ISDA. Safe, Efficient Markets

June 30, 2022

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St. N.W.
Washington, DC 20581

Re: Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps to Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates (RIN 3038-AF18)

Dear Mr. Kirkpatrick

The International Swaps and Derivatives Association, Inc. ("**ISDA**") appreciates the opportunity to submit these comments on the Commodity Futures Trading Commission's (the "**Commission's**") notice of proposed rulemaking (the "**NPR**") noted above. We previously responded to the Commission's request for information and comment titled "Swap Clearing Requirement Amendments to Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates"[1].

We are grateful for the Commission's longstanding commitment to facilitate an orderly transition of swaps from LIBOR and other IBORs to alternative reference rates. We welcome that the Commission took our and other market participants' views into account when developing the NPR and appreciate the opportunity to provide additional views aimed at refining the swap clearing requirements ("**CR**") to further support the orderly transition to alternative reference rates.

We further welcome that the Commission analyzed the issue thoroughly, made the analysis public in the NPR and followed objective rules in Section 2(h)(2)(D)(ii) of the CEA when determining changes to the CR and sought to coordinate its efforts with global regulatory authorities.

[1] See our response at: https://www.isda.org/2022/01/25/isda-responds-to-cftcs-consultation-on-clearing-requirements-in-relation-to-libor-transition/.

We generally support the conclusions and objectives of the NPR and therefore will not respond to each question, but rather will provide only targeted comments.

Effective Dates

The effective date for newly included clearing mandates in the CR should in no event be sooner than 3 months after publication of the Final Rule.

In the NPR, the Commission proposes an effective date of 30 days after publication of the Final Rule in respect of the proposed (i) elimination of LIBOR from certain classes as set forth in the existing CR, and (ii) amendment of the SONIA swap maturity to align more fully with the UK and EU. However, in respect of the new CR for the alternative reference rates, an effective date 30 days after publication of the Final Rule will not support an efficient implementation. Although a large part of inter-dealer SOFR swaps is currently voluntarily cleared, establishing a framework that enables firms to comply with new CRs requires additional market preparations.

Compliance with new CRs requires ISDA members to: adapt systems; create and run internal training; issue client communications; and develop and implement control frameworks, internal governance; and address unique jurisdictional requirements where they exist.[2]

As a result, ISDA requests that the new CRs effective date be a minimum of 3 months after the publication of the Final Rule. Ideally the date could be aligned with the proposed UK effective date for SOFR USD overnight index swaps.[3] To meet a shorter deadline, ISDA members may have to adopt tactical solutions and place an unnecessary strain on their resources. Finally, in the event that the Commission materially amends or alters the scope or nature of the NPR with respect to a newly imposed CR for a specific alternative risk-free rate or LIBOR-based swap, we request additional time to comply with the amended rules for the relevant swap.[4]

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[2] In some jurisdictions (e.g., Germany), creation and delivery of job-related training which introduces changes to working practices such as clearing requirements require review with and sign of by worker representatives.

[3] https://www.bankofengland.co.uk/paper/2022/derivatives-clearing-obligation-modifications-reflect-usd-interest-rate-benchmark-reform-amendment

[4] We note that the implementation of a clearing mandate makes such products eligible for made-available-to-trade ("**MAT**") self-certifications by designated contract markets and swap execution facilities. A corresponding MAT determination alongside or closely following a clearing mandate could challenge a smooth and orderly transition, particularly while the RFR markets are still maturing and actively changing as the transition away from LIBOR progresses. We would like to remind the CFTC of this long-known industry challenge, and to ask that the CFTC consider what authority it has or promptly consider corresponding changes to the MAT determination process which

The effective date for the removal of USD LIBOR swaps from the CR should be earlier than the date when any clearinghouse converts any USD LIBOR swap.

The NPR proposes to remove swaps denominated in USD that reference LIBOR as a floating rate index from each of the fixed-to-floating swap, basis swap, and forward rate agreement classes on July 1, 2023. Global clearinghouses intend to convert cleared swaps from LIBOR to SOFR. While the timeline for such conversions is not set, it is likely some will occur earlier than July 1, 2023.[5] If the Commission's CR for USD LIBOR swaps ceases after clearinghouse conversions begin, a number of ramifications emerge that are inconsistent with certain of the Commission's key policy objectives.

Given that the clearinghouses are unlikely to convert simultaneously, there will be significant market confusion when one converts but others do not. If the CR continues beyond the initiation of a conversion at one clearinghouse, market participants could (i) be required to establish new clearing relationships to comply with a USD LIBOR CR that may be months or perhaps even only days away from ceasing to be effective, or (ii) opt to continue unhedged until the expiry of the relevant CR. Thus, the proposed effective date for removal of USD LIBOR swaps from the CR may inadvertently diminish efforts to support a smooth transition and may de-incentivize sound risk management practices.

We therefore suggest that the Commission amend its proposed rule to cease the CR for swaps referencing USD LIBOR on a date well before the earliest conversion date at any registered or exempt DCO clearing these USD LIBOR swaps. We propose Monday, March 6, 2023 for this effective date[6].

Consider excluding SARON swaps from the CR or, in the alternative, their effective date should be aligned to the ultimate effective date of any Swiss CR related thereto.

In the NPR, the Commission observes that it is the only authority to require CHF LIBOR swaps be cleared. A similar situation is likely to occur with SARON swaps. We note that the Swiss Financial Market Supervisory Authority ("**FINMA**") did not propose a CR for SARON swaps in

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could ensure that any MAT determination in new RFRs occur at the appropriate time and in line with overall policy objectives.

[5] See https://www.lch.com/system/files/media_root/LCH_USD%20LIBOR%20Conversion_Consultation.pdf on page 8.

[6] We believe that establishing a firm date provides much needed clarity to the market. The Commission could also link ceasing the CR for USD LIBOR swaps to the *earlier* of (1) July 1, 2023 and (2) the first conversion date at any registered or exempt DCO clearing these USD LIBOR swaps. However, this approach could create uncertainty and make planning more difficult if such clearinghouses later change their proposed conversion dates with short notice.

their recent consultation.[7] We would respectfully suggest that the Commission delay the issuance of a SARON CR until such time as the Swiss authorities adopt a SARON CR. In the alternative, we would suggest that the Commission's CR in respect of SARON swaps only become effective 3 months after the effective date of any Swiss mandate related thereto, thereby aligning implementation requirements for SARON swaps across the market.

Post Trade Risk Reduction ("PTRR") Exercises

Transactions stemming from PTRR exercises should be exempt from the clearing obligation.

PTRR exercises (e.g., multilateral compression or risk rebalancing) are undertaken to reduce uncleared counterparty credit risk or shift existing risk from the uncleared space to clearinghouses. Reducing risk in uncleared portfolios is particularly beneficial in volatile markets. Large market moves can result in large liquidity needs for market participants if they are not able to effectively manage the risk in their bilateral portfolios. Indeed, the Commission has long recognized PTRR as an important tool to reduce outstanding notional exposures and reduce operational and counterparty credit risk. In the context of the transition of swaps from LIBOR and other IBORs to alternative reference rates, the Commission previously provided relief that takes into the consideration the important market benefits of PTRR.[8]

As a part of compression exercises, dealer banks are currently able to book overnight index swaps ("**OIS**") into either their cleared or uncleared portfolios, as necessary to match the changes in risk, as OIS are not fully covered by the CR. However, under the NPR, dealer banks' ability to book OIS into their uncleared portfolios would be impaired because the CR would be extended to risk-free reference rate ("**RFR**") swaps. In recognition of the public policy importance of (i) facilitating the transition away from the use of certain IBORs, and (ii) the importance of supporting PTRR exercises; we request that the Commission consider an exemption from the clearing mandate for RFR swaps where the trades result from PTRR exercises. In the alternative, if the Commission prefers not to amend the CR language, it could provide the requested relief via the issuance of a Staff Letter issued contemporaneously with the Final Rule.

[7] https://www.finma.ch/en/news/2022/05/20220509-mm-anhoerung-finfrav/ (mostly in German)

[8] See, e.g., CFTC Letter No. 21-28 (https://www.cftc.gov/csl/21-28/download, at pages 6–7); CFTC Letter No. 20-25 (https://www.cftc.gov/csl/20-25/download, at page 6); and CFTC Letter No. 13-01 (https://www.cftc.gov/csl/13-01/download).

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ISDA appreciates the opportunity to submit these comments on the Commission's NPR.

If ISDA can be of any help in this process, we hope that you will not hesitate to contact ISDA's Head of Clearing, Ulrich Karl, at telephone number +44 20 3808 9720 or at UKarl@isda.org.

Sincerely,

Ulrich Karl

ISDA®

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 980 member institutions from 78 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.