

Public Statements & Remarks

Statement of Commissioner Kristin N. Johnson Regarding the Final Rule to Modify Interest Rate Swap Clearing Requirements for the Transition from LIBOR and Other IBORs to Alternative Reference Rates

August 12, 2022

In the fall of 2008, global financial markets reeled as evidence emerged indicating that market participants failed to effectively manage risks in the then-unregulated \$400 trillion (notional) swaps market. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directed the Commodity Futures Trading Commission (Commission) to develop and implement formal rules, and bring the swaps market under the ambit of the Commission's authority.^[1] The Commission introduced clearing requirements, a vital regulatory tool that has increased transparency and promoted market integrity.

Clearing Requirements

To determine which swaps are subject to clearing requirements, the Commission examines several transaction-based risk factors.^[2] In accordance with this approach, the Commission later determined that swaps that reference Interbank Offered Rates, or IBORs, including most notably the London Interbank Offered Rate—LIBOR, would be subject to clearing requirements. For decades, these global benchmark interest rates have served as the dominant rate setting standards for market participants around the world. Market participants have employed these reference rates to determine interest rates that impact financial agreements in almost every sector of the economy—including significant volumes of swaps and futures contracts, commercial and personal consumer loans, and home mortgages.^[3] U.S. Dollar LIBOR, for example, has for decades served as the basis for the settlement of the three-month Eurodollar futures contract listed on the Chicago Mercantile Exchange—one of the most liquid financial derivatives contract that has ever traded.^[4] Significant notional amounts of swaps and loans also referenced U.S. Dollar LIBOR.^[5]

Transition to Alternative Reference Rates

Even though the clearing requirement for LIBOR and other IBORs have reduced certain risks arising from the origination and trading of swaps, the clearing requirement did not eliminate risks inherent in the manner these reference rates were calculated. Determinations of LIBOR and other IBORs were based on submissions received from a relatively small and select panel of major banks. These rates were calculated and published daily for several different currencies by the British Banker's Association. While the rates were intended to reflect the cost to the banks of borrowing unsecured funds, evidence revealed through a number of enforcement actions brought by the CFTC over the past decade demonstrated marked manipulation of the submitted rates.[6] In order to protect investors from this misconduct and to preserve market integrity, the CFTC and other regulators, including the Bank of England, have been overseeing a market transition away from LIBOR and other IBORs to replacement rates based primarily on risk free rate overnight index swaps (RFR OIS).[7] In addition, as a result of the enforcement actions and other market shifts, the volume of interbank lending transactions upon which these rates were calculated has declined, leading to additional concerns regarding the integrity and reliability of the rates.[8] As a result, the Commission seeks to amend its Part 50 clearing requirements to remove all LIBOR and related IBOR interest rate swap clearing requirements and introduce clearing requirements for swaps referencing the corresponding RFR OIS.

The comments received in response to our notice of proposed rulemaking earlier this year support this proposal. Moreover, this final rule represents the culmination of years of work by the Commission as well as its counterparts across the globe to ensure a more reliable, more transparent set of interest rate benchmarks. In collaboration with our international colleagues' efforts in jurisdictions around the world, the Commission's efforts to adopt and implement this final rule serves to preserve the stability and integrity of our markets and to reduce the systemic risks that precipitated the financial crisis. Accordingly, I support the Commission's modification of its clearing requirements and transition from LIBOR and other IBORs to the RFR OISs.

[1] See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, tit. VII, 124 Stat. 1376, 1641 (2010).

[2] See Commodity Exchange Act sec. 2(h)(2)(D)(ii), 7 U.S.C. 2(h)(2)(D)(ii) (setting forth the five factors to be considered when making a clearing requirement determination).

[3] See Notice of Proposed Rulemaking, 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 FR 32898, 32899–90 (May 31, 2022); CFTC Release No. 6289-12, CFTC Orders Barclays to pay \$200 Million Penalty for Attempted Manipulation of and False Reporting concerning LIBOR and Euribor Benchmark Interest Rates (June 27, 2012), <https://www.cftc.gov/PressRoom/PressReleases/6289-12> (<https://www.cftc.gov/PressRoom/PressReleases/6289-12>).

[4] *Id.*

[5] *Id.*

[6] 87 FR at 32899–90

[7] *Id.* at 32901; see also CFTC, CFTC Market Risk Advisory Committee Adopts SOFR First Recommendation at Public Meeting, July 13, 2021, <https://www.cftc.gov/PressRoom/PressReleases/8409-21>.

[8] 87 FR at 32899–91.

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