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June 30, 2022

Mr. Christopher J. Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
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,

We appreciate the opportunity to provide comments to the Commodity Futures Trading Commission (the "Commission") on its proposal to amend the classes of interest rate swaps that are subject to the clearing requirement in order to account for the transition from LIBOR and other IBORs to risk-free reference rates ("RFRs").[1] We fully support Commission's Proposal to update the scope of the clearing requirement to reflect the adoption of RFRs and respectfully request that the Commission finalize this update as soon as practicable given the cessation of the most widely used USD LIBOR tenors in June 2023.

As we described in our response to the Commission's Request for Information,[2] the clearing requirement is a central pillar of the post-crisis reforms to the OTC derivatives markets. Central clearing is not only an important tool to mitigate systemic risk, it promotes market liquidity, increases transparency, and protects investors. As the global interest rate derivatives market transitions away from referencing interbank offered rates (such as USD LIBOR) to referencing new RFRs, it is critical that the post-crisis reforms, including the clearing requirement, are applied to these new OTC derivative contracts.

As a result, we strongly support the Commission's Proposal to:

- Add to the clearing requirement swaps denominated in USD that reference the Secured Overnight Financing Rate ("SOFR") as a floating rate index with a stated termination date range of 7 days to 50 years in the overnight index swap ("OIS") class; and

- Remove from the clearing requirement swaps denominated in USD that reference LIBOR as a floating rate index from each of the fixed-to-floating swap, basis swap, and forward

[1] "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," 87 Fed. Reg. 32,898 (May 31, 2022) (the "Proposal").

[2] Letter from S. Berger to C. Kirkpatrick (Jan. 24, 2022) available at https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=65924&SearchText=; *see also* "Swap Clearing Requirement To Account for the Transition From LIBOR and Other IBORs to Alternative Reference Rates," 86 Fed. Reg. 66,476 (Nov. 23, 2021).

rate agreement classes, at such time as these USD LIBOR settings are expected to cease or become nonrepresentative (*e.g.*, July 1, 2023).

We agree with the Commission's determination that the relevant statutory factors support applying the requirement to swaps referencing the aforementioned RFRs. While we will not repeat the Commission's analysis in full, the data in the Proposal clearly demonstrates that there are significant outstanding notional amounts in USD SOFR OIS, and that trading in USD SOFR OIS continues to increase. For example, from December 2021 to January 2022, the already significant notional amounts transacted in USD SOFR OIS nearly doubled (increasing from $2 trillion to $3.9 trillion).[3] Over this same period, the number of trades in USD SOFR OIS increased to 41,728 in the month of January 2022.[4] As of January 28, 2022, there was more than $8.5 trillion in outstanding notional in USD SOFR OIS according to the Commission's estimates.[5] More recent data indicates that trading in USD SOFR OIS has steadily increased since January 2022, and that over half of the USD interest rate derivatives market references SOFR as of May 2022.[6] This data demonstrates that significant outstanding notional exposures, trading liquidity and adequate pricing data are present in the USD SOFR OIS market to support the application of the clearing requirement.[7]

We also believe it is clear that market participants, including FCMs, have in place the operational and technological infrastructure to support the clearing of USD SOFR OIS. As the Commission acknowledges, almost all transactions in USD SOFR OIS today are cleared voluntarily.[8] Significant voluntary clearing demonstrates the confidence market participants have in the current DCO offerings.

We urge the Commission to adopt the amendments as proposed in lieu of any of the considered alternatives. Specifically, we believe that the alternatives to: (i) remove existing requirements to clear certain swaps referencing USD LIBOR 30 days after the publication of the final rule in the Federal Register (instead of on July 1, 2023); (ii) delay implementation of the proposed requirement to clear swaps referencing SOFR until July 1, 2023; or (iii) not adopt any new clearing requirements for swaps referencing SOFR, would unnecessarily increase systemic risk and undermine the continued growth of the cleared markets for these derivatives.[9] More specifically,

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[3] 87 Fed. Reg. at 32,917.

[4] 87 Fed. Reg. at 32, 918.

[5] 87 Fed. Reg. at 32,919. Additionally, we note that LCH SwapClear data indicates that it cleared more than $11.7 trillion in derivatives referencing SOFR in May 2022. SwapClear RFR Statistics available at https://www.lch.com/services/swapclear/volumes/rfr-volumes. As a result, DCOs have access to adequate pricing data in order to appropriately risk manage these instruments.

[6] ISDA-Clarus RFR Adoption Indicator (May 2022) available at https://www.isda.org/a/AlWgE/ISDA-Clarus-RFR-Adoption-Indicator-May-2022.pdf.

[7] See Section 2(h)(2)(D)(ii)(I) of the CEA.

[8] 87 Fed. Reg. 32,918 ("The proportion of notional transacted each month from November 2021 through January 2022 that was cleared was consistently high – approaching 100% – with regard to OIS referencing each of USD SOFR").

[9] Additionally, we note that the Commission should continue to reject requests for additional exemptions, such as for post-trade risk reduction services, when updating the clearing requirement to include OTC derivatives referencing RFRs. Existing no-action relief for multilateral portfolio compression exercises has provided market participants with

we believe that adopting the alternative approaches would reduce the availability of client clearing offerings, fragment liquidity between the cleared and uncleared versions of the relevant swaps, and undermine market participant confidence in the availability of cleared swap liquidity. A clearing requirement is also a prerequisite for a SEF trading requirement to be extended to OTC derivatives referencing SOFR, which has been shown to deliver additional benefits to market participants in terms of liquidity, transparency, and competition.

Finally, we believe the Commission's Proposal correctly maintains the clearing requirement applicable to swaps referencing LIBOR and provides the Commission with flexibility to continue evaluating market developments for specific tenors and to adjust requirements as necessary. Even with the continued adoption of SOFR, there is still a significant amount of trading in swaps denominated in USD that reference LIBOR.[10] If, in the future, trading activity substantially decreases or DCO offerings no longer support the relevant USD LIBOR swaps, the Commission may consider further modifications to the clearing obligation at that stage.

The U.S. has been a global leader in implementing OTC derivatives clearing, and we encourage the Commission to expeditiously update the scope of the clearing requirement to reflect the significant amount of trading activity, and voluntary clearing, in OTC derivatives referencing SOFR and certain other RFRs. Doing so will ensure these markets develop as centrally-cleared markets, with the associated benefits of greater liquidity, transparency, and competition for market participants.

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We appreciate the opportunity to provide comments to the Commission on the clearing requirement and interest rate benchmark reform. Please feel free to call the undersigned at (646) 403-8200 with any questions regarding these comments.

Respectfully,

/s/ Stephen John Berger
Managing Director
Global Head of Government & Regulatory Policy

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the necessary flexibility to reduce exposures in uncleared portfolios, while ensuring that swaps subject to the clearing requirement are actually cleared. A broader exemption that includes cleared swaps risks circumventing the clearing requirement, increasing trading activity in uncleared OTC derivatives, and increasing systemic risk.

[10] *See generally* 87 Fed. Reg. at 32,917-20 ("The Commission notes, however, that significant amounts of notional were transacted in USD LIBOR fixed-to-floating swaps).