March 9, 2023

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

Re: ***SIFMA AMG Comment Letter on the OFR Proposed Rule Change Relating to Collection of Non-Centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market; Document 88 FR 1154***

Dear Mr. Passante:

The Asset Management Group of the Securities Industry and Financial Markets Association ("**SIFMA AMG**")[1] appreciates the opportunity to comment on the Office of Financial Research's (the "**OFR**") proposed rule (the "**Proposal**") establishing a data collection regime covering non-centrally cleared bilateral transactions in the U.S. repurchase agreement ("**Repo**") market.[2] SIFMA AMG supports the OFR's goal of identifying and monitoring risks to financial stability arising in the market for U.S. Treasury securities through data collection and has long recognized the importance of regulators having the information necessary to carry out market supervision functions.

We agree with the general approach of one-sided reporting by sell-side entities with sizeable repo cash borrowings responsible for reporting, provided, however, that large buy-side entities with sizeable repo cash borrowings with entities other than the defined list of reporting sell-side counterparties are also required to report. Our key recommendations include: limit the reporting requirement to repos involving U.S. Treasury securities, expand the list of reporting sell-side entities to include U.S. banks and U.S. branches of foreign banks in addition to U.S. broker-dealers, do not calculate reporting thresholds by aggregating positions held by independent funds with a common investment advisor, and exempt U.S. money market and mutual funds from reporting as they both provide liquidity and rarely borrow cash through the repo markets.

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[1] SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

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

Executive Summary:

Our principal areas of focus are the following:

I. **One-sided Reporting is Efficient and Effective**: Consistent with other reporting regimes, our members support one sided sell-side reporting as best suited to enhance supervisory oversight while minimizing inefficient and duplicative data streams.

II. **Limit Reporting to Repos involving U.S. Treasury Securities as Collateral**: As the supervisory focus is on the liquidity and stability in the U.S. Treasury securities market, which represents a significant amount of collateral for repos, it would be best to clarify that the scope of reporting is limited to repos involving such securities as collateral.

III. **Expand Category 1 to add U.S. banks and U.S. branches of foreign banks**: While U.S. broker-dealers may represent a sizeable portion of market activity, as our members also trade repos involving U.S. Treasury securities with U.S. banks and U.S. branches of foreign banks, such entities should be added to Category 1 to provide a more complete data stream, eliminate duplicate reporting, and to limit the reporting responsibilities of Category 2 entities by reducing the number of repo transactions with non-Category 1 entities that must be monitored by Category 2 entities to assess reporting thresholds.

IV. **Investment Advisors are Inappropriate for Threshold Calculation:** Reporting by an investment advisor based on its overall assets under management is inappropriate as such advisors merely execute investment strategies on behalf of each of their independent managed funds, with each fund having an individualized strategy that may include repo transactions, and with each fund as the principal obligor,

V. **Exempt Money Market and Mutual Funds from Reporting:** There should be an exclusion for reporting by U.S. money market funds and mutual funds - regardless of assets - as they are rarely, if ever, cash borrowers, and there is no need for them to incur the expense of assessing if their repo portfolio with non-Category 1 entities meets the reporting threshold.

VI. **Allow for the Delegation of Reporting to a Party or Platform**: Especially for Category 2 reporters, there must be the ability to delegate reporting responsibilities to a counterparty or platform and thereby efficiently manage reporting costs.

VII. **Recognize Substitute Compliance with SFTR Reporting**: To the extent the OFR reporting regime overlaps with reporting under the European Securities and Markets Authority's ("**ESMAs**") Securities Financing Transactions Regulation ("**SFTR**"), the provision of the SFTR report should be confirmed as meeting any OFR reporting requirement.

VIII. **Provide Adequate Time for Implementation**: Our members estimate implementation of the proposed OFR reporting regime will take at least eighteen (18) months after the effective date of the final rule, especially given the plethora of developing regulatory initiatives.

Introduction

The bulk of the bilateral repo market involves transfers of cash from U.S. money market funds and mutual funds, among other entities, (collectively "**Lenders**") to U.S. broker-dealers, U.S. banks, and U.S. branches of foreign banks (the "**Borrowers**" or "**Intermediaries**") in exchange for the delivery of U.S. Treasury securities, among other securities, as collateral (the "**Collateral**") for the repayment of the transferred cash. When acting as an intermediary, the U.S. broker-dealer, U.S. bank, or U.S. branch of a foreign bank will transfer the borrowed cash to clients in exchange for collateral.

Whether acting as borrowers or intermediaries, U.S. broker-dealers, U.S. banks, and U.S. branches of foreign banks are parties to all or nearly all repo transactions, have robust operations that are established to comply with numerous reporting regimes in their existing compliance requirements, have existing reporting obligations under the Financial Industry Regulatory Authority's ("**FINRA**") TRACE and ESMA's SFTR reporting regimes, and are thereby well-positioned to effectively and efficiently adopt the proposed repo reporting regime. As borrowers or intermediaries, U.S. broker-dealers, U.S. banks, and U.S. branches of foreign banks engage in repo transactions with U.S. money-market funds and mutual funds as lenders.

While we acknowledge the potential reporting gap with respect to non-cleared, bilateral repo transactions not involving a U.S. broker-dealer, U.S. bank, or U.S. branch of a foreign bank, we believe the proposed thresholds for buy-side reporting are mistakenly targeted at investment advisors generally and will undoubtedly require sizeable U.S. money market and mutual funds to calculate their non-Category 1 repo borrowing portfolios when it is inevitable such portfolios will never meet the reporting threshold. If U.S. banks and U.S. branches of foreign banks are not added to Category 1, it is certain there will be inefficient and costly duplicate reporting from Category 2 entities as both the U.S. banks and U.S. branches of foreign banks and the buy-side will be forced to report on the same repo transaction (whereas if these entities are added to Category 1, they will provide a one-sided sell-side reporting on the transaction).

I. One-sided Reporting is Efficient and Effective:

Consistent with other reporting regimes, our members support one sided sell-side reporting as best suited to enhance supervisory oversight while minimizing inefficient and duplicative data streams.

For regulatory oversight and supervisory purposes, there need only be a single reporting of each relevant transaction as all pertinent information and insights can be gleaned from such reports. To require two-sided reporting would be inefficient as two parties would incur the cost of providing the exact same data which would also flood the supervisor with duplicate data for the same transaction.

SIFMA AMG members note the existing reporting regimes operated under FINRA's TRACE regime as well as by the Commodity Futures Trading Commission ("**CFTC**") for swaps and by the Securities Exchange Commission ("**SEC**") for security-based swaps operate on a single-sided approach and provide each agency with the appropriate data needed for oversight and supervision.

We are confident that with the proposed sell-side reporting regime the OFR will obtain exactly the information needed to meet its policy objectives.

II. Limit Reporting to Repos involving U.S. Treasury Securities as Collateral:

As the supervisory focus is on liquidity and stability in the U.S. Treasury securities market, which represents a significant amount of collateral for repos, OFR should clarify that the scope of reporting is limited to repos involving such securities as collateral.

Clearly the issue driving the OFR's proposed reporting regime is the stability and liquidity of U.S. Treasury markets. While repos can involve a variety of securities as collateral, the OFR has correctly identified risks regarding the functioning of the U.S. Treasury market in justifying the need for repo reporting. References to each of the 2008-2010 Global Financial Crisis and market dislocations in late 2019 and early 2020 identify stability and liquidity issues coupled with rate spikes in repos backed by U.S. Treasury securities.

On that basis, SIFMA AMG members recommend that the OFR limit the proposed reporting regime for non-centrally cleared bilateral repos to repos involving U.S. Treasury securities. Otherwise, the OFR will receive data on repo transactions that are not relevant to the U.S. Treasury security repo market.

In addition, we note that significantly greater implementation complexity is added in the event the final rule extends beyond repos involving U.S. Treasury securities as collateral. The operational build out to cover non-U.S. dollar-denominated securities, U.S. agency debt, or U.S. corporate debt would be extremely time-consuming and costly while providing questionable insight into overall systemic stability in U.S. or global financial markets. For this reason, SIFMA AMG urges OFR to limit the final rule to non-cleared, bilateral repos involving U.S. Treasury securities as collateral in order to maximize the benefits to be gleaned from any collected data.

III. Expand Category 1 to add U.S. banks and U.S. branches of foreign banks:

SIFMA AMG members enter into non-cleared, bilateral repos involving U.S. Treasury securities and other securities as collateral with U.S. broker-dealers, U.S. banks, and U.S. branches of foreign banks. While U.S. broker-dealers may represent a significant portion of the activity, sizeable positions are also maintained by banks foreign and domestic.

While the proposed two-category approach will serve to require reports from U.S. broker-dealers (in Category 1) and U.S. banks and U.S. branches of foreign banks (in Category 2), such treatment will inevitably result in duplicate reporting by Category 2 entities as thresholds for reporting by non-Category 1 entities fails to exclude repo cash borrowings from each of U.S. banks and U.S. branches of foreign banks. Funds with repo borrowings in excess of the reporting threshold with such entities will be forced to file reports on the same transaction as otherwise reported by U.S. banks and U.S. branches of foreign banks as neither is presently listed as a Category 1 entity.

We appreciate that the OFR's proposed approach seeks to strike a balance between soliciting value-add data and the costs associated with the gathering of such data. In establishing two categories of reporting entities, we believe the OFR intended for the reports provided by sell-side Category 1 entities to capture the bulk of the targeted market while avoiding leveeing redundant reporting costs on the buy-side in otherwise requiring the reporting of each transaction from both sides. Category 2 entity reporting is clearly meant to be a back-stop to capture repos from entities with sizeable borrowings from non-Category 1 entities as germane to the analysis.

SIFMA AMG members are very concerned however that in limiting Category 1 to U.S. broker-dealers as proposed, and not including U.S. banks and U.S. branches of foreign banks, OFR has compromised its intended efficiency for market participants and usefulness to OFR, OFR will be flooded with duplicate reports for the same transaction involving Category 2 entities including U.S. banks, U.S. branches of foreign banks, and the fund industry with no added value and significant added costs.

We also note that the cost analysis performed by OFR targets only the cost of assessing whether repo borrowings are from a Category 1 entity. In the event OFR does not expand Category 1 to include U.S. banks and U.S. branches of foreign banks, the fund industry will (x) be required to assess borrowings from such entities, and (y) in the event repo borrowings from such entities exceed the reporting threshold, also incur the cost to implement the reporting requirement with respect to such transactions otherwise also reported by the U.S. banks and U.S. branches of foreign banks.

As U.S. banks and U.S. branches of foreign banks will inevitably be reporters in Category 2, SIFMA AMG urges OFR to correctly add such entities to Category 1, and thereby maintain their reporting status while avoiding the cost to the buy-side in assessing their reporting status and reporting the same transaction with such entities.

IV. Investment Advisors are Inappropriate for Threshold Calculations:

Reporting by an investment advisor based on its overall assets under management across all managed funds is inappropriate. As a fiduciary for each fund, advisors execute each individual fund's investment strategy and each fund is the principal obligor to the trade. Investment Advisors neither act on their own behalf nor do they execute trades for their own benefit.

We note the following description of Category 2 for reporting:

> **"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:***
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> - 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***;"[3]

While the Proposal acknowledges that "***an advisor acts on the part of other parties***,"[i] it goes on to discuss a practice of executing trades "at the advisor level and then subsequently allocat[ing] them to their managed funds or portfolios."[4]

It is important to note that while trading of any kind may be executed by an investment advisor on a bunched basis across multiple funds to obtain consistent pricing for each fund, with allocation to individual funds to follow, such trading on behalf of any individual fund must be fully consistent with such fund's investment strategy and objectives which control the investment advisor's trading. Trading of fund assets and positions is never executed with the advisor as the principal obligor, but rather must be allocated to the appropriate fund as the principal obligor.

Fund assets do not accrue to the investment advisor nor do the assets of one fund accrue to those of another fund. Therefore, each fund, as principal obligor, with unique investment strategies, must stand alone for any assessment of the volume of repo transactions for reporting.

Notwithstanding the execution of trades on a bunched or similar basis, each individual fund is the principal obligor, and the investment advisor must act consistent with each such fund's

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[3] Proposal at pg. 1162 (emphasis added).

[3] Proposal at pg. 1163 (emphasis added).

[4] Proposal at pg. 1163.

investment strategy. For that reason, the Proposal's inclusion of investment advisors based on the aggregate assets under management across individual funds must be struck from the final rule as there is no common principal obligor and no single intent by the investment advisor to effect all repo transactions; as a fiduciary, an advisor has to make a specific determination or determinations in order to invest any particular fund's or account's assets in any repo transaction.

V. Exempt U.S. Money Market and Mutual Funds from Reporting:

Throughout the Proposal, there are references to concerns regarding the practice of funds effectively borrowing cash from a variety of lenders through the use of repo transactions, without regulators having insight into the scope of such borrowing and the ability to assess the potential risks. To the extent such funds enter into repo transactions with a U.S. broker-dealer, U.S. bank, or U.S. branch of a foreign bank, the Proposal provides that such transactions would be the responsibility of the U.S. broker-dealer (as a Category 1 entity), or the U.S. bank or U.S. branch of a foreign bank (as a Category 2 entity) to report.

In assessing the reporting responsibilities of sizeable funds themselves, the Proposal targets funds for reporting in the event they have repo borrowings from non-Category 1 entities exceeding a threshold. For the reporting requirement to apply to such borrowers, there is a two-threshold test with the funds first being required to have more than $1 billion in assets, and the second to having average daily total outstanding commitments to borrow cash from non-Category 1 entities in the bilateral repo markets of at least $10 billion. The Proposal notes that roughly 2000 entities would meet the $1 billion in assets test.

Once the $1 billion in assets test is met, a fund would be obligated to assess whether its average daily total outstanding commitments to borrow cash from non-Category 1 entities in the bilateral repo markets is $10 billion or more, with the OFR estimating each incurring at least $1,512 to make such calculations on an annual basis.

In our view, it is clear that all U.S. money market funds and mutual funds (regardless of size) should be exempt from making any of these calculations. Such funds are the acknowledged source of liquidity in the repo markets with broker-dealers borrowing cash either as principals or as intermediaries. In addition, such funds do not generally enter repo transactions in the role of borrower and are unlikely to ever have outstanding commitments to borrow cash in the bilateral repo markets of at least $10 billion.

For these reasons, we urge the OFR to exempt U.S. money market funds and mutual funds from any reporting obligation with respect to bilateral repo transactions as all or nearly all of their transactions are with U.S. broker-dealers, U.S. banks, or U.S. branches of foreign banks and otherwise will be subject to reporting by such entities.

VI. Allow for the Delegation of Reporting to a Party or Platform:

Especially for Category 2 reporters, there must be the ability to delegate reporting responsibilities to a counterparty or platform and thereby efficiently manage reporting costs.

Compliance through delegation of reporting responsibilities is an effective means to meet the OFR's policy goals while mitigating costs. SIFMA AMG members have often found it most efficient to outsource such requirements rather than build capacity in-house.

To the extent multiple reporting entities engage their counterparty or a platform, they are effectively leveraging the economies of scale to mitigate costs. We likewise believe that in delegating responsibilities the consistency and quality-control of the reported data is enhanced.

For these reasons, we recommend that OFR make it clear that Category 2 entities may delegate their reporting responsibilities to their counterparty or to a third-party platform.

VII. Recognize Substitute Compliance with SFTR Reporting:

To the extent the OFR reporting regime overlaps with ESMA's SFTR reporting regime, the SFTR report should be confirmed as meeting any OFR reporting requirement.

Repo transactions are reportable under SFTR by a branch of a European Union ("EU") entity operating outside of the EU.

To the extent an entity falls within the definition of a Category 1 or 2 entity and is otherwise already required to report repo transactions to the EU under SFTR, SIFMA AMG believes OFR should clarify that provision of the data in the SFTR report can meet the compliance requirements of the OFR's repo reporting regime.

VIII. Provide Adequate Time for Implementation:

The Proposal notes that the final rule would go into effect 60 days after publication in the Federal Register and that covered reporters would then be required to comply with the rule 90 days after the effective date (i.e., within 150 days from publication in the Federal Register).

Given several significant open questions in this Proposal and the potential required builds associated with reporting, we urge the OFR to include a longer implementation period and consider whether a tiered timeline is appropriate.[5]

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

In addition, a significant number of rule changes with respect to the global regulatory reporting environment are currently being, or will be shortly, implemented (for example, changes to TRACE requirements, implementation of Consolidated Audit Trail ("**CAT**") reporting, MiFID RTS 1 and RTS 2 changes, implementation of securities lending reporting) so a sufficient lead time is necessary to allow firms to meet all their obligations. In addition, the SEC is progressing numerous regulatory initiatives relevant to traded markets, registered funds, and investment advisors including, but not limited to, investment advisor outsourcing, investment company liquidity risk management and swing pricing, a variety of equity market structure proposals, reform of custody rules, reporting of security-based swaps large positions, and beneficial ownership reporting, which could require the simultaneous implementation with any repo transaction reporting required by OFR.

Reporting entities will need to develop policies and procedures to monitor activity to determine whether they have exceeded the thresholds. Once it is determined thresholds have been met, operational plumbing will need to be developed to comply with the reporting mandate.

Given the complexities of the analysis required to assess volumes against reporting thresholds, the need to develop the operational reporting infrastructure, and the current global regulatory change environment and the scope of potential reporting entities, SIFMA AMG believes OFR should not require compliance before eighteen (18) months after finalization of the specifications.

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On behalf of SIFMA AMG, we appreciate the opportunity to respond to the Proposal and your consideration of our comments and recommendations. If you have any questions or require additional information, please do not hesitate to contact us by calling William Thum at (202) 962-7381 or emailing bthum@sifma.org.

Sincerely,

William C. Thum
Managing Director and Assistant General Counsel, SIFMA AMG