

January 24, 2022

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

Re: Swap Clearing Requirement Amendments 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**”)¹ appreciates the opportunity to submit these comments on the Commodity Futures Trading Commission’s (the “**Commission**”) request for information and comment (the “**Consultation**”).

We welcome the opportunity to provide our views on swap clearing requirements (“**CR**”) to account for the transition from LIBOR and other IBOR’s to alternative reference rates. Please find below our feedback. We have provided some general comments below, roughly in line with the question under your heading “A. General Request for Comment”. In the appendix we responded to selected questions where ISDA members have a meaningful position.

¹ Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 960 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.

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ISDA members are very supportive of central clearing

Clearing, one of the key pillars of derivatives regulatory reform in the 2009 Pittsburgh G20 Communique, has several benefits for derivatives business that include: the risk reduction achieved by multilateral netting; tight operational processes; and ultimately reduction of counterparty risk. On top of these benefits, other regulations now provide powerful incentives to clear centrally, such as uncleared margin requirements (UMR)². Our members already support clearing of swaps referencing risk free rates (“RFR”).

This is evidenced by current clearing rates for new RFR products, which are currently largely outside the scope of CR but are already voluntarily cleared by market participants in very large proportions. As the Consultation states on section II. C.: “*Reviewing swap transaction data from January 2021 to October 2021, the Commission staff has estimated that over 90% of the volume of fixed-to-floating swaps referencing USD SOFR, GBP SONIA, CHF SARON, JPY TONA, and EUR €STR has been cleared on a voluntary basis.*”

A CR could be helpful in avoiding liquidity fragmentation

It is critical that there is sufficient liquidity in all RFRs before supporting a CR, in order to avoid detrimental market impacts. We believe that the conversion of IBOR swaps by CCPs will provide the required liquidity in RFR swaps.

Despite market participants generally clearing voluntarily, in this particular case, and to support an orderly migration it is important that the market does not split into a cleared and an uncleared market. While we do not believe such a development is likely (as market participants already clear most RFR swaps), a CR could be helpful to ensure such a split will not happen.

We believe that SOFR-fixed swaps should be mandatory to clear. We believe that the Commission should coordinate any CR with global regulators and ideally align CR for swaps referencing RFR with the ESMA timetable³ but should also be mindful of market liquidity of products referencing SOFR.

Due to low liquidity, we think SOFR-LIBOR basis swaps should not be subject to mandatory clearing.

² UMR continues to be phased in: the final phase of Initial Margin requirements will take effect for the smallest counterparties in-scope of Initial Margin requirements in September 2022.

³ Please find the ESMA report [here](#).

Notice period for clearing participants (clearing members and their clients)

So far, we have seen two approaches to CR for swaps referencing RFR by global regulators: A CR at the time of conversion from LIBOR to a RFR or a CR at an effective date.

Both approaches are acceptable as long as there is sufficient notice for participants to adapt systems, internal training, control framework, other processes and client communication and not force them to adopt tactical solutions to meet short deadlines. Members request a minimum of 6 months' notice to implement new CR.

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

Given the incentives, most market participants are clearing voluntarily. This allows for some degree of flexibility in clearing requirements. We ask the CFTC to contemplate an exemption from the clearing mandate applying to RFR swaps in the case of trades resulting from PTRR exercises (such as multilateral risk rebalancing cycles, which reduce uncleared counterparty credit risk and/or shift existing risk from the uncleared space to CCPs). With the extension of the clearing requirements to RFR swaps, such risk management practices, currently undertaken by many large dealer banks, could be impaired, as OIS as a tradeable instrument for both cleared and uncleared interest rate risk would no longer be available.

Reducing risk in uncleared portfolios is very beneficial in volatile markets such as those experienced in March 2020. Large market moves will cause large liquidity requirements for market participants if they are not able to manage the risk in their bilateral portfolios.

* * *

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

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
Head of Clearing

Appendix: Response to the Commission's questions

Note: We only list questions where ISDA members have a meaningful position/opinion.

Request for Information

A. Swaps Subject to the Clearing Requirement

4. The Commission would like to know whether any clearing member firms of DCOs have experienced challenges with respect to the transition from any IBOR to an alternative reference rate, and any related DCO conversion event, including whether and how such challenges were resolved, and whether clearing member firms believe there are any steps the Commission can take to help resolve ongoing challenges.

At this point, relatively few conversions have occurred in the non-cleared market. Despite the conversions being incredibly resource intensive, members are not aware of significant issues with respect to conversions to RFR, other than the gross up in notional facing the CCP over year end due to the splitting of the basis trades.

5. The Commission requests that registered swap dealers and other market participants provide data related to market participants' outstanding net LIBOR risk as of November 30, 2021.

We would like to highlight that the conversion date for JPY Libor was 6th Dec and GBP Libor 20th Dec, i.e. after November 20, 2021. We defer to individual firms to provide the data in their bilateral responses.

Request for Comment

A. General Request for Comment

The Commission seeks comments on these matters generally and commenters are encouraged to address any relevant matters that are not specifically identified in the requests for comment below.

Please see the introduction of this letter.

B. Specific Requests for Comment

i. Current Swap Clearing Requirement-Related Questions

1. Are market participants concerned about access to clearing for certain swaps that are subject to the Clearing Requirement? If so, are there any Commission actions or regulatory amendments that could facilitate the IBOR transition for market participants?

We are not aware of issues of access to clearing for products that are currently under the CR, but believe that the reduction in trading activity in LIBOR swaps as a result of “SOFR First” and “No new LIBOR” could reduce liquidity in those swaps. We request the Commission to keep liquidity of these contracts under review to make sure these contracts still warrant a CR.

For instance, ESMA has removed the USD LIBOR⁴ from the clearing obligation before adding SOFR swaps.

2. Please discuss recommendations for how the Commission should modify its Clearing Requirement under Commission regulation 50.4 and any related advantages or disadvantages (including anticipated costs) that might be expected from a specific approach.

Please see the introduction of this letter.

3. More specifically, should the Commission modify the termination date range, or any other specifications, with respect to SONIA OIS, AONIA OIS, CORRA OIS or any other OIS that are subject to the Clearing Requirement and for which the index has been nominated as an alternative reference rate? If such an amendment is recommended, please discuss a potential timeline for considering and adopting a modification and the reasons for adopting such timeline.

The main modification in Europe (UK and EU) was to extend SONIA GBP to 50Y. We propose to liaise with international regulators to align the new CR as much as possible.

The market needs global conformity with respect to mandated clearing as much as possible.

For any LIBOR product the mandated clearing termination date should never be later than either (i) the CCP conversion date and / or (ii) the introduction of the corresponding RFR to the CR.

⁴ See at https://www.esma.europa.eu/sites/default/files/library/esma70-156-5151_statement_implementation_co_and_dto_in_view_of_the_benchmark_transition.pdf

4. Should the Commission revise the clearing requirement related to the SGD SOR–VWAP rate as part of the initial LIBOR transition or should market participants be given additional time to consider changes to SGD SOR–VWAP Clearing Requirement because it is based on USD LIBOR (and may continue until 2023)?

Neither UK nor EU have considered this rate for a CR.

We generally point to the rules under Section 2(h)(2)(D)(ii) (including a projection how volumes will develop after a conversion) of the CEA to establish whether a CCR is warranted.

ii. Swap Clearing Requirements for Alternative Reference Rates

5. Are market participants concerned about access to clearing for certain swaps that reference alternative reference rates and are not currently subject to the Clearing Requirement? If so, please explain current or anticipated barriers to clearing swaps in alternative reference rates.

The table under II B shows that there is a clearing offering by large DCOs for all swaps that reference alternative reference rates in major jurisdictions.

6. Are there any steps related to the SOFR transition that have not been completed that would enable a significant number of market participants to submit swaps referencing SOFR to clearing? Are there specific metrics or products associated with the new SOFR rate that need to be developed before swaps referencing SOFR can be used by a broad range of market participants?

ESMA will enact a CR on SOFR swaps (7 days to 3 years) most likely in the first half of 2022 (technically 3 months after the publication of the new RTS in the EU Official Journal which is currently expected in Q1 2022). SOFR liquidity is still starting to pick up but overall, we do not anticipate any remaining steps in the migration.

15. Would adopting a clearing requirement for swaps referencing SOFR or other alternative reference rates that are not currently subject to the Clearing Requirement materially and beneficially affect trading activity in those swaps?

We are not aware of any conditions where adopting a CR for swaps referencing SOFR or other alternative reference rates that are not currently subject to the CR materially and beneficially affect trading activity in those swaps, as long as the CR is added when the product is offered by major CCPs and there is sufficient liquidity.

16. How and when should the Commission evaluate whether to require clearing for interest rate swaps denominated in USD that reference alternative reference rates other than SOFR, such as credit-sensitive benchmark rates (e.g., Ameribor and BSBY)? Provided that one or more DCOs have made such swaps available for clearing, are there additional factors or considerations beyond those specified in Section 2(h)(2)(D)(ii) of the CEA that the Commission should consider in determining whether to adopt a clearing requirement for such swaps?

We are not aware of any additional factors or considerations beyond those specified in Section 2(h)(2)(D)(ii) of the CEA that the Commission should consider in determining whether to adopt a CR for such swaps.

While this is an important product for some members who welcome that these products are available at several CCPs, we do not think that BSBY or Ameribor should be mandatory to clear. It's too early. Similarly, interest rate swaps referencing credit sensitive supplements to risk-free rates such as Across-the-Curve Credit Spread Indices (AXI) should not be subject to mandatory clearing at this time. In any event the focus for these rates is corporate and commercial clients who are largely exempt from mandatory clearing.

v. Cost-Benefit Considerations

21. The Commission requests comment from DCOs and market participants on the nature and extent of any operational, compliance, or other costs they may incur as a result of potential changes to the Clearing Requirement in response to the marketwide shift to alternative reference rates. Please provide supporting data.

While the changes in CR will have a cost attached, for instance for system changes, control framework changes, documentation and training, these costs are part of the overall cost of LIBOR transition and spread across multiple jurisdictions.

We however request to not enact a CR in response to the market wide shift to alternative reference rates in a way that increases cost, for instance by providing short notice period that would require the implementation of tactical solutions to meet short deadlines.

For smaller less sophisticated counterparties who do not have to currently clear, CR could be a significant cost that could deter them from hedging using swaps. But for institutional clients who already have some form of CR, there will be additional cost but it will be incremental as opposed to something completely new and potentially prohibitive.