

U.S. Adopts Reporting Rules for Non-Centrally Cleared Bilateral Repo Transactions

June 14, 2024

On May 6, 2024, the Office of Financial Research (the “**OFR**”) within the U.S. Department of Treasury adopted a [final rule](#) (the “**Final Rule**”) requiring certain financial companies to report to the OFR on each business day certain trade and collateral information on non-centrally cleared repo (“**NCCBR**”) transactions for which there is not a triparty custodian.¹ The OFR stated that this data collection will fill a gap in their information on the U.S. repo market, and that they will use this data to identify and monitor potential financial stability risks in the U.S. repo market.

Under the Final Rule, there are two categories of covered reporters (“**Covered Reporters**”): (1) registered broker-dealers (“**BDs**”) or government securities brokers or dealers (“**GSBDs**” and collectively with BDs, “**BDs/GSBDs**”) whose average daily of NCCBR guarantees and borrowings exceed \$10 billion (“**Category 1 Reporters**”) and (2) other financial companies with \$1 billion in assets or assets under management (“**AUM**”) whose average daily outstanding NCCBR guarantees and borrowings, including those of funds for which the firm serves as investment advisor, with non-BDs/GSBDs exceed \$10 billion (“**Category 2 Reporters**”), in each case as determined over all business days during the prior calendar quarter.

The effective date of the Final Rule is July 5, 2024. The compliance deadlines vary between 150 days and 270 days depending on whether a firm meets the definition of a Category 1 Reporter or a Category 2 Reporter.

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If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors:

Deborah North
+1 212 225 2039
dnorth@cgsh.com

Brandon M. Hammer
+1 212 225 2635
bhammer@cgsh.com

Lauren E. Semrad
+1 202 974 1712
lsemrad@cgsh.com

Wankun (Charles) Wang
+1 212 225 2798
wawang@cgsh.com

Sean Kwon
+1 212 225 2198
sekwon@cgsh.com

¹ 89 Fed. Reg. 37091 (May 6, 2024). The OFR issued a Notice of Proposed Rule Making (the “**Proposed Rule**”) on the same subject on January 9, 2023. 88 Fed. Reg. 1154 (Jan. 9, 2024).



BACKGROUND

(1) Data Collection and Assessment of Risk in the Repo Market

In explaining the rationale for the Final Rule, the OFR noted that the NCCBR market is the only segment in the repo market for which regulators do not currently have a transaction-level data source. By contrast, the OFR currently collects data on centrally cleared bilateral and triparty repos while the Federal Reserve Board collects data on non-centrally cleared triparty repos. The OFR argued that the lack of equivalent data on NCCBR activity was a “critical blind spot,” particularly after the spike in repo rates in September 2019 and the increase in repo rates following the decline in U.S. Treasury security (“**Treasury**”) prices in March 2020.

In addition, the OFR asserted that NCCBR activity presented a number of risks relative to other repos, particularly after the implementation of the Securities and Exchange Commission’s (the “**SEC**”) recently adopted central clearing rules for certain Treasury repos (“**Treasury Clearing Mandate**”).² Stated risks include lower-quality collateral, more heavily leveraged and less regulated participants in the market, inconsistent margining and settlement practices, and greater reliance on cross-product margining.

The OFR also emphasized that data on NCCBR was important to be able to identify shifts in activity between cleared and uncleared repos, including the extent to which market participants shift into cleared repos following the Treasury Clearing Mandate. The OFR also expressed interest in monitoring “guaranteed repos,” in which performance of one or both sides of a transaction is guaranteed by a third party. The OFR noted that guaranteed repos “replicate the profiles” of offsetting transactions with different counterparties, but have different accounting treatment.

² 89 Fed. Reg. 2714 (Jan. 16, 2024). Our alert memo on the Treasury Clearing Mandate is available [here](#).

THE FINAL RULES

(1) Scope of Covered Reporters

Under the Final Rule, Category 1 Reporters and Category 2 Reporters are defined as follows:

Category 1 Reporters: a BD or GSBD whose average daily outstanding commitments to borrow cash and extend guarantees in NCCBR transactions with all counterparties over all business days during the prior calendar quarter is at least \$10 billion.

The definition of Category 1 Reporters is limited to BDs/GSBDs *actually registered* under the Securities Exchange Act of 1934 (the “**Exchange Act**”) that satisfy the \$10 billion materiality threshold, and does not include entities registered in a similar capacity under foreign laws.

Importantly, a firm that is only registered as a GSBD for certain limited activities must include *all* NCCBR borrowings and guarantees in its calculation of the \$10 billion materiality threshold, even if such transactions are not what give rise to the registration status.

Category 2 Reporters: any non-BD/GSBD financial company that has over \$1 billion in assets or AUM, whose average daily outstanding commitments to borrow cash and extend guarantees in NCCBR transactions, including commitments of all funds for which the company serves as an investment adviser, with non-BD/GSBD counterparties over all business days during the prior calendar quarter is at least \$10 billion.

Banking entities not registered as GSBDs under the Exchange Act are not Category 1 Reporters, but may be “financial companies” for purposes of the definition of the Category 2 Reporters.

The calculation of the \$10 billion threshold for Category 2 Reporters excludes NCCBR transactions with BDs/GSBDs, not just Category 1 Reporters. However, transactions with non-BD/GSBD affiliates of BDs/GSBDs must be included.

“Financial companies” include, among others, banks and companies that are predominantly engaged in activities that are financial in nature, in each case incorporated or organized under the state or Federal law.

The OFR provides specific clarifications for whether it would consider a financial company to have assets or AUM over \$1 billion. Specifically, such threshold is met if:

- The firm is a registered investment adviser who provides continuous and regular supervisory or management services to securities portfolios valued in the aggregate at \$1 billion or more in assets;
- The firm includes in any required balance sheet disclosures to any federal or state regulator more than \$1 billion in assets;
- The firm discloses in any audited financial statements that it has more than \$1 billion in assets; or
- The firm discloses in filings with the Internal Revenue Service that it has more than \$1 billion in assets.

The OFR declined to exempt buy-side firms from the definition of Covered Reporters. The OFR contended that, while buy-side firms conduct the majority of NCCBR transactions mainly with Category 1 counterparties today, the OFR would like to monitor potential future changes to the NCCBR market, including buy-side entities’ potential shift towards trading with non-Category 1 entities (e.g., peer-to-peer repos or repos with U.S. branches of foreign banks).

The OFR also declined to exempt inter-affiliate repos from the reporting requirements or the calculation for the \$10 billion thresholds. The OFR noted the

importance of data on inter-affiliate repos for financial stability monitoring. In particular, OFR stated that large inter-affiliate transfers of cash from banks to affiliated dealers could signal declining liquidity for such dealers, which could be an early sign of stress. In addition, many BDs engage in centrally cleared trades on behalf of affiliated asset managers and then conduct back-to-back non-centrally cleared legs with such affiliated asset managers. While data on the cleared legs of such transactions are collected, repo exposures would be incorrectly attributed to the BDs instead of the affiliated asset managers without data on the uncleared legs.

(2) Scope of Reportable NCCBR Transactions and NCCBR Transactions Counting Towards the \$10 Billion Thresholds

The Final Rule defines an NCCBR transaction as:

- an agreement 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.

OFR stated in the preamble to the Final Rule that the definition of NCCBR transactions includes bilateral repos entered under a Master Repurchase Agreement or Global Master Repurchase Agreement, sell/buy-back agreements, and, transactions that parties agree are subject to Section 559 of the Bankruptcy Code.

However, securities lending transactions (such as those under a Securities Lending Agreement, a Master Securities Lending Agreement, or Global Master Securities Lending Agreement) and repurchase agreements arising from either participation in a commercial mortgage loan or the initial securitization of a residential mortgage loan are excluded. The OFR noted that reporting securities lending transactions could be unnecessary and redundant given the SEC's adoption of securities lending transparency rules that require such reporting.³

While all NCCBR transactions of a Covered Reporter are subject to the reporting requirements, the scope of NCCBR transactions that count towards the \$10 billion thresholds is narrower. For the \$10 billion thresholds, a firm is only required to count "commitments to borrow cash and extend guarantees in NCCBR transactions." The OFR provided the following clarification on the scope of transactions included towards this calculation:

- NCCBR transactions where the firm acts as the repo buyer (i.e., cash lender) are not included (but guarantees of a repo buyer's obligations under NCCBR transactions are included).
- Agency transactions where a BD/GSBD incurs no obligation and extends no guarantee are not included in the \$10 billion threshold under the Category 1 Reporter definition or the scope of transactions that need to be reported.
- "Guarantees" under the Final Rules include both (i) "indemnified repos" entered into as part of cash collateral reinvestment associated with securities lending and (ii) "shortfall guarantees" where a firm offers a guarantee only of the uncollateralized portion of a repo, and both such guaranteed transactions should be treated as any other guaranteed NCCBR.

- Guarantees do not have to be included if the guaranteed transaction is a triparty repo or a centrally cleared repo (such as a sponsored repo).

(3) Cross-Border Considerations

The OFR stated that only entities that are incorporated or organized under Federal or state law are subject to the Final Rules' reporting obligations. Entities that are not incorporated or organized under Federal or state law, or branches of entities that are not incorporated or organized under Federal or state law, are not subject to the Final Rule's reporting requirements.

The OFR clarified that U.S. branches of foreign banks are not considered "financial companies" the Final Rules. However, the OFR did not clarify whether foreign branches of U.S. banks are considered "financial companies."

However, transactions conducted outside the United States or settled in currencies other than the U.S. dollar by Covered Reporters are subject to the reporting requirements and the \$10 billion materiality thresholds.

(4) Required Information and Reporting Process

A Covered Reporter must report trade and collateral information required under the Final Rules with respect to each NCCBR transactions that opens on, or is outstanding at any time during the business day, including transactions which both opened and closed during such business day. The scope of transactions which information is required is broader than the scope of transactions used for determining the materiality thresholds, as a Covered Reporter must report information on *all* of its NCCBR transactions. In particular, a Covered Reporter must report transactions regardless of its role in the transactions as a cash lender, a cash borrower, a direct participant, guarantor, or other relevant third party.

³ Securities and Exchange Commission. Reporting of Securities Loans, Final Rule, 88 FR

75644 (Nov. 3, 2023). <https://www.federalregister.gov/d/2023-23052>.

- **Reporting deadline.** Required information for each business day must be reported by 11 a.m. Eastern Time on the following business day.
- **Required data and format.** The data elements required are set out in the Final Rules and in the table attached hereto as Exhibit A. The OFR has further specified the submission process and format in [Reporting Instructions](#) and [Technical Guidance](#) published on its [website](#).
- **Third-Party Submission of Data.** Covered Reporters may use a third party to submit required data, provided that: (i) at any time, only one third party submitter may be used, (ii) the Covered Reporter's data must be submitted from a single source (i.e., the Covered Reporter or a third party) and (iii) any change to the submitter requires a 90-day advance notice to the OFR.

(5) Compliance date

A firm that meets the definition of a Category 1 Reporter as of July 5, 2024 must submit the first report on December 2, 2024.

A firm that meets the definition of a Category 2 Reporter as of July 5, 2024 must submit the first report on April 1, 2025.

A firm that meets the definition of a Category 1 Reporter after July 5, 2024 must comply with the reporting requirements 150 days after the last day of the calendar quarter in which such firm becomes a Category 1 Reporter.

A firm that meets the definition of a Category 2 Reporter after July 5, 2024 must comply with the reporting requirements 270 days after the last day of the calendar quarter in which such firm becomes a Category 2 Reporter.

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Exhibit A: Data Elements for NCCBR Reporting

Data element	Explanation
File observation date	The date on which the business day ends.
Covered reporter LEI	The Legal Entity Identifier of the covered reporter.
Cash lender LEI	The Legal Entity identifier of the cash lender.
Cash lender name	The legal name of the cash lender.
Cash borrower name	The legal name of the cash borrower.
Cash borrower LEI	The Legal Entity Identifier of the cash borrower.
Guarantee	Indicator for whether the covered reporter issued a guarantee with respect to the transaction.
Transaction ID	The covered reporter-generated unique transaction identifier in an alphanumeric string format.
Unique transaction ID	If available, the Unique Transaction Identifier (UTI).
Trading platform	For transactions arranged using an outside vendor's platform, the provider of the platform.
Trade timestamp	The timestamp that the trade became an obligation of the covered reporter or the covered reporter's affiliate or subsidiary.
Start date	The start date of the repo.
End date	The date the repo matures.
Minimum maturity date	The earliest possible date on which the transaction could end in accordance with its contractual terms (taking into account optionality).
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.
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.
Start leg amount	The amount of cash transferred to the cash borrower on the open leg of the transaction at the inception of the transaction.
Close leg amount	The amount of cash to be transferred by the cash borrower on the end date of the transaction.
Current cash amount	The amount of cash to be transferred by the cash borrower, inclusive of principal, accrued interest and other adjustments, as of the end of the business day.
Start leg currency	The currency which is used in the Start leg amount field.
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.
Floating rate benchmark	The name of the benchmark interest rate upon which the transaction is based.

Floating rate reset frequency	The time period, in calendar days, describing the frequency of the floating rate resets.
Spread	The contractual spread over (or below) the benchmark rate referenced in the repurchase agreement.
Securities identifier type	The identifier type for the securities transferred between cash borrower and cash lender.
Security identifier	The identifier of securities transferred between the cash borrower and the cash lender in the repo.
Securities quantity	The number of units (e.g., shares, bonds, bills, notes) transferred to the cash lender as of the end of the business day.
Securities value	The market value of the transferred securities as of the end of the business day, inclusive of accrued interest.
Securities value at inception	The market value of the transferred securities at the inception of the transaction, inclusive of accrued interest
Securities value currency	The currency used in the Securities value and Securities value at inception fields.
Haircut	The difference between the market value of the transferred securities and the purchase price paid at the inception of the transaction.
Special instructions, notes, or comments	The covered reporter may characterize any detail of the transaction with special instructions, notes, or comments.