MFA

February 25, 2025

Via Electronic Mail

Scott Bessent
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Request for an Extension of the Compliance Date of the OFR Repo Reporting Rule and for OFR to Review and Reevaluate the Rule as Required by the President's Recent Executive Orders

Dear Secretary Bessent:

MFA[1] is submitting this letter on behalf of our members requesting that the U.S. Department of the Treasury's Office of Financial Research ("**OFR**") provide an extension of the compliance date of the final data collection rule covering non-centrally cleared bilateral repurchase ("**NCCBR**") transactions in the U.S. repurchase agreement market ("**Repo Reporting Rule**") for Category 2 Reporters (defined below).[2] We also are requesting that OFR eliminate application of the Repo Reporting Rule to Category 2 Reporters or, at a minimum, make reporting by Category 2 Reporters less burdensome.

We believe the recent Presidential Memorandum regarding a Regulatory Freeze ("**Regulatory Freeze EO**") requires OFR to provide such relief.[3] Consistent with the goal of the President to reduce costs and burdens on market participants and improve the efficiency of the financial markets, the Regulatory Freeze EO requires a postponement of the effective date of rules that have been published in the Federal

[1] Managed Funds Association (MFA), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

[2] Collection of Non-Centrally Cleared Bilateral Transactions in the U.S. Repurchase Agreement Market, 89 Fed. Reg. 37091 (May 6, 2024), available at: https://www.govinfo.gov/content/pkg/FR-2024-05-06/pdf/2024-08999.pdf.

[3] *See* Presidential Memorandum, *Regulatory Freeze Pending Review* (Jan. 20, 2025), available at: https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/. *See also* Presidential Memorandum, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative (Feb. 19, 2025), available at: https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency-regulatory-initiative/#:~:text=It%20is%20the%20policy%20of,overbearing%20and%20burdensome%20administrative%20state.

Register but not yet taken into effect, like the Repo Reporting Rule with respect to Category 2 Reporters. The purpose of this postponement is to give the agency time to review "any questions of fact, law, and policy that the rules may raise" in order to "consider reevaluating pending petitions involving such rules . . ., and where necessary to continue to review these questions of fact, law, and policy, consider further delaying, or publishing for notice and comment, proposed rules further delaying such rules beyond" the postponement period.[4]

Our members who are subject to the Repo Reporting Rule have been working very diligently on complying with the new reporting regime. Despite these significant efforts, they are very concerned about their ability to meet the April 1, 2025, compliance date, given the complexity and imprecise drafting of the rule and lack of appropriate guidance and interpretation. We believe a limited extension of the compliance date of the Repo Reporting Rule will address the serious compliance challenges raised by the rule, including the fact that:

- Automating the reporting process for end user financial institutions, who are not accustomed to complying with transaction reporting requirements, has been extremely challenging;
- The lack of transparency regarding counterparty eligibility (Category 1 vs. 2 Reporters) has made scoping of the rule very difficult;
- Ambiguous guidelines make automation of reporting systems more difficult; and
- Our members report that very few third-party providers currently offer outsourced repo reporting systems means that our members who are Category 2 Reporters will generally have to build internal reporting systems.

For these reasons, and as further discussed below, we believe that a limited extension of the compliance date of the Repo Reporting Rule until March 1, 2026, would give OFR time to review and reevaluate the rule. Such a review should lead OFR to eliminate the application of the rule to Category 2 Reporters or make other changes to the rule to make it less burdensome for Category 2 Reporters.

The Repo Reporting Rule Requires Costly and Unnecessary Dual-Sided Reporting

The Repo Reporting Rule requires daily reporting by certain entities with exposures to NCCBR transactions (with no tri-party custodian) that exceed a specified dollar threshold. The rule establishes two categories of covered reporters:

- The first category are securities broker-dealers or government securities broker-dealers registered with the Securities and Exchange Commission ("**SEC**") and whose average daily outstanding commitments to borrow and extend guarantees in NCCBR transactions with

[4] Regulatory Freeze EO at ¶ 3.

counterparties over all business days during the prior calendar quarter is at least $10 billion ("**Category 1 Reporters**"); and

- The second category are 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 NCCBR transactions (including commitments of all funds for which the company serves as an investment adviser) with counterparties that are not securities broker-dealers or government securities broker-dealers over all business days during the prior calendar quarter is at least $10 billion ("**Category 2 Reporters**").

A financial institution can exclude from the $10 billion threshold calculation repo transactions with Category 1 Reporters, but once a financial company becomes a Category 2 Reporter, it becomes subject to the reporting obligations under the Repo Reporting Rule regardless of whether its counterparty is a Category 1 Reporter—in other words, in such cases there is a dual-sided reporting obligation.

We believe dual-sided reporting is costly and inefficient and leads to inaccurate data sets, particularly when the transactions are voice-executed, which can make it difficult for regulators to reconcile trade information, as has been found in other jurisdictions. To avoid dual-sided reporting, the reporting obligation should be assigned to one party. Such a reporting hierarchy would allow, in a repo transaction between a Category 1 Reporter and a Category 2 Reporter, for the reporting obligation to be on the Category 1 Reporter.

Financial End-Users Face Technological and Operational Challenges with Creating Reporting Systems for NCCBR Transactions

Subjecting financial end users, who predominantly enter into NCCBR transactions with financial intermediaries like broker-dealers and banks, or the affiliates of such entities, to a new reporting regime poses unique technological and operational challenges.

First, our members, who may be Category 2 Reporters, are not required by other reporting regimes to report transactions. In the United States, transaction reporting for swaps and securities transactions—both equities and fixed-income—is done by broker-dealers and banks, not financial end users like private funds.

Second, financial end users who are determining whether they cross the transaction threshold to be Category 2 Reporters are able to exclude NCCBR transactions with Category 1 Reporters from their calculation. However, OFR has not provided a list of Category 1 Reporters. This makes scoping of the threshold requirement very difficult.

Third, our members believe that the current guidelines are ambiguous in certain respects and make automation of reporting systems very difficult for end-user firms.

Fourth, our members report that very few third-party providers are currently offering outsourced reporting systems for the Repo Reporting Rule. This means that members who are Category 2 Reporters

will generally have to build internal reporting systems to comply with the rule. This will be a very significant and costly compliance lift.

For these reasons, we believe a limited extension of the compliance date of the Repo Reporting Rule until March 1, 2026, would address the technological and operational concerns faced by Members who will be Category 2 Reporters.

OFR Should Review and Reevaluate the Rule for Impact on Category 2 Reporters

We also believe OFR should use the additional time provided by this extension to review and reevaluate the costs and benefits of requiring financial end users to provide dual-sided reporting.

We believe OFR should not subject Category 2 Reporters to the Repo Reporting Rule. As we previously argued, subjecting financial end users such as private funds, who predominantly enter into transactions with financial intermediaries like broker-dealers and banks or their affiliates, to a costly new reporting regime is not warranted.[5]

First, a significant quantity of the transactions subject to this reporting requirement will no longer be in scope once the Treasury clearing mandate goes into effect since these transactions will be centrally cleared.[6] Requiring financial end users to establish reporting systems in the short time between when the Repo Reporting Rule goes into effect and the Treasury Clearing Mandate goes into effect—essentially a temporary reporting requirement—cannot be justified on cost-benefit grounds.

Second, we believe that OFR will not receive significantly more valuable information from Category 2 Reporters beyond what it is already receiving from Category 1 Reporters. A large proportion of Category 2 Reporters' repo trading activity is already being reported by Category 1 reporters, diminishing the value of reporting the remaining repo trades, and thus making it unnecessary to impose an additional reporting obligation on financial end users.

Therefore, we believe OFR instead should take an approach that is similar to the approach in the swaps market, where reporting obligations are allocated by statute and rule to the counterparty that is a swap dealer or major swap participant. In other words, to avoid imposing a new and costly reporting obligation on financial end users, the rule should instead impose the reporting obligation only on sell-side entities, which are accustomed to complying with reporting requirements. This approach would improve the quality of information that OFR receives because broker-dealers are better equipped to comply with reporting obligations that are on a T+1 basis (*e.g.*, with respect to reporting securities transactions), unlike

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[5] See Letter from Jennifer W. Han of the Managed Funds Association to Michael Passante, Chief Counsel, Office of Financial Research, U.S. Department of the Treasury (Mar. 10, 2023), available at: https://www.mfaalts.org/wp-content/uploads/2023/03/Final-MFA-Comment-Letter-on-OFR-Proposal-on-Repo-Transparency-As-submitted-on-3.10.23-.pdf.

[6] See Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule with Respect to U.S. Treasury Securities, 89 Fed. Reg. 2714 (Jan. 16, 2024).

financial end users who typically report transaction and business information on a much more delayed basis.

In the event OFR continues to apply the Repo Reporting Rule to Category 2 Reporters—which we strongly oppose—we believe it should nonetheless appreciate that there are significant technological and operational hurdles related to the expansiveness of the reporting mandate to Category 2 Reporters. For example, once a financial institution crosses the threshold for being a Category 2 Reporter, it is required to report on every repo transaction it enters into, including one-off repo transactions done in non-U.S. jurisdictions. This means that a Category 2 Reporter will need to fully build out the reporting for every single market in which it enters into repo transactions, even for *de minimis* activity in non-U.S. markets.

One of the changes we believe should be made to the Repo Reporting Rule if Category 2 Reporters are still going to be in scope is that the rule should exclude inter-affiliate transactions from the reporting and counting requirements in the rule—that is, inter-affiliate repo transactions should not be required to be reported and should not count toward the Category 1 and Category 2 covered reporter thresholds. Reporting such transactions would not give OFR information that would enable it to better understand the repo market. These trades are typically risk transfers with no market impact.[7]

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We thank the OFR for considering our request for an extension of the compliance date of the Repo Reporting Rule for Category 2 Reporters and for OFR to review and reevaluate the rule to address its application to Category 2 Reporters. We would be pleased to meet with the OFR and its staff to discuss our request. Please do not hesitate to contact Matthew Daigler or the undersigned at (202) 730-2600 with any questions regarding this letter.

Respectfully yours,

/s/ Jennifer W. Han

Jennifer W. Han
Chief Legal Officer & Head of Global Regulatory Affairs
MFA

[7] For example, certain investment funds clear transactions through the Fixed Income Clearing Corporation ("**FICC**") using an affiliated broker-dealer. The broker-dealer then enters into a back-to-back repo transaction with the investment fund. Although the repo transaction is cleared and subject to regulatory reporting requirements, the back-to-back transaction could be required to be reported under the Repo Reporting Rule. However, requiring reporting of such inter-affiliate repo transactions will not contribute to OFR's transparency goals but rather would distort market information.