'' pursuant to the PRA. The Office is an independent regulatory agency under the PRA [66] and for purposes of OMB review. In accordance with the requirements of the PRA, the Office may not conduct or sponsor, and a covered reporter is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The Office anticipates that this proposed collection would require submission by 40 covered reporters, who would be required to submit data daily in accordance with the table in the proposed regulatory text. The Office anticipates an annual burden of 756 hours per covered reporter. This figure is arrived at by estimating the daily reporting time to be approximately 3 hours for submission and multiplying that figure by an average of 252 business days in a year, the typical number of days per year that do not fall either on weekends or on holidays widely observed by the market.

To estimate hourly wages, the Office used data from the May 2021 Bureau of Labor Statistics Occupational Employment Statistics for credit intermediation and related activities (North American Industry Classification System (NAICS) 522000). For hourly compensation, a figure of $84 per hour was used, which is an average of the 90th percentile wages in seven different categories of employment (compliance officers, accountants and auditors, lawyers, management occupations, financial analysts, software developers, and statisticians), plus an additional 50.4% to cover subsequent wage gains and non-wage benefits, which yields an estimate of $126 per hour. Each covered reporter must also obtain and maintain an LEI, which typically costs $65, and then $50 annually. Using these assumptions, the Office estimates the recurring operational costs for the submissions under this proposed collection to be $95,306 annually for each covered reporter and the total estimated annual costs for all expected covered reporters is $3,812,240.

The Office also estimates that approximately 2,000 financial firms would need to determine whether they are covered reporters on a quarterly basis. The Office estimates this would take 3 hours per quarter. The total estimated annual cost for these 2,000 financial firms is $3,024,000. Combining the costs of the 40 covered reporters and the 2,000 financial firms, the total recurring annual cost of the data collection is estimated at $6,836,240.

Office Estimates Summary

Title: Ongoing Data Collection of Non-Centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market.

Office: Office of Financial Research.

Frequency of Response: Daily (12 CFR 1610.11(d)).

Affected Public: Businesses or other for-profit.

Scope of Covered Reporters: Any party to a non-centrally cleared bilateral repurchase agreement transaction that meets the definition of financial company set forth in 12 U.S.C. 5341(2) and is: (i) A Securities Broker, securities dealer, government securities broker, or government securities dealer, each as defined under and registered pursuant to the Securities Exchange Act of 1934 whose average daily total outstanding commitments to borrow in non-centrally cleared bilateral repurchase agreement transaction (prior to netting) with all counterparties over all business days during the prior calendar quarter is at least $10 billion; or (ii) any other entity whose assets or assets under management are over $1 billion and whose average daily outstanding commitments to borrow in non-centrally cleared bilateral repurchase agreement transactions with counterparties that are not included in (i) over all business days during the prior calendar quarter is at least $10 billion. (12 CFR 1610.11(a), (b)(2)).

Number of Covered Reporters: 40 covered reporters.

Estimated Time per Covered Reporter per Submission: 3 hours.

Number of Submissions: Daily submission (12 CFR 1610.11(c)(3)).

Anticipated Annual Submissions: 252.

Total Estimated Annual Burden: 756 hours.

In addition to recurring reporting costs, the Office anticipates covered reporters would experience one-time initial start-up costs to account for data management systems and software, operations, and alignment of reporting schedules for ease of data transmission. The estimate of these initial costs is approximately 500 hours per covered reporter. Because the Office anticipates 40 covered reporters the estimated initial start-up cost of all required reporting is $2,520,000.

The Office invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the Office, including whether the information would have practical utility; (b) the accuracy of the estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to report the information.

b. Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (the ''RFA'') to address concerns related to the effects of agency rules on small entities.[67] The Office is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule for which general notice of proposed rulemaking is required, or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[68] In accordance with section 3(a) of the RFA, the Office is certifying that this proposed collection will not have a significant economic impact on a substantial number of small entities.

As discussed above, this proposed collection would only apply to certain brokers and dealers whose average daily borrowing in non-centrally cleared bilateral repo contracts over the prior calendar quarter is at least $10 billion and to other financial companies with over $1 billion in assets or assets under management and greater than $10 billion whose average daily borrowing in non-centrally cleared bilateral repo contracts over the prior calendar quarter from counterparties who are also non-securities broker, non-securities dealers, non-government securities brokers, or non-Government securities dealers is at least $10 billion.

Under regulations issued by the Small Business Administration, a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with asset sizes that vary from $7.5 million in assets to $750 million or less in assets.[69] For purposes of the RFA, entities that are banks are considered small entities if their assets are less than or equal to $750 million. The size of the exposure-based threshold in this

[66] 44 U.S.C. 3502(5).

[67] 5 U.S.C. 601 *et seq.*

[68] 5 U.S.C. 603(a).

[69] 13 CFR 121.201.

proposed collection ensures that any respondent will be well beyond these small entity definitions.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is hereby certified that this proposed collection will not have a significant economic impact on a substantial number of small entities.

c. Plain Language

The Office has sought to present this proposed collection in a simple and straightforward manner. The Office invites comments on how to make this proposal, the regulatory text, or the reporting schedules easier to understand. The Office specifically invites comments on the following questions:

Questions

1. Are the requirements in the proposal clearly stated? If not, how could the proposed rule be more clearly stated?

2. Does the proposed rule contain language or jargon that is not clear? If so, which language requires clarification?

3. Would a different format (*e.g.,* groupings, ordering of sections, use of headings, paragraphing) make the proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?

List of Subjects in 12 CFR Part 1610

Clearing, Confidential business information, Data collection, Economic statistics, No central counterparty, Reference rates, Repurchase agreements, No central counterparty.

For the reasons stated in the preamble, the Office of Financial Research proposes to amend 12 CFR part 1610 as set forth below:

PART 1610—REGULATORY DATA COLLECTIONS

■ 1. The authority citation for part 1610 continues to read as follows:

Authority: 12 U.S.C. 5343 and 5344.

■ 2. Add § 1610.11 to read as follows:

§ 1610.11 Non-centrally cleared Bilateral Repurchase Agreement Data.

(a) *Definitions.* The following definitions are applicable in this section:

Covered reporter means any financial company that meets the criteria set forth in paragraph (b)(2) of this section; provided, however, that any covered reporter shall cease to be a covered reporter only if it does not meet the dollar thresholds specified in paragraph (b)(2) of this section for at least four consecutive calendar quarters.

Financial company has the same meaning as in 12 U.S.C. 5341(2).

Government securities broker means any institution registered as a government securities broker with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Government securities dealer means any institution registered as a government securities dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Investment adviser means any institution registered as an investment adviser with the Securities and Exchange Commission under the Investment Advisers Act of 1940.

Non-centrally cleared bilateral repurchase agreement transaction means an agreement of one party 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 agreement does not involve a tri-party custodian and is not cleared with a central counterparty. This definition includes, but is not limited to, transactions that are executed under a Master Repurchase Agreement (MRA) or Global Master Repurchase Agreement (GMRA), or which are agreed to by the parties as subject to the provisions of 11 U.S.C. 559. Notwithstanding the above, transactions conducted under a Securities Lending Agreement (SLA) or a Master Securities Lending Agreement (MSLA) are not considered repurchase agreements, nor are repurchase agreements arising from either participation in a commercial mortgage loan or the initial securitization of a residential mortgage loan.

Outstanding commitment: The amount of financial obligations entered into pursuant to any repurchase agreement which opens on, or is outstanding as of, the file observation date, including transactions which both opened and closed on the file observation date. These financial obligations include all of those that exist prior to netting.

Securities broker means any institution registered as a broker with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Securities dealer means any institution registered as a dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

(b) *Purpose and Scope*—(1) *Purpose.* The purpose of this data collection is to require the reporting of certain information to the Office about non-centrally cleared bilateral repurchase agreement transactions. The information will be used by the Office to fulfill its responsibilities under title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act, including support of the Council and Council member agencies by facilitating financial stability monitoring and research consistent with support of the Council and its member agencies.

(2) *Scope of Application.* Reporting under this section is required by any financial company that is party to a non-centrally cleared bilateral repurchase agreement transaction that is:

(i) A Securities Broker, securities dealer, government securities broker, or government securities dealer whose average daily outstanding commitments to borrow and extend guarantees in non-centrally cleared bilateral repurchase agreement transactions with counterparties over all business days during the prior calendar quarter is at least $10 billion; and

(ii) 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 repurchase agreement transactions, including commitments of all funds for which the company serves as an investment adviser, with counterparties that are not securities broker, securities dealers, government securities brokers, or government securities dealers over all business days during the prior calendar quarter is at least $10 billion.

(c) *Data Required.* (1) Covered reporters shall report trade and collateral information on all non-centrally cleared bilateral repurchase agreement transactions, subject to paragraph (c)(2) of this section, in accordance with the prescribed reporting format in this section.

(2) Covered reporters shall only report trade and collateral information with respect to any non-centrally cleared bilateral repurchase agreement transaction which opens on, or is outstanding as of, the file observation

date, including transactions which both opened and closed on the file observation date.

(3) Covered reporters shall submit the following data elements for all transactions:

TABLE 1 TO PARAGRAPH (c)(3)

Data element	Explanation
(1) File observation date	The observation date of the file.
(2) Covered reporter LEI	The Legal Entity Identifier of the covered reporter.
(3) Cash lender LEI	The Legal Entity Identifier of the cash lender.
(4) Cash lender name	The legal name of the cash lender.
(5) Cash borrower name	The legal name of the cash borrower.
(6) Cash borrower LEI	The Legal Entity Identifier of the cash borrower.
(7) Guarantee	Indicator for whether the covered reporter issued a guarantee with respect to the transaction.
(8) Netting set	A descriptor to indicate for the transaction whether the covered reporter nets counterparty exposures across asset classes and instruments outside of repurchase agreements. When the covered reporter does not net counterparty exposures across asset classes and instruments outside of repurchase agreements, the descriptor indicates the repurchase agreement terms on which netting occurs.
(9) Transaction id	The respondent-generated unique transaction identifier in an alphanumeric string format.
(10) Unique transaction ID	If available, the Unique Transaction ID (UTI).
(11) Trading platform	For transactions arranged using an outside vendor's platform, the provider of the platform.
(12) Trade timestamp	The timestamp that the trade became an obligation of the covered reporter or the covered reporter's subsidiary.
(13) Start date	The start date of the repo.
(14) End date	The date the repo matures.
(15) Minimum maturity date	The earliest possible date on which the transaction could end in accordance with its contractual terms (taking into account optionality).
(16) Cash lender internal identifier	The internal identifier assigned to the cash lender by the covered reporter, if the covered reporter is not the cash lender.
(17) Cash borrower internal identifier	The internal identifier assigned to the cash borrower by the covered reporter, if the covered reporter is not the cash borrower.
(18) Start leg amount	The amount of cash transferred to the cash borrower on the open leg of the transaction at inception of the repurchase.
(19) Close leg amount	The amount of cash to be transferred by the cash borrower on the end date of the transaction.
(20) Current cash amount	The amount of cash to be transferred by the cash borrower, inclusive of accrued interest and principal as of the file observation date.
(21) Start leg currency	The currency which is used in the ''start leg'' field.
(22) Rate	The rate of interest paid by the cash borrower on the transaction, expressed as an annual percentage rate on an actual/360-day basis.
(23) Floating rate	The benchmark interest rate upon which the transaction is based.
(24) Floating rate reset frequency	The time period, in calendar days, describing the frequency of the floating rate resets.
(25) Spread	The contractual spread over the benchmark rate referenced in the repurchase agreement.
(26) Securities identifier type	The identifier type for the securities transferred between cash borrower and cash lender.
(27) Security identifier	The identifier of securities transferred between the cash borrower and the cash lender in the repo.
(28) Securities quantity	For fixed-income instruments, the par amount of the transferred securities as of the report date.
(29) Securities value	The market value of the transferred securities as of the close of business on the file observation date, inclusive of accrued interest.
(30) Securities value at inception	The market value of the transferred securities at the inception of the transaction, inclusive of accrued interest.
(31) Securities value currency	The currency which is used in the ''securities value'' and ''securities value at inception'' fields.
(32) Haircut	The difference between the market value of the transferred securities and the purchase price paid at the inception of the transaction.
(33) Special instructions notes or comments	The covered reporter may characterize any collateral with special instructions notes or comments.

(d) *Reporting Process.* The Office may either collect the data itself or designate a collection agent for that purpose. Covered reporters shall submit the required data for each business day by 11 a.m. Eastern time on the following business day.

(e) *Compliance Date.* (1) Any financial company that is a covered reporter as of the effective date of this section shall comply with the reporting requirements pursuant to this section 90 days after the effective date of this section. Any such covered reporter's first submission shall be submitted on the first business day after such compliance date.

(2) Any financial company that becomes a covered reporter after the effective date of this section 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.

James D. Martin,

Deputy Director for Operations Performing the Duties of the OFR Director.

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