

Public Statements & Remarks

Concurring Statement of Commissioner Caroline D. Pham Regarding LIBOR Transition Clearing Requirement Determination for Certain Interest Rate Swaps

August 12, 2022

I respectfully concur with the final rule updating the CFTC's interest rate swap clearing requirement regulations. Pursuant to the Commodity Exchange Act (CEA) and the Commission's regulations, subject to Commission determination, certain interest rate swaps are required to be submitted for clearing to a derivatives clearing organization (DCO) registered under the CEA or a DCO exempted from registration under the CEA.[1] The final rule updates this set of interest rate swaps required to be cleared in light of the global transition from reliance on certain interbank offered rates (IBORs) such as the London Interbank Offered Rate (LIBOR), to alternative reference rates, which are predominantly overnight, nearly risk-free reference rates (RFRs). This rulemaking is an essential part of that transition. I commend the CFTC staff for their work here, as well as for their leadership in a historic global effort by the CFTC alongside other regulators, international bodies such as IOSCO and FSB, cross-jurisdictional working groups, financial market infrastructures, swap dealers, other market participants, and more, to reform the global interest rate swap market and benchmarks.

I would like to note, however, a few points. I believe in international harmonization and a practical approach wherever possible.

First, with those principles in mind, we should not impose a clearing requirement for CHF Swiss Average Rate Overnight (SARON) swaps or SGD Singapore Overnight Rate Average (SORA) swaps until the Swiss authorities or Singaporean authorities, respectively, adopt their own swap clearing requirements for those swaps.[2]

Second, absent a compelling reason otherwise, I would support an October 31, 2022 effective date, rather than 30 days after publication in the Federal Register, for the overnight index swaps (OIS) referencing RFRs covered by the rulemaking, consistent with the Bank of England's proposed effective date.[3] This would be consistent with principles of international harmonization and also would recognize the implementation requirements associated with any rule changes. For example, as raised by commenters, complying with new clearing requirements requires market participants 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." [4] We should recognize and take a practical approach to the very real implementation issues and operational challenges like these which necessitate sufficient planning and time.

Finally, I note two issues relating to the IBOR transition that are identified as beyond the scope of the rulemaking. These relate to trade execution requirements and to post-trade risk reduction.[5] We should consider these issues further as appropriate.

[1] Section 2(h)(1)(A) of the CEA, 7 U.S.C. 2(h)(1)(A).

[2] Cf. Comment No. 69489, Ulrich Karl, International Swaps and Derivatives Association, Inc. (June 30, 2022).

[3] Derivatives clearing obligation – modifications to reflect USD interest rate benchmark reform: Amendments to BTS 2015/2205, Bank of England (June 9, 2022), available at <https://www.bankofengland.co.uk/paper/2022/derivatives-clearing-obligation-modifications-reflect-usd-interest-rate-benchmark-reform-amendment> (<https://www.bankofengland.co.uk/paper/2022/derivatives-clearing-obligation-modifications-reflect-usd-interest-rate-benchmark-reform-amendment>).

[4] Comment No. 69489, Ulrich Karl, International Swaps and Derivatives Association, Inc. (June 30, 2022).

[5] See Notice of Final Rulemaking, Section III.C.

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