

**COMMODITY FUTURES TRADING COMMISSION****17 CFR Part 50**

RIN 3038-AF18

**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****AGENCY:** Commodity Futures Trading Commission.**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is modifying its existing interest rate swap clearing requirement regulations under applicable provisions of the Commodity Exchange Act (CEA) due to the global transition from reliance on certain interbank offered rates (IBORs) (e.g., the London Interbank Offered Rate (LIBOR)) that have been, or will be, discontinued as benchmark reference rates to alternative reference rates, which are predominantly overnight, nearly risk-free reference rates (RFRs). The amendments update the set of interest rate swaps that are required to be submitted for clearing pursuant to the CEA and the Commission's regulations to a derivatives clearing organization (DCO) that is registered under the CEA (registered DCO) or a DCO that has been exempted from registration under the CEA (exempt DCO) to reflect the market shift away from swaps that reference IBORs to swaps that reference RFRs.

**DATES:** This rule is effective September 23, 2022, except for amendatory instructions 3 and 5, which are effective July 1, 2023. Specific compliance dates are discussed in the **SUPPLEMENTARY INFORMATION**.

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**I. Background****A. Commission's Existing Interest Rate Swap Clearing Requirement**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established a comprehensive new regulatory framework for swaps.<sup>1</sup> Title VII of the Dodd-Frank Act (Title VII) amended the CEA to require, among other things, that a swap be cleared through a registered DCO or an exempt DCO if the Commission has determined

that the swap, or group, category, type, or class of swaps, is required to be cleared, unless an exception to the clearing requirement applies.<sup>2</sup> The CEA, as amended by Title VII, provides that the Commission may issue a clearing requirement determination based either on a Commission-initiated review of a swap,<sup>3</sup> or a swap submission from a DCO.<sup>4</sup>

Section 2(h)(2)(D)(ii) of the CEA requires the Commission to consider the following five factors when making a clearing requirement determination: (I) the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data; (II) the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is traded; (III) the effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCOs available to clear the contract; (IV) the effect on competition, including appropriate fees and charges applied to clearing; and (V) the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.<sup>5</sup>

The Commission adopted its first clearing requirement determination (First Determination) in 2012.<sup>6</sup> The First Determination was implemented between March 2013 and October 2013

<sup>2</sup> Section 2(h)(1)(A) of the CEA, 7 U.S.C. 2(h)(1)(A).

<sup>3</sup> Section 2(h)(2)(A) of the CEA, 7 U.S.C. 2(h)(2)(A). Section 2(h)(2)(A) provides for a Commission-initiated review process whereby the Commission, on an ongoing basis, must review swaps, or a group, category, type, or class of swaps, to determine whether a swap, or a group, category, type, or class of swaps, should be required to be cleared.

<sup>4</sup> Section 2(h)(2)(B) of the CEA, 7 U.S.C. 2(h)(2)(B). Section 2(h)(2)(B)(i) requires that each DCO submit to the Commission each swap, or group, category, type, or class of swaps, that it plans to accept for clearing. The swaps subject to this determination were submitted by DCOs pursuant to CEA section 2(h)(2)(B)(i) and regulation § 39.5(b), 17 CFR 39.5(b). Pursuant to section 2(h)(2)(B)-(C) of the CEA, the Commission must review swap submissions from DCOs to determine whether the swaps should be subject to required clearing. Regulation § 39.5(b) implements the procedural elements of section 2(h)(2)(B)-(C) by establishing the process by which a DCO must submit the swaps it offers for clearing to the Commission for purposes of considering a clearing requirement determination.

<sup>5</sup> 7 U.S.C. 2(h)(2)(D)(ii).

<sup>6</sup> Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74284 (Dec. 13, 2012) (First Determination).

<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

based on the schedule described in regulation § 50.25 and the preamble to the First Determination.<sup>7</sup> The First Determination applied to interest rate swaps in four classes: fixed-to-floating swaps, basis swaps, forward rate agreements (FRAs), and overnight index swaps (OIS).<sup>8</sup>

In making its initial interest rate swap clearing determination, the Commission focused on the size of the interest rate swap market relative to the swap market overall, as well as the fact that these swaps were already widely being cleared.<sup>9</sup> As set forth in regulation § 50.4(a), the Commission required clearing for four classes of interest rate swaps having six specifications related to (i) the currency in which the notional and payment amounts are specified; (ii) the floating rate index referenced in the swap; (iii) the stated termination date; (iv) optionality; (v) dual currencies; and (vi) conditional notional amounts.<sup>10</sup> The Commission also limited the interest rate swaps required to be cleared to those denominated in four currencies (U.S. dollar (USD), Euro (EUR), British pound (GBP), and Japanese yen (JPY)). The Commission noted that interest rate swaps denominated in these currencies

comprised an outsized portion of the interest rate swap market in terms of notional amounts outstanding and trading volumes compared to interest rate swaps denominated in other currencies.<sup>11</sup>

The First Determination covered a number of interest rate swaps that reference IBORs, including fixed-to-floating swaps, basis swaps, and FRAs denominated in USD, GBP, JPY, and EUR, referencing USD LIBOR, GBP LIBOR, JPY LIBOR, and the Euro Interbank Offered Rate (EURIBOR), respectively. The First Determination also included OIS denominated in EUR referencing the Euro Overnight Index Average (EONIA), as well as OIS denominated in USD referencing FedFunds and GBP referencing the Sterling Overnight Index Average (SONIA). The Commission observed that interest rate swaps referencing those rates had significant outstanding notional amounts and trading liquidity.<sup>12</sup> The First Determination was implemented throughout 2013 by type of market participant pursuant to regulation § 50.25, in subpart B of part 50 of the Commission's regulations.

The Commission adopted its second clearing requirement determination for interest rate swaps (Second Determination) in 2016.<sup>13</sup> The Second Determination covered interest rate swaps in nine additional currencies: Australian dollar (AUD), Canadian dollar (CAD), Hong Kong dollar (HKD), Mexican peso (MXN), Norwegian krone (NOK), Polish zloty (PLN), Singapore dollar (SGD), Swedish krona (SEK), and Swiss franc (CHF), and was implemented between December 2016 and October 2018 based on the effective dates of analogous clearing mandates adopted by authorities in non-U.S. jurisdictions.<sup>14</sup> The Commission adopted the Second Determination largely in order to further harmonize its interest rate swap clearing requirement with those of other jurisdictions that had already issued, or were in the process of issuing, interest rate swap clearing mandates.<sup>15</sup> The Second

Determination also covered swaps that reference other IBORs, including fixed-to-floating swaps denominated in SGD referencing the Singapore Swap Offer Rate (SOR-VWAP) and fixed-to-floating swaps denominated in CHF referencing CHF LIBOR.<sup>16</sup>

### B. End of LIBOR

LIBOR is an interest rate benchmark that was intended to measure the average rate at which a bank can obtain unsecured funding in the London interbank market for a given tenor and currency. It had been one of the world's most frequently referenced interest rate benchmarks, serving as a reference rate for a wide variety of swaps and other financial products. Over the years, LIBOR was calculated based on submissions from panels of contributor banks and published every London business day. Immediately prior to January 1, 2022, LIBOR was published for five currencies (USD, GBP, EUR, CHF, and JPY) and seven tenors (overnight or spot-next depending on currency, one-week, one-month, two-month, three-month, six-month, and 12-month), resulting in 35 individual LIBOR rates.<sup>17</sup> Beginning this year, these LIBOR rates have almost entirely ceased publication or become nonrepresentative of the underlying market they are intended to measure.

Government investigations into LIBOR that occurred nearly a decade ago, as well as a decline in the volume of interbank lending transactions that LIBOR was intended to measure, gave rise to concerns regarding the integrity and reliability of LIBOR and other IBORs.<sup>18</sup> Although LIBOR was subject to

jurisdiction's clearing requirement by entering into a swap with a swap dealer located in the United States. *Id.* at 71203.

<sup>16</sup> *Id.* at 71205. These IBOR rates also were discussed specifically in the notice of proposed rulemaking (NPRM). 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 at 32914–32915 (May 31, 2022) (NPRM).

<sup>17</sup> See generally ICE Benchmark Administration (IBA), LIBOR, available at <https://www.theice.com/iba/libor>.

<sup>18</sup> See, e.g., International Organization of Securities Commissions (IOSCO), Principles for Financial Benchmarks, July 2013, at 1, available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf>. See also David Bowman, et al., "How Correlated Is LIBOR With Bank Funding Costs?," FEDS Notes, June 29, 2020, available at <https://www.federalreserve.gov/econres/notes/feds-notes/how-correlated-is-libor-with-bank-funding-costs-20200629.htm>; and Alternative Reference Rates Committee, *Second Report*, Mar. 2018, at 1–3, available at <https://www.newyorkfed.org/medialibrary/Microsites/arcc/files/2018/ARRC-Second-report>.

<sup>7</sup> 17 CFR 50.25; First Determination, 77 FR 74319–74321.

<sup>8</sup> See generally First Determination. By way of background, an interest rate swap is generally an agreement by counterparties to exchange payments based on a series of cash flows over a specified period of time, typically calculated using two different rates. Fixed-to-floating swaps are interest rate swaps in which the payment(s) owed on one leg of the swap is calculated using a fixed rate, and the payment(s) owed on the other leg is calculated using a floating rate. Basis swaps are interest rate swaps for which the payments for both legs are calculated using floating rates. FRAs are interest rate swaps in which payments are exchanged on a predetermined date for a single period and one leg of the swap is calculated using a fixed rate while the other leg is calculated using a floating rate set on a predetermined date. OIS are interest rate swaps for which one leg of the swap is calculated using a fixed rate and the other leg is calculated using a floating rate based on a daily overnight rate.

<sup>9</sup> *Id.* at 74287, 74307. To this day, significant amounts of notional in interest rate swaps are traded in markets around the world, and these swaps comprise an outsized portion of notional among all swaps. According to the Bank for International Settlements (BIS), as of December 2021, there was an estimated \$475 trillion in outstanding notional of interest rate swaps, which represents approximately 79% of the total outstanding notional of all over-the-counter (OTC) derivatives. See BIS, "Interest rate derivatives," Table D7, H2 2021, updated May 12, 2022, available at <https://stats.bis.org/statx/srs/table/d7?f=pdf>; BIS, "Global OTC derivatives market," Table D5.1, H2 2021, updated May 12, 2022, available at <https://stats.bis.org/statx/srs/table/d5.1?f=pdf>; BIS, "OTC derivatives statistics at end-December 2021," May 12, 2022, available at <https://www.bis.org/publ/otchy2205.htm>; BIS, "Global OTC derivatives market," Table D5.2, H2 2021, updated May 12, 2022, available at <https://stats.bis.org/statx/srs/table/d5.2?f=pdf>.

<sup>10</sup> 17 CFR 50.4(a).

<sup>11</sup> First Determination, 77 FR 74308.

<sup>12</sup> *Id.* at 74309.

<sup>13</sup> Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps, 81 FR 71202 (Oct. 14, 2016) (Second Determination).

<sup>14</sup> 17 CFR 50.26; Second Determination, 81 FR 71202–71228.

<sup>15</sup> Second Determination, 81 FR 71203–71205. The Commission explained that such harmonization serves an important anti-evasion goal: if a non-U.S. jurisdiction issued a clearing requirement, and a swap dealer located in the United States were not subject to an analogous clearing requirement under U.S. law, then market participants potentially could avoid the non-U.S.

a number of significant reform efforts,<sup>19</sup> regulators and global standard-setting bodies did not view these reforms as a long-term solution. On July 27, 2017, Andrew Bailey, then-Chief Executive of the United Kingdom (UK) Financial Conduct Authority (FCA), LIBOR’s primary regulator, announced that the FCA would not use its authority to compel LIBOR panel banks to contribute to the benchmark after 2021.<sup>20</sup> On March 5, 2021, the FCA announced that publication of LIBOR would cease on December 31, 2021, for the following:<sup>21</sup>

- (i) EUR LIBOR in all tenors;
- (ii) CHF LIBOR in all tenors;
- (iii) JPY LIBOR in the spot-next, one-week, two-month, and 12-month tenors;
- (iv) GBP LIBOR in the overnight, one-week, two-month, and 12-month tenors; and
- (v) USD LIBOR in the one-week and two-month tenors.

The FCA further determined that GBP and JPY LIBOR in one-month, three-month, and six-month tenors would become nonrepresentative after December 31, 2021.<sup>22</sup> Additionally, the FCA determined that USD LIBOR in the overnight and 12-month tenors would cease after June 30, 2023, and that USD LIBOR in the one-month, three-month, and six-month tenors would not be representative after that date.<sup>23</sup> At this time, EUR, CHF, JPY, and GBP LIBOR in all tenors, and USD LIBOR in the one-week and two-month tenors, have ceased publication or become nonrepresentative of the underlying market they are intended to measure.

The circumstances surrounding the transition from IBORs to RFRs are the result of significant private and public sector coordinated efforts.<sup>24</sup> As plans to retire LIBOR proceeded, regulators in the United States and other jurisdictions

worked to identify, develop, and implement reference rates to serve as alternatives to LIBOR and other IBORs.<sup>25</sup> In the United States, the Alternative Reference Rates Committee (ARRC), convened in 2014 by the Federal Reserve Board (FRB) and the Federal Reserve Bank of New York (FRBNY) and comprised of private market participants and *ex officio* banking and financial sector regulators, selected the Secured Overnight Financing Rate (SOFR)<sup>26</sup> as its preferred alternative to USD LIBOR.<sup>27</sup> The ARRC developed a Paced Transition Plan, which has now been completed, to facilitate an orderly transition from USD LIBOR to USD SOFR.<sup>28</sup>

Table 1 that follows this paragraph contains a non-exhaustive list of RFRs that have been identified to replace IBORs. Each of these RFRs is currently being published.<sup>29</sup>

TABLE 1—RFRs IDENTIFIED FOR IBORs

Currency	Index	Identified RFR	RFR administrator	Secured
AUD	Bank Bill Swap Rate (BBSW)	Reserve Bank of Australia Interbank Overnight Cash Rate (AONIA).	Reserve Bank of Australia	No.
CAD	Canadian Dollar Offered Rate (CDOR).	Canadian Overnight Repo Rate Average (CORRA).	Bank of Canada	Yes.
CHF	LIBOR	Swiss Average Rate Overnight (SARON).	SIX Swiss Exchange	Yes.
EUR	LIBOR	Euro Short-Term Rate (€STR)	European Central Bank (ECB)	No.
	EONIA	€STR	ECB	No.
	EURIBOR	€STR	ECB	No.
GBP	LIBOR	SONIA	Bank of England	No.
HKD	Hong Kong Interbank Offered Rate (HIBOR).	Hong Kong Dollar Overnight Index Average (HONIA).	Treasury Market Association	No.

<sup>19</sup> See generally IBA, Methodology, available at [https://www.theice.com/publicdocs/ICE\\_LIBOR\\_Methodology.pdf](https://www.theice.com/publicdocs/ICE_LIBOR_Methodology.pdf); H.M. Treasury, The Wheatley Review of LIBOR: Final Report, Sept. 2012, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/191762/wheatley\\_review\\_libor\\_finalreport\\_280912.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/191762/wheatley_review_libor_finalreport_280912.pdf); Intercontinental Exchange (ICE), ICE LIBOR Evolution, Apr. 25, 2018, at 4, available at [https://www.theice.com/publicdocs/ICE\\_LIBOR\\_Evolution\\_Report\\_25\\_April\\_2018.pdf](https://www.theice.com/publicdocs/ICE_LIBOR_Evolution_Report_25_April_2018.pdf).

<sup>20</sup> Andrew Bailey, “The future of Libor,” July 27, 2017, available at <https://www.fca.org.uk/news/speeches/the-future-of-libor>.

<sup>21</sup> FCA, FCA Announcement on Future Cessation and Loss of Representativeness of the LIBOR Benchmarks, Mar. 5, 2021 (FCA Announcement on LIBOR Cessation), available at <https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf>.

<sup>22</sup> FCA Announcement on LIBOR Cessation. The FCA stated that once a LIBOR rate becomes nonrepresentative, its representativeness will not be restored.

<sup>23</sup> *Id.*

<sup>24</sup> While not all benchmark rates considered to be alternative reference rates for IBORs may be RFRs, efforts to transition markets away from IBORs have focused on RFRs as alternatives. For purposes of brevity, the Commission uses the term “RFR” in this final rulemaking to refer to alternative reference rates.

<sup>25</sup> For additional background information, see generally Swap Clearing Requirement To Account

for the Transition from LIBOR and Other IBORs to Alternative Reference Rates, 86 FR 66476 at 66480 (Nov. 23, 2021) (Request for Information (RFI)).

<sup>26</sup> USD SOFR is an RFR that measures the cost of overnight repurchase agreement transactions collateralized by U.S. Treasury securities. FRBNY, Statement Introducing the Treasury Repo Reference Rates, Apr. 3, 2018, available at [https://www.newyorkfed.org/markets/opolicy/operating\\_policy\\_180403](https://www.newyorkfed.org/markets/opolicy/operating_policy_180403). See also FRBNY, Secured Overnight Financing Rate Data, available at <https://apps.newyorkfed.org/markets/autorates/SOFR#:~:text=The%20SOFR%20is%20calculated%20as,LLC%2C%20an%20affiliate%20of%20the;and> FRBNY, Additional Information about the Treasury Repo Reference Rates, available at <https://www.newyorkfed.org/markets/treasury-repo-reference-rates-information>. USD SOFR has been published each New York business day at 8 a.m. ET since April 3, 2018, by the FRBNY in cooperation with the U.S. Office of Financial Research (OFR).

<sup>27</sup> ARRC, “The ARRC Selects a Broad Repo Rate as its Preferred Alternative Reference Rate,” June 22, 2017, available at <https://www.newyorkfed.org/medialibrary/microsites/arrc/files/2017/ARRC-press-release-Jun-22-2017.pdf>.

<sup>28</sup> ARRC, Paced Transition Plan, available at <https://www.newyorkfed.org/arrc/sofr-transition#pacedtransition>. The Paced Transition Plan called for (i) the establishment of infrastructure for futures and/or OIS trading in USD SOFR by the second half of 2018; (ii) the start of trading in futures and/or bilateral, uncleared OIS that reference USD SOFR by the end of 2018; (iii) the start of trading in cleared OIS that reference USD SOFR in the effective Federal funds rate

(EFFR) price alignment interest (PAI) and discounting environment by the end of the first quarter of 2019; (iv) Chicago Mercantile Exchange, Inc. (CME)’s and LCH Limited (LCH)’s conversion of discounting, and PAI and price alignment amount, from EFFR to USD SOFR with respect to all outstanding cleared USD-denominated swaps by October 16, 2020; and (v) the ARRC’s endorsement of a term reference rate based on USD SOFR derivatives markets by the end of the first half of 2021. All steps in this plan have been completed as of July 29, 2021.

<sup>29</sup> See generally Financial Stability Board (FSB), Reforming Major Interest Rate Benchmarks, Nov. 20, 2020, at 29–43, 54–55, available at <https://www.fsb.org/2020/11/reforming-major-interest-rate-benchmarks-2020-progress-report/>. See also Andreas Schrimpf and Vladislav Sushko, “Beyond Libor: a primer on the new reference rates,” BIS Quarterly Review, Mar. 2019, at 35, available at [https://www.bis.org/publ/qtrpdf/r\\_qt1903e.pdf](https://www.bis.org/publ/qtrpdf/r_qt1903e.pdf); Bank of England, Preparing for 2022: What You Need to Know about LIBOR Transition, Nov. 2018, at 10, <https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/what-you-need-to-know-about-libor-transition.pdf>; ISDA, et al., IBOR Global Benchmark Survey 2018 Transition Roadmap, Feb. 2018, at 32, <https://www.isda.org/a/g2hEE/IBOR-Global-Transition-Roadmap-2018.pdf>; European Central Bank, Euro Short-Term Rate (€STR), available at [https://www.ecb.europa.eu/stats/financial\\_markets\\_and\\_interest\\_rates/euro\\_short-term\\_rate/html/index.en.html#:~:text=The%20euro%20short%20term%20rate,activity%20on%201%20October%202019.](https://www.ecb.europa.eu/stats/financial_markets_and_interest_rates/euro_short-term_rate/html/index.en.html#:~:text=The%20euro%20short%20term%20rate,activity%20on%201%20October%202019.)

TABLE 1—RFRs IDENTIFIED FOR IBORs—Continued

Currency	Index	Identified RFR	RFR administrator	Secured
JPY .....	LIBOR .....	Tokyo Overnight Average Rate (TONA).	Bank of Japan .....	No.
MXN .....	Term Interbank Equilibrium Interest Rate (TIIE).	Overnight TIIE .....	Banco de Mexico .....	Yes.
SGD .....	SOR .....	Singapore Overnight Rate Average (SORA).	Association of Banks in Singapore (ABS).	No.
	Singapore Interbank Offered Rate (SIBOR).	SORA .....	ABS .....	No.
USD .....	LIBOR .....	SOFR .....	FRBNY .....	Yes.

Regulators and global standard-setting bodies have urged market participants to accelerate their adoption of USD SOFR and other RFRs and cease entering new swaps referencing LIBOR and other IBORs,<sup>30</sup> and Commission staff have issued no-action letters to facilitate the transition.<sup>31</sup> In the United States, on July 13, 2021, the Commission's Market Risk Advisory Committee adopted SOFR First, a phased initiative to switch interdealer trading conventions from reliance on USD LIBOR to USD SOFR as a reference rate for swaps.<sup>32</sup> SOFR First was implemented in four phases between July 26, 2021 and December 16, 2021.<sup>33</sup> SOFR First mirrors similar best practices adopted in other jurisdictions to increase activity in swaps referencing RFRs.<sup>34</sup>

<sup>30</sup> See, e.g., FSB, FSB Statement Welcoming Smooth Transition Away from LIBOR, Apr. 5, 2022, available at <https://www.fsb.org/wp-content/uploads/P050422.pdf>.

<sup>31</sup> See, e.g., CFTC Letter Nos. 20–25 and 21–28, available at <https://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm>.

<sup>32</sup> CFTC, "CFTC Market Risk Advisory Committee Adopts SOFR First Recommendation at Public Meeting," July 13, 2021, available at <https://www.cftc.gov/PressRoom/PressReleases/8409-21>.

<sup>33</sup> CFTC, CFTC's Interest Rate Benchmark Reform Subcommittee Issues User Guide for the Transition of Exchange-Traded Derivatives Activity to SOFR, Dec. 16, 2021, available at <https://www.cftc.gov/PressRoom/PressReleases/8469-21>. SOFR First spurred a significant shift in liquidity toward USD SOFR, particularly in the interbank market. See J.P. Morgan, SOFR Takes Over, Mar. 30, 2022, available at <https://www.jpmorgan.com/solutions/cib/markets/libor-sofr-transition>; Chatham Financial, "LIBOR transition update—2022," Apr. 19, 2022, available at <https://www.chathamfinancial.com/insights/libor-transition-update>.

<sup>34</sup> See, e.g., Bank of England, "The FCA and the Bank of England encourage market participants in further switch to SONIA in interest rate swap markets," Sept. 28, 2020, available at <https://www.bankofengland.co.uk/news/2020/september/fca-and-boe-joint-statement-on-sonia-interest-rate-swap>; Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks, "Transition of Quoting Conventions in the JPY interest rate swaps market ('TONA First')," July 26, 2021, available at [https://www.boj.or.jp/en/paym/market/jpy\\_cmte/data/cmt210726b.pdf](https://www.boj.or.jp/en/paym/market/jpy_cmte/data/cmt210726b.pdf); European Securities and Markets Authority (ESMA), "Recommendations from the Working Group on Euro Risk-Free Rates on the switch to risk free rates in the interdealer market," July 1, 2021, available at [https://www.esma.europa.eu/sites/default/files/library/esma81-391-73\\_eur\\_rfr\\_wg\\_statements\\_on\\_estr\\_first\\_and\\_ccs.pdf](https://www.esma.europa.eu/sites/default/files/library/esma81-391-73_eur_rfr_wg_statements_on_estr_first_and_ccs.pdf).

### C. Update on Work by DCOs To Support the Transition to RFRs

As explained in the NPRM,<sup>35</sup> the Chicago Mercantile Exchange Group (CME),<sup>36</sup> the London Stock Exchange Group (LSEG),<sup>37</sup> and Eurex Clearing AG (Eurex) all operate or are registered DCOs that offer for clearing RFR swaps subject to this final rule. Japan Securities Clearing Corporation (JSCC), an exempt DCO, offers JPY TONA swaps for clearing. OTC Clearing Hong Kong Limited (HKEX), another exempt DCO, offers USD SOFR and EUR €STR swaps for clearing.<sup>38</sup> Exempt DCOs, such as JSCC and HKEX, do not offer customer clearing to U.S. customers.

DCOs played an important role in the transition from IBORs to RFRs by offering clearing services for RFR swaps and converting cleared EUR EONIA and GBP, EUR, CHF, and JPY LIBOR swaps to RFR OIS.<sup>39</sup> These efforts have helped to facilitate a smooth transition from cleared IBOR swaps to cleared RFR swaps.

In responding to the Commission's November 23, 2021 RFI regarding updates to the clearing requirement to account for the transition to RFRs, CME, LSEG, and Eurex also discussed plans to convert cleared USD LIBOR swaps to market standard USD SOFR OIS. In April 2022, LCH published a consultation on its proposed conversion process.<sup>40</sup> Having learned from the

<sup>35</sup> NPRM, 87 FR 32902.

<sup>36</sup> CME Group is the parent company of CME.

<sup>37</sup> LSEG has majority ownership of LCH Group, which operates LCH.

<sup>38</sup> See Hong Kong Exchanges and Clearing, Interest Rate Swaps, available at [https://www.hkex.com.hk/Products/OTC-Derivatives/Interest-Rate-Swaps?sc\\_lang=en](https://www.hkex.com.hk/Products/OTC-Derivatives/Interest-Rate-Swaps?sc_lang=en).

<sup>39</sup> Conversion events were intended to address market participant concerns related to potential bifurcation of liquidity between trading in legacy IBOR swaps that had fallen back to RFRs (i.e., as a result of the operation of DCO rules implementing ISDA's fallbacks) and new RFR OIS, as well as certain operational costs. NPRM, 87 FR 32902; see also RFI, 86 FR 66484.

<sup>40</sup> LCH, USD LIBOR Contract Conversion, Apr. 2022, available at <https://www.lch.com/system/>

conversion process for non-USD LIBOR and EUR EONIA interest rate swaps at the end of 2021 and received input based on this consultation, LCH is "working closely with industry bodies, such as ARRC and [International Swaps and Derivatives Association (ISDA)], and with [its] user-base, to ensure clarity around the [USD LIBOR] transition process."<sup>41</sup> In response to LCH's consultation, market participants have not raised any operational concerns about the USD LIBOR swap conversion process.

Since the publication of the NPRM, CME and Eurex published more detailed information regarding their plans to convert cleared USD LIBOR contracts to USD SOFR OIS, ahead of the June 30, 2023 end date for USD LIBOR.<sup>42</sup> Additionally, JSCC converted all its JPY LIBOR interest rate swaps into JPY TONA swaps pursuant to plans announced in 2021.<sup>43</sup> Finally, HKEX implemented RFR fallback rates identified by the ISDA in its IBOR Fallbacks Supplement for the interest rate swaps it offers for clearing.<sup>44</sup>

<sup>41</sup> LCH, LCH Benchmark Reform Overview, available at [https://www.lch.com/Services/swapclear/benchmark-reform/files/media\\_root/LCH\\_USD%20LIBOR%20Conversion\\_Consultation.pdf](https://www.lch.com/Services/swapclear/benchmark-reform/files/media_root/LCH_USD%20LIBOR%20Conversion_Consultation.pdf) (proposing a two-stage conversion based on product category over two weekends in April and May 2023).

<sup>42</sup> CME, CME Conversion for USD LIBOR Cleared Swaps, June 2022, available at <https://www.cmegroup.com/trading/interest-rates/files/cme-conversion-for-usd-libor-cleared-swaps.pdf> (proposing a two-stage conversion (based on product category) occurring on two dates in May and July 2023); Eurex, "Eurex Clearing Readiness Newsflash: EurexOTC Clear: Details on OTCClear transition plan for transactions referencing the USD Libor benchmark," June 8, 2022, available at <https://www.eurex.com/ec-en/find/circulars/Eurex-Clearing-Readiness-Newsflash-EurexOTC-Clear-Details-on-OTCClear-transition-plan-for-transactions-referencing-the-USD-Libor-benchmark-3103098> (proposing a conversion on a single date ahead of June 30, 2023).

<sup>43</sup> This conversion process is discussed in JSCC's response to the RFI, available at <https://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx>.

<sup>44</sup> HKEX, Benchmark Reform, Feb. 4, 2021, available at <https://www.hkex.com.hk/Services/>

To be clear, these final rules apply only to swaps entered into on or after the implementation dates discussed below. As was in the case with the First Determination in 2012 and the Second Determination in 2016, only these new swaps are required to be cleared. Market participants may wish to clear other interest rate swaps in their portfolios on a voluntary basis, as has been the case with a majority of RFR OIS. As reflected in the data presented below, the overwhelming majority of RFR OIS are being voluntarily cleared already.

#### *D. Update on Work by Market Participants To Support the Transition to RFRs*

Market participants also play a critical role in the transition from reliance on IBORs to the adoption of RFRs through engagement with RFR working groups, such as ARRC, and the provision of trading liquidity in interest rate swaps referencing RFRs.<sup>45</sup> As explained in the NPRM, many RFR swaps are now voluntarily cleared by market participants in large proportions.<sup>46</sup> In its recent public announcements, ISDA reported that the proportion of cleared OTC and exchange-traded interest rate derivatives denominated in USD and referencing SOFR climbed to a record high of more than 50% in May 2022.<sup>47</sup>

*Clearing/OTC-Clear/Special-Topics/Benchmark-Reform?sc\_lang=en.* For further discussion of ISDA's fallbacks, see RFI, 86 FR 66483–66484.

<sup>45</sup> ISDA played a key role in the development of contractual fallbacks for IBORs, ensuring that swaps documented under ISDA agreements that reference certain key IBORs can transition to adjusted versions of corresponding RFRs when those IBORs cease or become non-representative. ISDA, "Amendments to the 2006 ISDA Definitions to include new IBOR fallbacks," Oct. 23, 2020, available at <http://assets.isda.org/media/3062e7b4/23aa1658.pdf>; ISDA, ISDA 2020 IBOR Fallbacks Protocol, Oct. 23, 2020, available at <http://assets.isda.org/media/3062e7b4/08268161-pdf/>; ISDA 2021 Fallbacks Protocol, December 2021 Benchmark Module, Dec. 16, 2021, available at <https://www.isda.org/a/UhtgE/ISDA-2021-Fallbacks-Protocol-December-2021-Benchmark-Module-Publication-Version.pdf>. See also RFI, 86 FR 66483–66484 (discussing ISDA's IBOR fallbacks protocol and supplement).

<sup>46</sup> NPRM, 87 FR 32903.

<sup>47</sup> ISDA, ISDA-Clarus RFR Adoption Indicator, May 2022, available at [https://www.isda.org/a/AIWgE/ISDA-Clarus-RFR-Adoption-Indicator-May-2022.pdf?\\_zs=gOSgP1&\\_zl=PRxk6](https://www.isda.org/a/AIWgE/ISDA-Clarus-RFR-Adoption-Indicator-May-2022.pdf?_zs=gOSgP1&_zl=PRxk6). See also ISDA, SwapsInfo, Interest Rate and Credit Derivatives Weekly Trading Volume: Week Ending June 10, 2022, June 13, 2022, available at <http://analysis.swapsinfo.org/2022/06/interest-rate-and-credit-derivatives-weekly-trading-volume-week-ending-june-10-2022/> (showing for the week ending June 10, 2022 a year-to-date increase over 2021 of 258% in traded notional and 364% in trade count for OIS, versus a 2% increase in traded notional and 16% decrease in trade count for fixed-to-floating swaps).

## **II. Domestic and International Coordination Efforts**

The global shift from IBORs to RFRs represents a historic effort by international bodies such as IOSCO and FSB, regulators, cross-jurisdictional working groups, market infrastructure providers, market participants, and others, to move the global interest rate swap market toward more reliable benchmarks.<sup>48</sup> Due to the cross-border nature of this effort and the size of the affected markets, the Commission believes it is a priority to engage with domestic and international regulators, as it makes changes to the swap clearing requirement. As with prior clearing requirement determinations, the Commission engaged in ongoing consultation and coordination with regulatory authorities and with market participants.

### *A. Domestic Coordination Efforts*

The Commission is committed to working with domestic authorities, such as the FRB, FRBNY, and the Securities and Exchange Commission, to ensure transparency in its efforts and, to the greatest extent possible, consistency in the transition from IBORs to RFRs. For example, the Commission sought input from domestic authorities through this rulemaking process and continued its participation in relevant coordinating committees. Commission staff also shared a draft of this final rulemaking with certain domestic authorities.

### *B. International Coordination Efforts*

Section 752(a) of the Dodd-Frank Act directs the Commission to consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards for the regulations of swaps.<sup>49</sup> The Commission accomplished this with respect to the Second Determination by considering the ways in which it could harmonize its clearing requirement with clearing requirements in other jurisdictions.<sup>50</sup> The Commission has long recognized the interconnectedness of the interest rate swap market and the importance of consulting and coordinating with its counterparts in other jurisdictions in the adoption of clearing requirements in order to (1) promote regulatory consistency and

certainty and (2) prevent the evasion of clearing requirements.<sup>51</sup>

In particular, as part of the ongoing regulatory dialogue among authorities, Commission staff consulted with counterparts, including those at Australian Securities and Investments Commission (ASIC), Bank of England, ESMA, Hong Kong Securities and Futures Commission (HKSF),<sup>52</sup> Japanese Financial Services Agency (JFSA), Monetary Authority of Singapore (MAS), and Swiss Financial Market Supervisory Authority (FINMA). This type of dialogue reflects an effort to ensure consistency in interest rate swap clearing requirements across jurisdictions.

The discussion below sets forth relevant updates and coordination efforts among international authorities. As part of this rulemaking process, the Commission sought input from overseas counterparts to ensure a coordinated approach to required clearing of interest rate swaps during the move from use of swaps referencing IBORs to swaps referencing RFRs and shared information regarding this final rulemaking with international counterparts.<sup>53</sup>

### *C. Interest Rate Swap Clearing Requirements in Other Jurisdictions*

Regulators and public-private working groups have been working to identify, develop, and encourage market uptake of interest rate swaps referencing RFRs to replace interest rate swaps referencing IBORs. As relevant to these amendments, RFRs identified as alternatives for IBORs, in addition to SOFR for USD, include: (i) SONIA for GBP; (ii) SARON for CHF; (iii) TONA for JPY; and (iv) €STR for EUR.

In finalizing these amendments, the Commission considered relevant changes to clearing requirements in other jurisdictions. As noted in the NPRM, the Commission sought to

<sup>51</sup> E.g., Second Determination, 81 FR 71223 (noting that "the interest rate swaps market is global and market participants are interconnected"); First Determination, 77 FR 74287 ("The Commission is mindful of the benefits of harmonizing its regulatory framework with that of its counterparts in foreign countries. The Commission has therefore monitored global advisory, legislative, and regulatory proposals, and has consulted with foreign regulators in developing the final regulations.").

<sup>52</sup> In Hong Kong, clearing rules are issued by HKSF in consultation with the Hong Kong Monetary Authority (HKMA). For further information please see the FAQs issued by Hong Kong authorities, available at <https://www.sfc.hk/-/media/EN/files/SOM/OTC/FAQ-Clearing-Rules-20220103-FINAL.pdf>.

<sup>53</sup> Commission staff also participate in a number of international groups, including FSB Official Sector Steering Group, that work on IBOR transition issues.

<sup>48</sup> See generally NPRM, 87 FR 32903–32904; and RFI, 86 FR 66478–66482.

<sup>49</sup> Section 752 can be found in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. This section is not codified in the CEA.

<sup>50</sup> Second Determination, 81 FR 71203.

harmonize these part 50 amendments to the greatest extent possible with those adopted by international counterparts. This goal is consistent with the Commission's approach in the Second Determination and the views of commenters on both the NPRM and the RFI. The discussion that follows addresses specific IBOR swap reform efforts by jurisdiction.

### 1. Australia

On December 6, 2021, ASIC published a consultation proposing changes to its interest rate swap clearing requirement. The consultation proposed (i) removing contracts referencing EUR EONIA from the OIS class and replacing them with OIS referencing EUR €STR with a termination date range of seven days to two years; (ii) removing contracts referencing JPY LIBOR from the fixed-to-floating swap, basis swap, and FRA classes and replacing them with OIS referencing JPY TONA with a termination date range of seven days to 30 years; and (iii) removing contracts referencing GBP LIBOR from the fixed-to-floating swap, basis swap, and FRA classes, and extending the termination date range for OIS referencing GBP SONIA to include seven days to 50 years.<sup>54</sup>

On May 12, 2022, Australia finalized changes to its clearing requirement. There was only one change from the proposal: the termination date range for EUR-denominated €STR OIS required to be cleared was expanded from two years to three years, in line with final European Union (EU) rules.<sup>55</sup> In its explanatory statement, ASIC referenced the Commission's NPRM and suggested ASIC may be waiting for final rule changes to part 50 before updating its USD-denominated interest rate swap clearing obligation.<sup>56</sup>

### 2. European Union

In the EU, the Working Group on Euro Risk-Free Rates, convened in 2018 by the ECB in connection with Belgian Financial Services, ESMA, and

<sup>54</sup> ASIC, Consultation Paper 353, "Proposed amendments to the ASIC Derivative Transaction Rules (Clearing) 2015," Dec. 6, 2021, at 5, 14, available at <https://download.asic.gov.au/media/mjknulh/cp-353-published-6-december-2021.pdf>.

<sup>55</sup> ASIC Derivative Transaction Rules (Clearing) Amendment Instrument 2022/224, May 12, 2022 (ASIC Derivative Transaction Rules), available at <https://www.legislation.gov.au/Details/F2022L00697>. ASIC's adopted termination date range for EUR €STR OIS is consistent with changes adopted in the UK and EU and proposed in Switzerland. It is also consistent with the termination date range established for EUR €STR OIS in this final rulemaking.

<sup>56</sup> *Id.* (noting ASIC would revisit the removal and replacement of swaps referencing USD LIBOR "once the US authorities settled their approach").

European Commission (EC), identified EUR €STR as its preferred alternative to EUR EONIA, which ceased publication on January 3, 2022.<sup>57</sup>

In 2021, ESMA published a consultation proposing to (i) remove swaps referencing EUR EONIA from the OIS class and replace them with swaps referencing EUR €STR with a termination date range of seven days to three years; (ii) remove swaps referencing GBP LIBOR from the fixed-to-floating swap, basis swap, and FRA classes and extend the termination date range for OIS referencing GBP SONIA to include seven days to 50 years; (iii) remove swaps referencing JPY LIBOR from the fixed-to-floating and basis swap classes; and (iv) add swaps referencing USD SOFR to the OIS class with a termination date range of seven days to three years.<sup>58</sup> The changes were proposed to come into force on the later of January 3, 2022, or 20 days after publication in the Official Journal of the European Union.

On February 8, 2022, ESMA adopted final regulatory technical standards (RTS), which also removed swaps referencing USD LIBOR from the fixed-to-floating swap, basis swap, and FRA classes.<sup>59</sup> These RTS changes were approved by the EC and published on May 17, 2022.

On July 11, 2022, ESMA proposed adding OIS referencing JPY TONA (seven days to 30 years) to its clearing obligation, as well as expanding the termination date range for OIS referencing USD SOFR to include seven days to 50 years.<sup>60</sup> ESMA noted trading

<sup>57</sup> ESMA, Working Group on Euro Risk-Free Rates, available at <https://www.esma.europa.eu/policy-activities/benchmarks/working-group-euro-risk-free-rates>; European Money Markets Institute, EONIA, available at <https://www.emmi-benchmarks.eu/benchmarks/eonia/>.

<sup>58</sup> ESMA, Consultation Paper, "On the clearing and derivative trading obligations in view of the benchmark transition," July 9, 2021, at 37–39, 58–59, available at [https://www.esma.europa.eu/sites/default/files/library/consultation\\_paper\\_on\\_the\\_co\\_and\\_dto\\_for\\_swaps\\_referencing\\_rfrs.pdf](https://www.esma.europa.eu/sites/default/files/library/consultation_paper_on_the_co_and_dto_for_swaps_referencing_rfrs.pdf).

<sup>59</sup> Commission Delegated Regulation (EU) 2022/750 of 8 February 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts (Text with EEA relevance), May 17, 2022, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0750&qid=1654283051240>. See also ESMA, Final Report, "On draft RTS on the clearing and derivative trading obligations in view of the benchmark transition to risk free rates," Nov. 18, 2021, at 31 (ESMA Final Report), available at [https://www.esma.europa.eu/sites/default/files/library/esma70-156-4953\\_final\\_report\\_on\\_the\\_co\\_and\\_dto\\_re\\_benchmark\\_transition.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-156-4953_final_report_on_the_co_and_dto_re_benchmark_transition.pdf).

<sup>60</sup> ESMA, Consultation Paper, "On the clearing and derivative trading obligations in view of the 2022 status of the benchmark transition," July 11, 2022, available at <https://www.esma.europa.eu/file/124582/download?token=rnNMa9ak>.

activity increased for USD SOFR activity up to and including 50 years. In terms of implementation timing, ESMA considered it unnecessary to provide a specific implementation date. Rather, ESMA proposed that its modified clearing obligation for USD SOFR OIS, and its new clearing obligation for JPY TONA OIS, would take effect on the twentieth day following publication of the final RTS, as per common practice. ESMA also indicated that it will analyze the feedback received on its consultation and to publish final rules by the end of 2022 or beginning of 2023.

### 3. Hong Kong

HKSFC and HKMA have jurisdiction over the clearing obligation in Hong Kong. As of September 1, 2016, clearing mandate rules promulgated jointly by HKSFC and HKMA require that swaps between certain local and foreign-incorporated entities covering fixed-to-floating and basis swaps denominated in USD, GBP, and JPY each referencing LIBOR, fixed-to-floating and basis swaps denominated in EUR referencing EURIBOR, and fixed-to-floating and basis swaps denominated in HKD referencing HIBOR be cleared.<sup>61</sup> The same mandate requires that OIS denominated in USD referencing Fed Funds, EUR referencing EONIA, and GBP referencing SONIA be cleared.

A recent publication of frequently asked questions indicated that "certain indexes may not be relevant if they are no longer maintained. For example, we do not expect HIBOR–ISDC will be used as it is no longer maintained by [ISDA]. The list of indexes may evolve over time but changes will be subject to consultation and the industry will be given time to make necessary arrangement before changes are implemented."<sup>62</sup> The list of designated

<sup>61</sup> The Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules impose a clearing obligation on transactions between prescribed persons, including local and foreign (i) licensed corporations, (ii) authorized financial institutions, and (iii) approved money brokers, that have reached the clearing threshold of USD \$20 billion during the applicable three-month calculation period. In addition, any transactions between such a prescribed person and a financial services provider must be cleared. Financial services providers are designated by HKSFC, with the consent of HKMA. Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules, The Government of the Hong Kong Special Administrative Region Gazette, available at <http://www.gld.gov.hk/egazette/pdf/20162005/es22016200528.pdf>.

<sup>62</sup> Frequently Asked Questions on the Implementation and Operation of the Mandatory Clearing Regime, January 2022, available at <https://www.sfc.hk/en/faqs/OTC-derivatives>. However,

central counterparties (CCPs) in Hong Kong includes CME, JSCC, LCH, and HKEX.

#### 4. Japan

On December 6, 2021, proposed changes to JFSA's clearing rules became effective.<sup>63</sup> The changes removed contracts referencing three-month and six-month JPY LIBOR from the fixed-to-floating swap class and replaced them with OIS referencing JPY TONA with a termination date range of seven days to 40 years.<sup>64</sup> In a May 2022 report, Bank of Japan stated that a smooth transition from JPY LIBOR has been achieved due to JFSA and Bank of Japan support of efforts by financial institutions and market participants.<sup>65</sup> The report went on to indicate that “[f]uture challenges include the transition from USD LIBOR, for which the publication of some of the tenor settings will be ceased at the end of June 2023, and the development of infrastructure to facilitate the smooth use of JPY interest rate benchmarks to replace LIBOR.”<sup>66</sup>

Japanese authorities accomplished the smooth transition from swaps referencing JPY LIBOR to JPY TONA OIS in coordination with JSCC. As JSCC explains in its comment letter,<sup>67</sup> the conversion of JPY IRS referencing LIBOR was completed without any issue and market liquidity has now completely shifted to JPY TONA OIS. JSCC no longer accepts clearing of any new JPY interest rate swaps referencing LIBOR. As discussed further below, JSCC now clears increased volumes of JPY TONA OIS.<sup>68</sup>

HKMA recently noted that there is no plan to discontinue HIBOR. HKMA, Reform of Interest Rate Benchmarks, Feb. 2, 2022, available at <https://www.hkma.gov/hk/eng/key-functions/banking/banking-regulatory-and-supervisory-regime/reform-of-interest-rate-benchmarks/>.

<sup>63</sup> Prior to implementation of the changes, Bank of Japan urged market participants to cease entering new JPY LIBOR transactions by the end of September 2021 and announced that JPY TONA would become the primary replacement RFR for JPY LIBOR interest rate swaps. Bank of Japan, “Preparations for the discontinuation of LIBOR in the JPY interest rate swaps market,” Mar. 26, 2021, available at [https://www.boj.or.jp/en/paym/market/jpy\\_cmte/cmt210326c.pdf](https://www.boj.or.jp/en/paym/market/jpy_cmte/cmt210326c.pdf).

<sup>64</sup> Although JFSA does not clearly prescribe a termination date range in its public notice regarding its JPY TONA clearing requirement, JSCC rules provide for the clearing of JPY TONA OIS with a termination date range of seven days to 40 years. JSCC, Interest Rate Swap Clearing Products: List of Cleared Products, available at <https://www.jpx.co.jp/jscce/en/cash/irs/product.html>.

<sup>65</sup> Review of JPY LIBOR Transition and Future Initiatives, Bank of Japan Review, May 2022, available at [www.fsa.go.jp](http://www.fsa.go.jp).

<sup>66</sup> *Id.*

<sup>67</sup> A complete discussion of comment letters received in response to the NPRM is found in section III.

<sup>68</sup> It is the Commission's understanding that under Japanese law, all swaps entered into by two

#### 5. Singapore

With regard to SGD denominated interest rate swaps, MAS established the Steering Committee for SOR & SIBOR Transition to SORA. This group has been working to oversee a transition from SGD SOR–VWAP to SGD SORA.<sup>69</sup> SGD SOR–VWAP relies on USD LIBOR as an input and is expected to be discontinued across all tenors after June 30, 2023.<sup>70</sup> Commission staff updated MAS regarding the status of IBOR OIS conversion efforts as part of this rulemaking process and staff identified no major concerns. Additional discussion of SGD SORA OIS is included below.

#### 6. Switzerland

On May 9, 2022, FINMA launched a consultation on amendments to its Financial Market Infrastructure Ordinance to, among other things, update the list of interest rate swaps subject to mandatory clearing. The consultation closed on July 5, 2022. In relevant part, the proposal would require clearing of the following OIS: (i) EUR €STR OIS for a termination date range of seven days to three years; (ii) GBP SONIA OIS for a termination date range of seven days to 50 years; and (iii) USD SOFR OIS for a termination date range of seven days to three years.<sup>71</sup>

The publicly available English language documents state that proposed changes to FINMA's clearing mandate “will be adjusted in line with foreign legal developments to the altered market conditions resulting from benchmark reform,” and that, more specifically, FINMA will “align[] itself closely with EU law.”<sup>72</sup> The consultation states that

Japanese entities must be cleared through a CCP located in Japan.

<sup>69</sup> ABS, About SC–STS, available at <https://www.abs.org.sg/benchmark-rates/about-sc-sts>.

<sup>70</sup> Steering Committee for SOR & SIBOR Transition to SORA, Update to the SORA Market Compendium: Transition from SOR to SORA, Nov. 17, 2021, at 4, available at <https://www.abs.org.sg/docs/library/sora-market-compendium-on-the-transition-from-sor-to-sora-version-1-1.pdf>.

<sup>71</sup> Ordinance of the Federal Financial Market Supervisory Authority on the Financial Market Infrastructure and Market Behavior in Securities and Derivatives Trading, May 9, 2022, available at [https://www.finma.ch/~media/finma/dokumente/dokumentencenter/anhoeerungen/laufende-anhoeerungen/20220509\\_finanmarktinfrastrukturverordnung/20220509\\_finfrav\\_finma\\_anhoeerung\\_verordnung.pdf?sc\\_lang=de&hash=17383BC6490B694C7CC2D82354100AFB](https://www.finma.ch/~media/finma/dokumente/dokumentencenter/anhoeerungen/laufende-anhoeerungen/20220509_finanmarktinfrastrukturverordnung/20220509_finfrav_finma_anhoeerung_verordnung.pdf?sc_lang=de&hash=17383BC6490B694C7CC2D82354100AFB) (translated from original German).

<sup>72</sup> FINMA, “FINMA Financial Market Infrastructure Ordinance—partial revision,” Key Points, May 9, 2022, available at [https://www.finma.ch/~media/finma/dokumente/dokumentencenter/anhoeerungen/abgeschlossene-anhoeerungen/20220509\\_finanmarktinfrastrukturverordnung/20220509\\_finfrav\\_finma\\_anhoeerung\\_kernpunkte.pdf?sc\\_lang=en&hash=39645D542F56C608D72C1A8](https://www.finma.ch/~media/finma/dokumente/dokumentencenter/anhoeerungen/abgeschlossene-anhoeerungen/20220509_finanmarktinfrastrukturverordnung/20220509_finfrav_finma_anhoeerung_kernpunkte.pdf?sc_lang=en&hash=39645D542F56C608D72C1A8)

adoption of the revised ordinance is planned for the third quarter of 2022, with an effective date in early 2023.

As explained in the NPRM, following the Commission's action in 2016, FINMA did not require clearing of swaps referencing CHF LIBOR, and to date no jurisdiction has implemented mandatory clearing for swaps referencing CHF SARON.<sup>73</sup> Commission staff updated FINMA regarding the status of IBOR OIS conversion efforts as part of this rulemaking process and identified no major concerns regarding the transition process. Additional discussion of CHF SARON OIS is included below.

#### 7. United Kingdom

On May 20, 2021, Bank of England proposed to (i) effective October 18, 2021, remove contracts referencing EUR EONIA from the OIS class and replace them with contracts referencing EUR €STR with a termination date range of seven days to three years; and (ii) effective December 20, 2021, remove contracts referencing GBP LIBOR from the fixed-to-floating swap, basis swap, and FRA classes, and extend the termination date range for OIS referencing GBP SONIA to include seven days to 50 years.<sup>74</sup> Additionally, on September 29, 2021, Bank of England proposed to remove contracts referencing JPY LIBOR from the fixed-to-floating and basis swap classes and replace them with OIS referencing JPY TONA with a termination date range of seven days to 40 years, effective December 6, 2021.<sup>75</sup> On December 3, 2021, Bank of England updated the effective date for its new JPY TONA clearing requirement to be January 31, 2022, rather than December 6, 2021.<sup>76</sup>

*C4D408580*; FINMA, Press Release, “FINMA to adjust FinMIO–FINMA,” May 9, 2022, available at [https://www.finma.ch/~media/finma/dokumente/dokumentencenter/8news/mediennmitteilungen/2022/05/20220509-mm-anhoeerung-finfrav-de.pdf?sc\\_lang=en&hash=08F6A2BB006408179809E99958977762](https://www.finma.ch/~media/finma/dokumente/dokumentencenter/8news/mediennmitteilungen/2022/05/20220509-mm-anhoeerung-finfrav-de.pdf?sc_lang=en&hash=08F6A2BB006408179809E99958977762).

<sup>73</sup> NPRM, 87 FR 32914.

<sup>74</sup> Bank of England, “Derivatives clearing obligation—modifications to reflect interest rate benchmark reform: Amendments to BTS 2015/2205,” May 20, 2021, available at <https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-modifications-to-reflect-interest-rate-benchmark-reform-amendments>.

<sup>75</sup> Bank of England, “Derivatives clearing obligation—modifications to reflect interest rate benchmark reform: Amendments to BTS 2015/2205,” Sept. 29, 2021, available at <https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-modifications-to-reflect-interest-rate-benchmark-reform>.

<sup>76</sup> Bank of England, “Derivatives clearing obligation—introduction of contracts referencing TONA: Amendment to BTS 2015/2205,” Dec. 3, 2021, available at <https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-introduction-of-contracts->

These changes went into effect as proposed.

On June 9, 2022, Bank of England published a proposal to remove contracts referencing USD LIBOR from the fixed-to-floating swap, basis swap, and FRA classes, that would come into force “around the same time as a number of CCPs contractually convert these contracts and remove them from their list of contracts eligible for clearing,” and add OIS referencing USD SOFR effective October 31, 2022.<sup>77</sup>

This proposal, and the proposed implementation approach, are largely aligned with the Commission’s proposal.<sup>78</sup> The proposal for mandatory clearing of USD SOFR OIS is for an identical termination date range of seven days to 50 years. As discussed further below, Bank of England’s proposed implementation timing of October 31, 2022, would align with Commission action.

### III. Overview of Comment Letters Received

The interest rate swap market has made tremendous progress toward completing the transition from reliance on swaps that reference LIBOR and other IBORs to clearing and trading swaps that reference RFRs. In issuing this final rule, the Commission further facilitates this transition by amending its interest rate swap clearing requirement to reflect the cessation or loss of representativeness of certain IBORs and the market adoption of swaps referencing RFRs.

On May 31, 2022, the Commission published an NPRM seeking public input regarding how it should amend the interest rate swap clearing requirement to address the cessation or loss of representativeness of IBORs that have been used as benchmark reference rates and the market adoption of swaps that reference RFRs. The NPRM was preceded by an RFI that the Commission

*referencing-ona-ps.* Bank of England noted that the change was designed to “provide firms with more time to complete their preparations without . . . posing a risk to UK financial stability.” *Id.* There were no changes to the date for removing Bank of England’s JPY LIBOR clearing requirement.

<sup>77</sup> Bank of England, Derivatives clearing obligation—modifications to reflect USD interest rate benchmark reform: Amendments to BTS 2015/2205, June 9, 2022 (Bank of England SOFR Proposal), available at <https://www.bankofengland.co.uk/paper/2022/derivatives-clearing-obligation-modifications-reflect-usd-interest-rate-benchmark-reform-amendment>.

<sup>78</sup> *Id.* (“In the light of the changes in market activity observed since [2021], and aligning with the Commodity Futures Trading Commission’s (CFTC’s) recent announcements, the Bank is now proposing to add OIS contracts referencing SOFR to the clearing obligation and remove contracts referencing USD Libor.”)

issued on November 23, 2021.<sup>79</sup> Both these efforts sought input on all aspects of the swap clearing requirement that may be affected by the transition from IBORs to RFRs, including enumerated requests for data and other information related to IBOR and RFR swaps.

The NPRM proposed amending regulation § 50.4(a) to remove from the clearing requirement interest rate swaps in all classes referencing LIBOR (USD, GBP, CHF, and JPY), EUR EONIA, and SGD SOR–VWAP, as applicable. The NPRM also proposed updating the clearing requirement to include OIS referencing USD SOFR (seven days to 50 years), CHF SARON (seven days to 30 years), JPY TONA (seven days to 30 years), EUR €STR (seven days to three years), and SGD SORA (seven days to 10 years), as well as extending the termination date range of GBP SONIA OIS to include seven days to 50 years. The NPRM proposed an implementation date of 30 days after publication of final rules in the **Federal Register** for nearly all the amendments. The one exception proposed was an implementation date of July 1, 2023, for removing the requirement to clear interest rate swaps referencing USD LIBOR and SGD SOR–VWAP.

The Commission received 12 comments on its NPRM from a variety of market infrastructure providers, market participants, and industry organizations.<sup>80</sup> All NPRM comment letters, as well as the RFI response letters, are available on the CFTC’s Comments Portal. Most commenters largely supported the Commission’s proposal and offered specific responses to questions posed in the NPRM. Several commenters asked for clarification regarding certain issues. These matters are addressed in the discussion and analysis below.

#### A. Scope of Amendments—Coverage of OIS and Removal of Existing Rules

Nearly all of the commenters expressed support for the scope of the

<sup>79</sup> RFI, 86 FR 66486–66488. The following 14 entities responded to the RFI: Alternative Investment Management Association (AIMA), American Council of Life Insurers (ACLI), Bloomberg L.P., CCP12, Citadel, CME, Eurex, ISDA, Investment Company Institute (ICI), JSCC, LSEG, Managed Funds Association (MFA), Toronto-Dominion Bank (TD Bank), and Tradeweb Markets LLC (Tradeweb), available at <https://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx>.

<sup>80</sup> Comments were submitted by: AIMA, ACLI, CCP12, Citadel, CME, ISDA, ICI, JSCC, MFA, and SOFR Academy. In addition to these ten responses from institutional entities, two individuals submitted responses to the NPRM. All letters related to this rulemaking are available on the CFTC Comments Portal: <https://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx>.

OIS covered under the Commission’s proposal, and many agreed with the Commission’s analysis that an updated swap clearing requirement would enhance financial stability by reducing systemic risk, improving market integrity, and increasing transparency in the interest rate swap market.<sup>81</sup> Commenters also noted the important role played by the Commission throughout the IBOR transition process.<sup>82</sup>

#### 1. Importance of Harmonization

Commenters, including CCP12, CME, Citadel, ISDA, JSCC, and MFA supported the Commission’s goal of harmonizing its clearing requirement with those of non-U.S. jurisdictions. CCP12 stated such coordination with counterparts would allow the U.S. to align its interest rate swap clearing requirement with other major jurisdictions in a manner that promotes legal certainty, regulatory transparency, and the preservation of liquidity in cleared swaps. CME stated its support for adding the RFR OIS covered by the NPRM to the clearing requirement in light of rapid market adoption of voluntary clearing of RFR OIS and the objective of harmonizing global clearing requirements to the extent possible. CME also noted the Commission’s commitment to coordination, transparency, and consistency in engaging with domestic authorities. JSCC stated support for the inclusion of JPY TONA OIS in the modifications to regulation § 50.4(a) because such action would harmonize the Commission’s interest rate swap clearing requirement with those of other jurisdictions. JSCC stated that this harmonization, in turn, would lower the operational and compliance burden for market participants active across multiple jurisdictions. Market participants including those represented by ISDA, MFA, and others stated their support for global harmonization efforts as well.

#### 2. DCOs’ Ability To Clear OIS

CCP12 highlighted the work done by CCPs to support the transition to RFRs. CCP12 stated that CCPs offered clearing for new RFR swaps, which has encouraged participation, growth, and liquidity in these products, and enabled a smooth conversion of certain cleared

<sup>81</sup> Comments from AIMA, ACLI, CCP12, Citadel, CME, ISDA, ICI, JSCC, MFA, and one of the individual commenters were largely supportive of the Commission’s proposal. Several raised additional issues, questions, and/or requests that will be discussed further below. SOFR Academy and the other individual commenter requested clarification regarding SOFR.

<sup>82</sup> See, e.g., comment letters from CCP12, ISDA, ICI, and MFA.

IBOR swaps to RFR OIS at the end of 2021. CCP12 stated that DCOs are required to ensure that they have sufficient resources and liquidity, adequate pricing data, and risk management practices and capabilities in terms of default management with respect to the swaps covered by the NPRM.

This point is consistent with comments submitted by both CME and JSCC, among others. For example, CME stated that with the expected increase in the number of transactions, it is prepared to continue clearing RFR OIS. JSCC stated that requiring JPY TONA OIS to be cleared would not affect the ability of DCOs to comply with the CEA or the relevant legal and regulatory regime of any other jurisdiction.

### 3. Inclusion of CHF-Denominated OIS Referencing SARON

ISDA recommended that the Commission delay the issuance of a clearing requirement for CHF-denominated interest rate swaps referencing SARON that would take the place of an existing Commission clearing requirement for interest rate swaps referencing LIBOR, until such time as the Swiss authorities adopt a clearing requirement for interest rate swaps referencing CHF SARON.<sup>83</sup> No other commenter responded to the NPRM's question on this topic.

### 4. Inclusion of USD SOFR–USD LIBOR Basis Swaps

ACLI stated its support for the Commission's decision not to include USD SOFR–USD LIBOR basis swaps in the interest rate swap clearing requirement. ACLI pointed to the limited and dwindling use cases for these swaps, along with low liquidity and limitations on the ability to electronically execute such basis swaps. No other commenter responded to the NPRM's question on this topic.

### 5. Effect of Margin Rules for Uncleared Swaps

ACLI stated that because both the cleared swaps framework and uncleared swap margin rules reduce risk, life insurers should be free to weigh the pros and cons of cleared versus uncleared swaps and choose a regime that provides the most flexibility in allocating collateral.<sup>84</sup> ACLI stated that

<sup>83</sup> In the alternative, ISDA suggests that the Commission delay the effective date of its CHF SARON OIS clearing requirement until three months after the effective date of any Swiss clearing mandate.

<sup>84</sup> The ability to choose not to clear swaps subject to the clearing requirement is reserved for those entities that are eligible to elect an exception or

central clearing provides market participants with numerous advantages over bilateral arrangements, including increased safety, transparency, and customer protection. However, ACLI stated that mandatory clearing elevates concentration of risk in CCPs and futures commission merchants (FCMs).<sup>85</sup> ACLI also stated that central clearing's risk mitigation benefits are decreased by the Commission's rules that require swap dealers to margin their uncleared swaps with certain counterparties.<sup>86</sup>

No other commenter raised these issues.<sup>87</sup>

### 6. Clarification Regarding USD SOFR

In its comment letter, SOFR Academy recommended that the Commission clarify the definition of USD SOFR OIS in the final rule to avoid potential confusion in the event a market develops for OIS referencing a new index that combines USD SOFR as administered and published by FRBNY with a credit spread supplement.<sup>88</sup> Similarly, an individual commenter requested that the Commission clarify which version of USD SOFR is referenced by the swaps to which its USD SOFR OIS clearing requirement would apply.<sup>89</sup> The individual asked

exemption from the swap clearing requirement under subpart C of part 50 of the Commission's regulations. Section 2(h)(7)(C)(i)(VIII) excludes certain financial entities from such eligibility by defining financial entity as "a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature," as defined in section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k). Section 4(k) of the Bank Holding Company Act defines such activities to include the activities of life insurers and certain related entities. 12 U.S.C. 1843(k)(4)(B), (H)(ii)(II), and (I)(ii)–(iii).

<sup>85</sup> ACLI stated that (1) when large FCMs face financial difficulties, their clients will face elevated credit risk; (2) if an FCM were to default, the FCM's clients may have difficulty porting their swap positions on short notice; (3) the process of negotiating new FCM arrangements, completing operational setup, and porting positions from one FCM to another takes significant time and is operationally burdensome; and (4) some smaller life insurers have difficulty finding FCMs who will take on their business at competitive costs.

<sup>86</sup> ACLI stated that practical solutions to allow end-users to clear directly at CCPs do not currently exist, and there are significant operational and regulatory hurdles to their creation. This issue is beyond the scope of this rulemaking.

<sup>87</sup> ACLI's comment is discussed further in the Cost Benefit Considerations section VII.

<sup>88</sup> According to SOFR Academy, such "all-in" benchmark rates combine across-the-curve credit spreads with variations of USD SOFR that are administered and published by FRBNY.

<sup>89</sup> The commenter sought clarification regarding whether such swaps reference term USD SOFR, compounded USD SOFR, or daily simple USD SOFR. This commenter also requested that the Commission clarify whether the Commission intends its USD SOFR OIS clearing requirement to apply retroactively to existing USD SOFR OIS that were executed before implementation but not

the Commission to confirm that the proposed determination (i) would not apply to swaps using a CME term USD SOFR rate; and (ii) would apply to swaps using both compounded USD SOFR and daily simple USD SOFR.

In its comment letter, CME referred to the ongoing industry transition of swaps referencing LIBOR to the relevant nominated successor RFRs and noted that market participants have demonstrated a preference for transition to market standard RFR OIS.

### B. Implementation, Cross-Border Coordination, and Operational Considerations

Commenters expressed a number of views with regard to the implementation schedule for the RFR OIS clearing requirement and the removal of the existing clearing requirement for LIBOR, EUR EONIA, and SGD SOR–VWAP interest rate swaps.

#### 1. Immediate Implementation of RFR OIS Clearing Requirement

A majority of commenters favored the Commission's proposed approach of implementing the RFR OIS clearing requirement 30 days after publication of this final rulemaking in the **Federal Register**. For example, CCP12 supported this approach because the market has already gravitated toward central clearing of RFR OIS (including USD SOFR OIS) to a significant degree, and 30 days would provide market participants with sufficient time to comply with the new determination. CCP12 stated that the new determination would not lead to a material change in operations for a majority of market participants. Likewise, Citadel and MFA stated that the Commission's proposed 30-day compliance date is appropriate as almost all USD SOFR OIS transactions are cleared voluntarily. AIMA stated that the Commission should expedite its consideration of a final rule, consistent with the NPRM, and update the clearing requirement as quickly as possible. Finally, CME and JSCC agreed with the Commission's proposal to adopt a single compliance date that would be 30 days after the publication of the final rule in the **Federal Register**.

#### 2. Harmonizing Implementation Timing With International Counterparts

ISDA recommended that the implementation date for the RFR OIS

voluntarily cleared. Consistent with its past clearing requirement determinations, this final clearing requirement determination will not apply retroactively. It will apply to swaps executed on or after the implementation dates discussed below.

clearing requirement be October 31, 2022, which would align with Bank of England's proposed effective date for its USD SOFR OIS clearing obligation. According to ISDA, this alignment of implementation dates would reduce operational burdens for clearing members and their clients. ISDA stated that a shorter deadline might require ISDA members to adopt tactical solutions and place unnecessary strain on resources, preventing an efficient implementation.<sup>90</sup>

No other commenter expressly recommended October 31, 2022, as an implementation date for all RFR OIS. However, despite supporting the Commission's 30-day implementation approach, CCP12 stated that a harmonized approach to timing would reduce the potential operational burden for clearing members and clients of having to comply with the same, or very similar, clearing mandates at different times and in different jurisdictions.

### 3. Delay Implementation Until June 30, 2023

ACLI stated that the Commission should postpone the inclusion of USD SOFR OIS in the clearing requirement until June 30, 2023, which would coincide with the date USD LIBOR swaps are removed from the clearing requirement and create an incentive for market participants concerned about clearing trades to move from USD LIBOR to USD SOFR swaps. ACLI stated that the Commission and other regulators have offered significant relief to smooth the transition from USD LIBOR to USD SOFR, and that postponing implementation of the USD SOFR OIS clearing requirement would be consistent with that approach. No other commenter supported this view.

### 4. Removal of Existing USD LIBOR Clearing Requirement

AIMA supported the Commission's proposal, particularly the proposal to require USD SOFR OIS clearing out to 50 years, and to maintain the USD LIBOR clearing requirement until July 1, 2023. Likewise, Citadel agreed with the Commission's proposal to maintain the current clearing requirement for USD LIBOR swaps until July 1, 2023, in light

<sup>90</sup> ISDA noted that compliance with new clearing requirements requires ISDA members to adapt systems, create and run internal trainings, and issue client communications; develop and implement control frameworks and internal governance; and address unique jurisdictional requirements. For example, ISDA noted that in some jurisdictions such as Germany, creation and delivery of job-related training which introduces changes to working practices such as clearing requirements require review with and sign-off by workers' representatives.

of continued significant trading activity in USD LIBOR swaps. Citadel stated that this would provide the Commission with flexibility to continue evaluating market developments for specific tenors and adjust requirements as necessary.

CME supported the Commission's proposal to retain its USD LIBOR swap clearing requirement because USD LIBOR is widely expected to continue until June 30, 2023, and clearing services are expected to continue to be offered up to or shortly before that date. CME stated that retaining the USD LIBOR swap clearing requirement until CCPs cease to provide clearing services and/or convert swaps would provide clarity and certainty for market participants.

ISDA proposed March 6, 2023, as the implementation date for removing rules requiring clearing interest rate swaps referencing USD LIBOR. ISDA stated that the removal date for USD LIBOR swaps should be no earlier than any CCP conversion date because a later removal date would be inconsistent with Commission objectives. ISDA stated that because CCPs are unlikely to convert simultaneously, there will be confusion when one converts and others do not.<sup>91</sup> In the alternative, ISDA suggested the removal date be the earlier of July 1, 2023, or the first conversion date at any registered or exempt DCO clearing USD LIBOR swaps. However, as ISDA noted, this could result in uncertainty if a clearinghouse were to change its proposed conversion date on short notice.

MFA stated that the Commission's proposal to maintain its USD LIBOR interest rate swap clearing requirement until July 1, 2023, is appropriate, as liquidity in swaps denominated in USD that reference LIBOR in the fixed-to-floating swap, basis swap, and FRA classes is sufficient to continue to support required clearing.<sup>92</sup> Other commenters, including Citadel and CME, generally supported this view.

### C. Issues Beyond the Scope of the Rulemaking

Commenters raised the following two issues that are related to the IBOR

<sup>91</sup> ISDA raised the possibility that market participants could be required to establish new clearing relationships to comply with a USD LIBOR swap clearing requirement that may be months or days away from ceasing to be effective or opt to continue unhedged until the expiration of the clearing requirement if the IBOR clearing requirement remains in place beyond the initiation of a conversion at any one CCP.

<sup>92</sup> MFA also suggested that if before July 1, 2023, concerns arise regarding the sufficiency of outstanding notional, liquidity, or pricing data to support required clearing, the Commission could take appropriate action that expires on June 30, 2023, to facilitate the IBOR transition.

transition. They are presented for the sake of a complete consideration of comments submitted, but the Commission observes that, as discussed below, they are beyond the scope of this rulemaking.

### 1. Trade Execution Requirement

ICI supported the proposed modifications to the interest rate swap clearing requirement, but urged the Commission to recognize the separate nature of the trade execution requirement. ICI commented that the Commission should not approve or allow certification of a subsequent made-available-to-trade (MAT) determination solely on the basis of the swap being subject to a clearing requirement. ICI stated that the MAT process is especially important with respect to longer-dated swaps proposed to be cleared, which are less liquid. ISDA also stated that a corresponding MAT determination alongside or closely following a clearing mandate could challenge a smooth and orderly IBOR transition, and ISDA requested that the Commission consider changes to its MAT determination process to ensure that any MAT determination in new RFRs occur at the appropriate time and in line with overall policy objectives.

Pursuant to section 2(h)(8) of the CEA and Commission regulations §§ 37.10 and 38.12, a trade execution requirement could, in the future, apply to some or all of the interest rate swaps covered by this rulemaking. The process for determining which swaps are subject to the trade execution requirement is separate from the clearing requirement determination process. Therefore, it is beyond the scope of this rulemaking for the Commission to address the suitability of particular swaps for a trade execution requirement or to address issues related to the MAT process.

### 2. Post-Trade Risk Reduction

ISDA stated that currently swap dealers are able to book OIS into their cleared or uncleared portfolios to match changes in risk as part of portfolio compression exercises. According to ISDA, a clearing requirement for RFR OIS would impair swap dealers' ability to manage their uncleared portfolios. ISDA requested that the Commission consider an exemptive order or staff no-action from the clearing requirement for RFR swaps where the trades result from post-trade risk reduction (PTRR) exercises.

By contrast, Citadel stated that the Commission should continue to reject requests for additional exemptions, including for PTRR services, when updating the clearing requirement.

Citadel stated that existing no-action relief for multilateral portfolio compression exercises provides market participants with adequate flexibility to reduce exposures in uncleared portfolios while ensuring swaps subject to the clearing requirement are cleared. Citadel also stated that a broader exemption risks circumventing the clearing requirement, increasing trading activity in uncleared OTC derivatives, and increasing systemic risk.

No other commenters raised this issue.

In 2013, Commission staff issued a no-action letter regarding PTRR services.<sup>93</sup> This letter explained that compression is an important tool to facilitate post-trade risk reduction. Prior Commissions have declined to codify this no-action letter, and this matter is beyond the scope of this rulemaking.

#### IV. Final Amendments to Regulation § 50.4(a)

The Commission is finalizing amendments to regulation § 50.4(a) to remove certain IBORs and EUR EONIA interest rate swap clearing requirements and add requirements to clear corresponding RFR OIS. The IBOR swaps for which clearing requirements are being removed span all four classes of swaps currently required to be cleared—fixed-to-floating swaps, basis swaps, FRAs, and (in the case of EUR EONIA) OIS.<sup>94</sup> The RFR swaps that the Commission is adding to the clearing requirement are all OIS.<sup>95</sup> OIS are swaps where one leg is calculated based on a fixed rate and the other is calculated based on a daily overnight floating rate (*i.e.*, the RFR).

##### A. Scope of Amendments—Coverage of OIS and Removal of Existing Rules

These amendments to the interest rate swap clearing requirement are the first rule changes that the Commission has issued to facilitate the transition from IBORs to RFRs. The amendments update the existing clearing requirement. In

<sup>93</sup> Staff No-Action Letter Re: Relief from Required Clearing for Swaps Resulting from Multilateral Portfolio Compression Exercises, CFTC Letter No. 13–01, Mar. 18, 2013, available at <https://www.cftc.gov/LawRegulation/CFTCStaffLetters/index.htm>.

<sup>94</sup> Beyond the IBOR swaps that will be removed from regulation § 50.4 and replaced with RFR swaps pursuant to this determination, regulation § 50.4 contains requirements to clear a number of swaps referencing IBORs that have not yet been discontinued. In the future the Commission may consider further modifications to the interest rate swap clearing requirement in regulation § 50.4 to address the cessation of additional IBORs and market adoption of corresponding RFRs. But no further modifications are necessary at this time.

<sup>95</sup> GBP SONIA OIS are already required to be cleared. Regulation § 50.4(a) Table 2.

effect, the amendments replace the requirement to clear certain IBOR swaps in a number of different classes with a requirement to clear RFR OIS because the IBOR swaps have become unavailable and liquidity has shifted into RFR OIS. Accordingly, pursuant to this final rulemaking, the following swaps will no longer be required to be cleared:

- Swaps denominated in USD, GBP, CHF, and JPY that reference LIBOR as a floating rate index in each of the fixed-to-floating swap, basis swap, and FRA classes, as applicable.
- Swaps denominated in EUR that reference EONIA as a floating rate index in the OIS class.
- Swaps denominated in SGD that reference SOR–VWAP as a floating rate index in the fixed-to-floating swap class.

The Commission is amending the OIS class of interest rate swaps under regulation § 50.4(a) that are required to be cleared to include the following:

- Swaps denominated in USD that reference SOFR as a floating rate index with a stated termination date range of seven days to 50 years,
- Swaps denominated in EUR that reference €STR as a floating rate index with a stated termination date range of seven days to three years,
- Swaps denominated in CHF that reference SARON as a floating rate index with a stated termination date range of seven days to 30 years,
- Swaps denominated in JPY that reference TONA as a floating rate index with a stated termination date range of seven days to 30 years, and
- Swaps denominated in SGD that reference SORA as a floating rate index with a stated termination date range of seven days to 10 years.
- Swaps denominated in GBP that reference SONIA as a floating rate index with a stated termination date range of seven days to 50 years.<sup>96</sup>

While these amendments are legally effective 30 days after publication of the final rule in the **Federal Register**, they will be implemented according to a schedule discussed in detail below.<sup>97</sup>

##### B. Clarification Regarding OIS Product Specifications

SOFR Academy and one of the individual commenters requested clarification regarding the product specifications subject to this rulemaking. These commenters asked

<sup>96</sup> For GBP SONIA OIS, these amendments expand the existing maximum termination date range to 50 years, for a new termination date range of seven days to 50 years.

<sup>97</sup> Specific implementation timing is set forth in section VI.

which interest rates apply to the USD-denominated OIS referencing SOFR.

The final rules apply to the USD SOFR OIS that are offered for clearing at registered and exempt DCOs. These DCOs' product specifications provide that the USD SOFR OIS that they clear reference USD–SOFR–COMPOUND under the 2006 ISDA Definitions and USD–SOFR–OIS Compound under the 2021 ISDA Definitions. Similarly, GBP SONIA, CHF SARON, JPY TONA, SGD SORA, and EUR €STR OIS clearing requirements refer to the GBP SONIA, CHF SARON, JPY TONA, SGD SORA, and EUR €STR OIS that are offered for clearing at registered and exempt DCOs. Each of these rates reference compound RFR indexes as defined in ISDA Definitions.<sup>98</sup>

##### C. Swaps Referencing CHF SARON and SGD SORA

The Commission is the only authority to require CHF LIBOR swaps be submitted for clearing. In 2016, FINMA considered adopting a clearing mandate for swaps referencing CHF LIBOR, but after the Commission's final rules that included CHF LIBOR swaps went into effect, FINMA did not adopt a similar mandate.<sup>99</sup> To date, FINMA has not adopted a clearing mandate for CHF SARON OIS. However, as explained above, FINMA may adjust its clearing obligation in line with international authorities and altered market conditions resulting from benchmark reform.

Likewise, while MAS did not require clearing of SGD SOR–VWAP swaps with a termination date range of 28 days to 10 years until October 2018, the Commission was aware of this expected action, and took it into account when adopting a clearing requirement for SGD

<sup>98</sup> See generally CME, Product Scope, available at <https://www.cmegroup.com/trading/interest-rates/cleared-otc.html>; LCH, Product Specific Contract Terms and Eligibility Criteria Manual, June 20, 2022, at 36–44, available at [https://www.lch.com/system/files/media\\_root/220620%20-%20Product%20Specific%20Contract%20Terms%20-%20SGD%20SORA.pdf](https://www.lch.com/system/files/media_root/220620%20-%20Product%20Specific%20Contract%20Terms%20-%20SGD%20SORA.pdf); Eurex, EurexOTC Clear Product List, available at <https://www.eurex.com/ec-en/clear/eurex-otc-clear/interest-rate-swaps>; ISCC, List of Clearing Products, available at <https://www.jpjx.co.jp/jscc/en/cash/irs/product.html>; HKEX, Interest Rate Swaps, available at [https://www.hkex.com.hk/Products/OTC-Derivatives/Interest-Rate-Swaps?sc\\_lang=en](https://www.hkex.com.hk/Products/OTC-Derivatives/Interest-Rate-Swaps?sc_lang=en). Some DCOs' product specifications reference both the 2021 and 2006 ISDA Definitions whereas other DCOs' product specifications refer only to the 2021 ISDA Definitions (or reference both only with respect to certain swaps).

<sup>99</sup> The Commission provided an opportunity for comment prior to adopting its requirement to clear CHF-denominated interest rate swaps. Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps, 81 FR 39506 at 39508 (June 16, 2016); see also Second Determination, 81 FR 71205.

SOR–VWAP swaps in 2016.<sup>100</sup> At this time, MAS has not yet implemented mandatory clearing for SGD SORA OIS.

### 1. Data Analysis

Against this regulatory backdrop, clearing rates for CHF SARON OIS and SGD SORA OIS are already high. The Commission estimates that more than 97% of notional transacted in these rates each month between November 2021 and April 2022 was cleared.<sup>101</sup>

Furthermore, the Commission estimates that, as of April 29, 2022, there was \$1,497 billion in outstanding notional in CHF SARON OIS, whereas there was \$282 billion in outstanding notional in CHF LIBOR fixed-to-floating swaps.<sup>102</sup> Similarly, the Commission estimates that, as of April 29, 2022, there was \$558 billion in outstanding notional in SGD SORA OIS, and \$248 billion in outstanding notional in SGD SOR–VWAP fixed-to-floating swaps.<sup>103</sup> In comparison, as of January 28, 2022, there was \$1,730 billion in outstanding notional in CHF SARON OIS and \$686 billion in outstanding notional in CHF LIBOR fixed-to-floating swaps.<sup>104</sup> Further, estimates as of the same date indicate there was \$449 billion in outstanding notional in SGD SORA OIS and \$307 billion in outstanding notional in SGD SOR–VWAP fixed-to-floating swaps.<sup>105</sup>

Comparing the January and April 2022 month-end estimates, there is a slight decline in outstanding notional in CHF SARON OIS, but a steep decline in outstanding notional for CHF LIBOR fixed-to-floating swaps. With respect to the SGD rates, there is a decline in outstanding notional for SGD SOR–

VWAP fixed-to-floating swaps roughly proportional to the increase in outstanding notional for SGD SORA OIS. The Commission believes these numbers demonstrate that CHF LIBOR and SGD SOR–VWAP are steadily being replaced by their corresponding RFRs.

Based on this data, it would appear that, since the time the Commission issued its NPRM, the CHF interest rate swap market has moved from comprising roughly one-half LIBOR swaps to only approximately one-fifth LIBOR swaps. Additionally, while SGD SOR–VWAP is anticipated to continue until June 30, 2023, the transition to SGD SORA is well underway. Data presented in tables 2 and 3 below further illustrate that the CHF LIBOR and SGD SOR–VWAP swap markets have rapidly diminished as markets shift to swaps referencing RFRs. The Commission estimates that, in April 2022, there were no CHF LIBOR fixed-to-floating swap transactions, and 39 SGD SOR–VWAP fixed-to-floating swap transactions (comprising \$2 billion notional). The Commission also estimates that, in April 2022, there were 1,913 CHF SARON OIS transactions (comprising \$91 billion notional) and 3,277 SGD SORA OIS transactions (comprising \$124 billion notional).

### 2. Consideration of Comments

In response to the NPRM, ISDA commented that the Commission should delay the update of the CHF-denominated interest rate swap clearing requirement until such time as the Swiss authorities issue a clearing mandate. The requirement to clear interest rate swaps denominated in Swiss francs has been in place under U.S. law since 2016.

With regard to SGD-denominated interest rate swaps, the Commission did not receive any comments. Nor is the Commission aware of any concerns on the part of its fellow authorities with regard to update the clearing requirement to include SGD SORA OIS. The requirement to clear interest rate swaps denominated in SGD has been in place under U.S. law since 2016.

### 3. Inclusion of CHF SARON OIS and SGD SORA OIS

The Commission is unaware of any risk-related or operational concerns that have arisen with regard to this requirement. In addition, to delay updating the Commission's existing interest rate swap clearing requirement for swaps denominated in these two currencies would limit the scope of the Commission's existing clearing requirement. It also would risk introducing unnecessary market

confusion by unexpectedly changing the scope of the interest rate swap market that is required to be cleared.

Swiss and European authorities generally have indicated that they are reviewing this matter and may act to require clearing of CHF SARON OIS under the laws of their respective jurisdictions at some point in the future. The Commission proceeded in 2016 under the Second Determination and now updates those regulations to further the extensive work pursuant to a public-private partnership that has taken place to prepare the interest rate swap markets for IBOR conversions. While Singaporean authorities have not yet amended their regulations, a similar justification exists with regard to updating the SGD-denominated interest rate swap clearing requirement.

### D. RFR–IBOR Basis Swaps

Based on responses to the RFI, as well as ACLI's comment, the Commission is not adding any new requirements to clear RFR-linked basis swaps at this time. These swaps are used primarily to move out of IBOR swap positions and into RFR swap positions.<sup>106</sup> The Commission recognizes the added flexibility RFR-linked basis swaps offer market participants, but will continue to monitor their use as the IBOR transition process reaches its conclusion. Such monitoring will focus on volumes of RFR-linked basis swaps after the date on which IBOR rates cease publication.

## V. Determination Analysis for RFR OIS

The Commission is amending its interest rate swap clearing requirement to include OIS referencing RFRs by adopting a new clearing requirement determination. The Commission has completed a review of the current RFR OIS offered for clearing and has considered the specific statutory factors required to make a new clearing requirement determination.

### A. General Description of Information Considered

CME, LCH, and Eurex provided the Commission with regulation § 39.5(b)

<sup>106</sup> RFR-linked basis swaps offered for clearing are generally RFR–IBOR basis swaps. See ACLI's RFI response letter ("We also do not believe that SOFR–LIBOR basis swaps should be added to the clearing requirement due to low liquidity and limitations on electronic execution. We expect SOFR–LIBOR basis swaps to require bilateral OTC treatment for their limited and dwindling use cases."); ISDA's RFI response letter ("Due to low liquidity, we think SOFR–LIBOR basis swaps should not be subject to mandatory clearing."). RFI response letters are available at <https://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx>.

<sup>100</sup> Second Determination, 81 FR 71205; MAS, MAS Requires OTC Derivatives to be Centrally Cleared to Mitigate Systemic Risk, May 2, 2018, available at <https://www.mas.gov.sg/news/media-releases/2018/mas-requires-otc-derivatives-to-be-centrally-cleared-to-mitigate-systemic-risk>; MAS, Response to Feedback Received: Draft Regulations for Mandatory Clearing of Derivatives Contracts, May 2, 2018, at 4, available at <https://www.mas.gov.sg/-/media/MAS/News-and-Publications/Consultation-Papers/2018-May-02-Response-to-consultation-on-draft-regs-on-mandatory-clearing-of-derivatives/Response-to-Feedback-on-Draft-Regulations-for-Mandatory-Clearing-of-Derivatives-Contracts.pdf>.

<sup>101</sup> The data referenced is from Commission's weekly swaps report data. In the NPRM, the Commission estimated that more than 98% of notional transacted in these rates in each of November 2021, December 2021, and January 2022 was cleared. NPRM, 87 FR 32914–32915.

<sup>102</sup> These outstanding notional figures are based on data for swaps that have been cleared at CME, LCH, or Eurex and reported to the CFTC under part 39 of the Commission's regulations. Commission staff compiled, processed, and reviewed the data presented in this rulemaking.

<sup>103</sup> *Id.*

<sup>104</sup> NPRM, 87 FR 32915.

<sup>105</sup> *Id.*

submissions relating to RFR OIS.<sup>107</sup> In addition to the DCOs' submissions, the Commission looks to the ability of each DCO to clear RFR OIS, DCO swap data, swap data repository (SDR) data, publicly available data, the rule frameworks and risk management policies of each DCO, and information provided through public comment.

This clearing requirement determination is distinguishable from prior determinations insofar as it responds to a public and private sector, consensus-driven market event that has resulted, or will result, in liquidity shifting to new benchmark rates from rates that have become, or will soon become, unavailable. In that sense, central clearing in the RFR OIS markets, which rely on benchmark rates that are less susceptible to manipulation, may offer unique benefits that prior interest rate swap market clearing did not.<sup>108</sup> As a result, and in light of the quick pace of market adoption and DCOs' willingness to provide clearing for a wide variety of RFR swaps, the RFR interest rate swap markets are prepared for this clearing requirement determination.

#### *B. Consistency With DCO Core Principles Under Section 2(h) of the CEA*

Section 2(h)(2)(D)(i) of the CEA requires the Commission to determine whether a clearing requirement determination is consistent with core principles for DCOs set forth in section 5b(c)(2) of the CEA.<sup>109</sup> CME, LCH, and Eurex are registered DCOs, and currently clear the RFR OIS subject to this rulemaking. CME, LCH, and Eurex are required to comply with the DCO core principles (and applicable Commission regulations) with respect to the RFR OIS subject to this determination. These DCOs also are subject to the Commission's examination and risk surveillance programs.

<sup>107</sup> Regulation § 39.5(b) submissions from DCOs are available on the Commission's website, [www.cftc.gov](http://www.cftc.gov), under DCO Swaps Submissions.

<sup>108</sup> A discussion of the costs and benefits of this rulemaking appears in section VII below.

<sup>109</sup> 7 U.S.C. 2(h)(2)(D)(i). The core principles address numerous issues, including financial resources, participant and product eligibility, risk management, settlement procedures, default management, system safeguards, reporting, recordkeeping, public information, and legal risk, among other subjects. 7 U.S.C. 7a-1(c)(2). The Commission implemented the core principles through regulations that are applicable to registered DCOs. 17 CFR part 39.

The Commission believes that CME, LCH, and Eurex will be able to maintain compliance with the DCO core principles and applicable Commission regulations following adoption of this clearing requirement determination. For the reasons discussed below, the Commission has determined that subjecting any of the RFR OIS to required clearing is unlikely to impair CME's, LCH's, or Eurex's ability to comply with the DCO core principles, along with applicable Commission regulations.<sup>110</sup>

While exempt DCOs are not subject to the DCO core principles *per se*, the Commission determined that each was subject to comparable, comprehensive supervision and regulation by its home country regulator before granting such DCOs an exemption from registration, as required by the CEA.<sup>111</sup> With regard to the two exempt DCOs that offer RFR OIS for clearing, namely, JSCC and HKEX, the Commission expects that both DCOs will continue to comply with their home country law and regulations for purposes of this clearing requirement determination for RFR OIS.

As outlined in the summary of comments, the Commission's conclusions regarding the DCOs' ability to remain in compliance with applicable regulations, as well as sound risk management practices, is supported by commenters.<sup>112</sup> No commenter raised any concern regarding a registered or an

<sup>110</sup> In their public comments, each DCO stated that requiring clearing of USD SOFR and other RFR OIS would not negatively affect their ability to comply with the DCO core principles and applicable Commission regulations. See RFI response letters from CME, LSEG, and Eurex, and NPRM comment letter from CME.

<sup>111</sup> The Commission may exempt a DCO from registration if it determines that the DCO is subject to comparable, comprehensive supervision by appropriate government authorities in its home country. The Commission determined that JSCC demonstrated compliance with the requirements of the CEA with which it must comply in order to be eligible for an exemption from registration as a DCO. JSCC Order of Exemption from Registration, Oct. 26, 2015, at 1, available at <http://www.cftc.gov/idx/groups/public/@otherif/documents/ifdocs/jscddcoexemptorder10-26-15.pdf>; JSCC Amended Order of Exemption from Registration, May 15, 2017, at 1, available at <https://www.cftc.gov/sites/default/files/idx/groups/public/@otherif/documents/ifdocs/jscddcoexemptamorder5-15-17.pdf>. Likewise, HKEX is an exempt DCO that the Commission determined has demonstrated compliance with the requirements of the CEA. OTC Clearing Hong Kong Limited Order of Exemption from Registration, Dec. 21, 2015, at 1, available at <https://www.cftc.gov/sites/default/files/idx/groups/public/@otherif/documents/ifdocs/otcclearcoexemptorder12-21-15.pdf>.

<sup>112</sup> See, e.g., comment letters from CME, CCP12, Citadel, ISDA, JSCC, and MFA.

exempt DCO maintaining its ability to clear the interest rate swaps that it offers for clearing. The Commission also notes the importance of its ongoing examination and risk surveillance programs for all registered DCOs, as well as its ability to work with fellow authorities to ensure DCOs located outside the United States remain in compliance with the highest standards. In 2016, the Commission explained the rigor of the DCO registration and exemption processes, along with subsequent examination and risk surveillance scrutiny that DCOs receive. These processes remain in place and have been enhanced over the intervening years.<sup>113</sup>

Clearing the RFR OIS swaps subject to this determination does not pose financial or legal risks that are materially distinguishable from those posed by the IBOR interest rate swaps that the Commission required to be cleared in 2012 and 2016 and that DCOs have been offering for clearing for over a decade. For additional information regarding the ability of DCOs and exempt DCOs to clear these swaps, see the discussion of Factor II in the Commission's determination analysis below.

#### *C. Conclusions Regarding Consideration of Section 2(h)'s Five Statutory Factors*

Set forth below is the Commission's consideration of the five factors set forth in section 2(h)(2)(D)(ii) of the CEA as they relate to all OIS being added to the interest rate swap clearing requirement, which includes OIS (i) denominated in USD and referencing SOFR; (ii) denominated in GBP and referencing SONIA; (iii) denominated in CHF and referencing SARON; (iv) denominated in JPY and referencing TONA; (v) denominated in EUR and referencing €STR; and (vi) denominated in SGD and referencing SORA.<sup>114</sup>

<sup>113</sup> Second Determination, 81 FR 71207-71208. In particular, Commission staff monitors the risks posed to and by DCOs, clearing members, and market participants, including market risk, liquidity risk, credit risk, and concentration risk with the objective (1) to identify positions in cleared products subject to the Commission's jurisdiction that pose significant financial risk; and (2) to confirm that these risks are being appropriately managed.

<sup>114</sup> The Commission is conducting this analysis only with respect to the swaps that are being added to the clearing requirement under this determination. Removing swaps that are no longer offered for clearing from Commission regulation § 50.4 is not considered in this analysis.

### 1. Factor (I)—Outstanding Notional Exposures and Trading Liquidity

Liquidity has shifted, and continues to shift, from swaps referencing IBORs to swaps referencing RFRs. The first of the five factors under section 2(h)(2)(D)(ii) of the CEA requires the Commission to consider “the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data” related to “a submission made [by a DCO].”<sup>115</sup> The Commission reviewed data from multiple sources, including but not limited to data from SDRs, data from DCOs, and other, publicly available data (e.g., data published by ISDA). For purposes of this rulemaking, the Commission principally considered notional exposures and trading liquidity based on the Commission’s own collected data.

#### a. Outstanding Notional Exposures and Trading Liquidity

The Commission reviewed data to determine whether there is an active market for the swap, including whether

there is a measurable amount of notional exposure and whether the swap is traded regularly as reflected by trade count. The data presented in the NPRM and below indicates that there is sufficient outstanding notional exposure and trading liquidity in RFR OIS to support a clearing requirement determination.<sup>116</sup> Specifically, the data generally demonstrates that there is significant activity in new USD SOFR, GBP SONIA, EUR €STR, CHF SARON, JPY TONA, and SGD SORA OIS trading. The Commission compiled the data used in tables 2–5 below from transaction data collected under part 45 of the Commission’s regulations.<sup>117</sup> This analysis also supports a DCO’s ability to adequately risk manage the swap.

In Table 2 below, the Commission provides estimates of notional transacted by month for various categories of RFR OIS, and IBOR fixed-to-floating and basis swaps, for the period beginning November 1, 2021, and ending April 30, 2022. The data in Table 2 generally indicates significant, and relatively steady or increasing, amounts of notional transacted in RFR

OIS from November 2021 through April 2022. The data also illustrates that there was comparatively little notional transacted during the same time period in fixed-to-floating swaps referencing IBORs that ceased publication or became nonrepresentative in December 2021 and January 2022.

Significant amounts of notional were transacted in USD LIBOR fixed-to-floating swaps. In the NPRM, the Commission observed that while notional traded per month in USD SOFR OIS nearly doubled between December 2021 and January 2022, the amount of such notional transacted in January 2022 was still less than half that of the amount of notional transacted during the same month in USD LIBOR fixed-to-floating swaps. However, as shown below, in April 2022, notional transacted in USD SOFR OIS outpaced notional transacted in USD LIBOR fixed-to-floating swaps. Thus, while the transition of liquidity from USD LIBOR fixed-to-floating swaps to USD SOFR OIS is not yet complete, it is well underway.

TABLE 2—ESTIMATED NOTIONAL TRANSACTED  
[USD billions]<sup>118</sup>

Product	November 2021	December 2021	January 2022	February 2022	March 2022	April 2022
USD SOFR OIS .....	\$2,384	\$2,011	\$3,918	\$5,008	\$6,439	\$4,807
USD LIBOR Fixed-to-Floating Swaps .....	6,674	4,409	9,598	6,708	6,480	4,470
USD LIBOR–LIBOR Basis Swaps .....	1,049	602	292	476	626	490
EUR €STR OIS .....	3,394	2,022	3,488	7,716	7,706	7,371
EUR EONIA OIS .....	2	8	0	5	0	7
CHF SARON OIS .....	208	108	130	152	164	91
CHF LIBOR Fixed-to-Floating Swaps .....	62	0	0	0	0	0
GBP SONIA OIS .....	5,852	3,151	4,149	4,956	4,458	2,629
GBP LIBOR Fixed-to-Floating Swaps .....	340	205	2	2	1	0
JPY TONA OIS .....	425	360	377	434	576	1,372
JPY LIBOR Fixed-to-Floating Swaps .....	45	15	0	2	2	1
SGD SORA OIS .....	74	41	119	97	156	124
SGD SOR Fixed-to-Floating Swaps .....	8	3	5	9	5	2

Table 3 that follows this paragraph provides estimates of trade counts for the same categories of RFR and IBOR swaps during the same six-month period. The data in Table 3 indicates that, with regard to RFR OIS, monthly trade count generally increased or was relatively steady between November 2021 and April 2022, with an especially

pronounced increase in the number of USD SOFR OIS transactions. Conversely, trade counts for swaps referencing IBORs that ceased or became nonrepresentative in December 2021 and January 2022 dropped off precipitously by January 2022. While there were still a significant number of USD LIBOR fixed-to-floating swap

transactions during the six-month period that Table 3 measures, the monthly trade count for such transactions declined significantly during that period. Similarly, the monthly trade count for SGD SOR–VWAP fixed-to-floating swaps declined significantly between November 2021 and April 2022.

<sup>115</sup> 7 U.S.C. 2(h)(2)(D)(ii).

<sup>116</sup> Data considered includes all material presented in the NPRM along with updated information presented in this final rule.

<sup>117</sup> The data presented in these tables is the same as the data used to create the Commission’s weekly swaps report. This data represents only those swaps that are reported to the CFTC’s registered SDRs by

swap market participants. The Commission’s weekly swaps report currently incorporates data from three SDRs (CME Group SDR, DTCC Data Repository, and ICE Trade Vault). The raw SDR data has been filtered to represent, as accurately as possible, the market-facing trades that occur and excludes certain inter-affiliate transactions. For more information about the data components in the

weekly swaps report, please visit the CFTC’s web page available at: <https://www.cftc.gov/MarketReports/SwapsReports/index.htm>.

<sup>118</sup> The data in Table 2 is based on the Commission’s weekly swaps report data. In this table, a notional figure of \$0 billion indicates that the notional transacted during a given time period was less than \$1 billion.

TABLE 3—ESTIMATED TRADE COUNT <sup>119</sup>

Product	November 2021	December 2021	January 2022	February 2022	March 2022	April 2022
USD SOFR OIS .....	18,484	19,110	41,728	45,696	66,644	54,439
USD LIBOR Fixed-to-Floating Swaps .....	48,245	29,309	30,749	25,061	27,284	20,184
USD LIBOR—LIBOR Basis Swaps .....	1,025	831	329	384	690	477
EUR €STR OIS .....	8,415	5,420	8,962	14,222	16,957	12,341
EUR EONIA OIS .....	7	1	0	3	0	3
CHF SARON OIS .....	2,698	1,574	2,283	2,775	3,380	1,913
CHF LIBOR Fixed-to-Floating Swaps .....	390	19	0	0	0	0
GBP SONIA OIS .....	24,275	12,913	17,654	21,139	21,396	14,656
GBP LIBOR Fixed-to-Floating Swaps .....	2,061	1,286	12	33	5	2
JPY TONA OIS .....	5,311	4,639	5,141	6,227	7,859	6,692
JPY LIBOR Fixed-to-Floating Swaps .....	577	69	9	26	22	17
SGD SORA OIS .....	2,422	1,846	3,794	3,715	4,652	3,277
SGD SOR Fixed-to-Floating Swaps .....	197	94	69	143	77	39

Table 4 that follows this paragraph presents estimates of the percentage of notional cleared for the RFR OIS subject to this determination, based on notional transacted by month during the period beginning November 1, 2021, and

ending April 30, 2022. The data in Table 4 illustrates that, with respect to the RFR OIS, significant amounts of notional are already being cleared voluntarily. The proportion of notional transacted each month from November

2021 through April 2022 that was cleared was consistently high—approaching 100%—with regard to OIS referencing each of USD SOFR, GBP SONIA, EUR €STR, CHF SARON, JPY TONA, and SGD SORA.

TABLE 4—ESTIMATED PERCENTAGE OF NOTIONAL CLEARED  
[Based on notional transacted by month] <sup>120</sup>

OIS	November 2021 (%)	December 2021 (%)	January 2022 (%)	February 2022 (%)	March 2022 (%)	April 2022 (%)
USD SOFR .....	96.3	94.9	95.1	96.0	95.3	96.2
GBP SONIA .....	98.8	98.7	97.8	98.1	98.2	97.6
EUR €STR .....	99.0	99.2	97.6	99.0	98.4	98.9
CHF SARON .....	99.6	98.1	99.2	98.9	99.7	98.4
JPY TONA .....	96.6	98.7	98.0	98.1	98.5	99.3
SGD SORA .....	98.2	98.6	98.7	97.9	98.0	98.9

Table 5 that follows this paragraph presents a breakdown of notional transacted and trade count for the period beginning April 1, 2022 and ending April 30, 2022, by tenor, for the

relevant RFR OIS. Table 5 illustrates that RFR OIS are being cleared across a wide range of maturities. By notional and trade count, most clearing activity occurs in RFR OIS dated between three

months and 15 years. However, with respect to USD SOFR and GBP SONIA OIS in particular, there is also significant clearing activity in swaps dated 15 years or greater.

TABLE 5—ESTIMATED CLEARED NOTIONAL AND TRADE COUNT BY TENOR  
[April 2022 transaction data] <sup>121</sup>

OIS	Tenor	Notional cleared (USD billions)	Trade count
USD SOFR .....	7 days–3 months .....	\$282	384
	3–6 months .....	230	463
	6 months–1 year .....	211	853
	1–5 years .....	1,900	13,507
	5–15 years .....	1,736	27,698
	>15 years .....	264	8,752
GBP SONIA .....	7 days–3 months .....	548	351
	3–6 months .....	624	391
	6 months–1 year .....	509	364
	1–5 years .....	407	3,101
	5–15 years .....	410	7,508
	>15 years .....	66	2,600
EUR €STR .....	7 days–3 months .....	735	364
	3–6 months .....	3,128	1,491

<sup>119</sup> The data in Table 3 is based on the Commission's weekly swaps report data.

<sup>120</sup> The data in Table 4 is based on the Commission's weekly swaps report data.

<sup>121</sup> The data in Table 5 is based on the Commission's weekly swaps report data. Tenor length is approximate. In Table 5, a notional figure of \$0 billion USD indicates that the notional

transacted during a given time period was less than \$1 billion.

TABLE 5—ESTIMATED CLEARED NOTIONAL AND TRADE COUNT BY TENOR—Continued  
[April 2022 transaction data]<sup>121</sup>

OIS	Tenor	Notional cleared (USD billions)	Trade count
CHF SARON	6 months–1 year	2,300	1,318
	1–5 years	831	4,440
	5–15 years	260	3,652
	>15 years	33	817
	7 days–3 months	5	3
JPY TONA	3–6 months	6	7
	6 months–1 year	10	29
	1–5 years	27	417
	5–15 years	40	1,298
	>15 year	2	146
SGD SORA	7 days–3 months	3	3
	3–6 months	14	25
	6 months–1 year	10	30
	1–5 years	121	944
	5–15 years	1,182	3,646
	>15 years	33	1,887
	7 days–3 months	6	29
	3–6 months	4	20
	6 months–1 year	12	86
	1–5 years	75	1,383
	5–15 years	26	1,720
	>15 years	0	5

In addition to this transaction-level data, Table 6 that follows this paragraph presents open swaps data illustrating outstanding notional in the RFR OIS subject to this determination.

TABLE 6—OUTSTANDING NOTIONAL AS OF APRIL 29, 2022<sup>122</sup>

OIS	Outstanding notional (USD billions)
USD SOFR	\$16,104
GBP SONIA	21,885
EUR €STR	16,099
CHF SARON	1,497
JPY TONA	4,035
SGD SORA	558

Finally, to demonstrate that clearing has expanded beyond the short-dated maturities for USD SOFR fixed-to-floating swaps, in particular, the data in Table 7 that follows this paragraph reflects the total volumes of cleared outstanding notional by tenor for USD LIBOR fixed-to-floating swaps and USD SOFR OIS. The Commission has determined that the data collectively

indicates sufficient outstanding notional exposures and regular trading activity in RFR OIS for purposes of demonstrating the liquidity necessary for DCOs to risk manage these products and to support a clearing requirement. The Commission anticipates that RFR OIS notional exposures and trading activity will increase over time as markets continue to adopt RFR OIS in place of swaps

referencing IBORs that have, or will by mid-2023, become unavailable. In addition to the extensive data presented and analyzed in this rulemaking, and as discussed in detail below, the Commission is basing this determination on its ongoing supervision of DCOs and its monitoring of the cleared interest rate swap market for purposes of risk surveillance.

TABLE 7—OUTSTANDING NOTIONAL AS OF APRIL 26, 2022<sup>123</sup>

Swap class	Tenor	Notional cleared (USD billions)
USD LIBOR Fixed-to-Floating Swaps	0–1 months	\$67
	>1 month to 3 months	247
	>3 months to 1 year	901
	>1–3 years	1,674
	>3–5 years	703

<sup>122</sup> The data in Table 6 represents swaps that have been cleared at CME, LCH, or Eurex and reported to the CFTC under part 39 of the Commission's regulations.

<sup>123</sup> The data in Table 7 represents swaps that have been cleared at CME, LCH, or Eurex and reported to the CFTC under part 39 of the Commission's regulations.

TABLE 7—OUTSTANDING NOTIONAL AS OF APRIL 26, 2022 <sup>123</sup>—Continued

Swap class	Tenor	Notional cleared (USD billions)
USD SOFR OIS .....	>5–7 years .....	439
	>7–10 years .....	379
	>10–15 years .....	233
	>15–25 years .....	276
	>25–35 years .....	124
	>35 years .....	14
	0–1 months .....	12
	>1 month to 3 months .....	121
	>3 months to 1 year .....	807
	>1–3 years .....	1,274
	>3–5 years .....	282
	>5–7 years .....	123
	>7–10 years .....	149
	>10–15 years .....	59
	>15–25 years .....	62
>25–35 years .....	44	
>35 years .....	5	

b. Pricing Data

The Commission regularly reviews pricing data for the RFR OIS subject to this determination and has found that these OIS are capable of being priced off of deep and liquid markets. Commission staff regularly receives and reviews margin model information from DCOs that includes particular procedures that they follow to ensure that market liquidity exists in order to close out a position in a stressed market, including the time required to determine a price.<sup>124</sup> Because of the stability of access to pricing data from these markets, the pricing data for the OIS that are the subject of this determination is generally viewed as being reliable. Based on this information, the Commission has determined that there is adequate pricing data to support required clearing of RFR OIS.

In addition, as part of their regulation § 39.5(b) submissions, the registered DCOs that clear the RFR OIS subject to this determination provided information to support the Commission’s conclusion that there exists adequate pricing data to justify a clearing requirement determination. In its regulation § 39.5(b) submissions, CME provided data regarding transaction volumes and market participation, and LCH provided

information on daily volumes, and noted that pricing data for each of the RFR OIS that it clears is available from brokers. LCH also noted the range of maturities for which quotes can be obtained from brokers. In its submissions to the Commission, Eurex provided relevant language from its FCM Regulations and Clearing Conditions regarding determination of daily pricing. Eurex stated that it believes its reliance on Reuters for pricing data is accurate because it is a readily available and conventional source. Eurex noted that it also can receive pricing data from Bloomberg and has multiple backup sources.

c. Comments Received Regarding Factor (I)

Commenters provided support for the conclusion that sufficient liquidity and pricing data exists in RFR OIS markets to withstand stressed market conditions. Commenters also supported the DCOs’ representations that adequate pricing data exists for DCO risk and default management of swaps referencing RFRs. CCP12 noted that SOFR liquidity improved materially in the past 12 months as a function of SOFR First and subsequent restrictions on new USD LIBOR activity that began on January 1, 2022. Citadel agreed that the data in the NPRM clearly demonstrates that there are significant outstanding notional amounts in USD SOFR OIS, and that trading in USD SOFR OIS continues to increase. Citadel also cited more recent data demonstrating that trading in USD SOFR OIS has steadily increase since January 2022, noting that over half of the USD interest rate derivatives market references SOFR as of May 2022. Citadel stated that this data demonstrates that significant outstanding notional

exposures, trading liquidity, and adequate pricing data are present in the USD SOFR OIS market to support a clearing requirement determination.

CME stated that adequate pricing data for risk and default management purposes is available across all stated termination date ranges, and stated that CME is capable of offering uninterrupted clearing services for all instruments it clears even during times of market stress.

JSCC likewise noted that the JPY swaps market has now fully transitioned away from JPY LIBOR interest rate swaps and that as of the end of April 2022, JPY TONA OIS accounted for 97% of DV01 traded in the under two-year tenor category, in the interest rate derivatives market. Additionally, JSCC stated that, because the JPY swaps market has fully migrated from JPY LIBOR interest rate swaps to JPY TONA OIS, JSCC believes there is adequate pricing data in a liquid market across different tenors for DCO risk and default management of JPY TONA OIS. JSCC also regularly holds default management fire drills to verify that its default management process is robust and would be capable of managing a default in stressed market conditions.

Based on the data presented and analyzed above, and in light of the comments received, the Commission has determined that there are sufficient outstanding notional exposures, trading liquidity, and pricing information for the RFR OIS subject to this rulemaking to support a clearing requirement determination.

<sup>124</sup> As discussed further below, Commission staff receives and reviews margin model information from the registered DCOs that clear these swaps, including information regarding how those DCOs would ensure that liquidity exists in order to exit a position in a stressed market. For purposes of the first statutory factor, the Commission considers possible periods of market stress, particularly when assessing whether there is sufficient liquidity and pricing data. Second Determination, 81 FR 71210 (noting that the Commission considered “the effect a new clearing mandate will have on a DCO’s ability to withstand stressed market conditions” as part of its analysis in connection with the Second Determination).

2. Factor (II)—Availability of Rule Framework, Capacity, Operational Expertise and Resources, and Credit Support Infrastructure

Section 2(h)(2)(D)(ii)(II) of the CEA requires the Commission to consider the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the classes of swaps on terms that are consistent with current material terms and trading conventions. Based on their regulation § 39.5(b) submissions, as well as ongoing oversight, the Commission has determined that each of the registered DCOs has developed rule frameworks, capacity, operational expertise and resources, and credit support infrastructure to clear the interest rate swaps they currently clear, including the RFR OIS subject to this rulemaking, on terms that are consistent with the material terms and trading conventions on which those swaps are being traded. The Commission subjects each of the registered DCOs to ongoing review, risk surveillance, and examination to ensure compliance with the CEA's core principles and Commission regulations, including with respect to the submitted swaps.<sup>125</sup>

Each of the registered DCOs has procedures pursuant to which they regularly review their RFR OIS clearing in order to confirm or adjust margin and other risk management tools. When reviewing each of the registered DCOs' risk management tools, the Commission considers whether the DCO is able to manage risk during stressed market conditions to be one of the most significant considerations. Each of the registered DCOs has developed detailed risk management practices, including a description of risk factors considered when establishing margin levels.<sup>126</sup> The

<sup>125</sup> In order to be registered with the Commission, a DCO must comply with the DCO core principles under section 5b of the CEA and applicable Commission regulations. Once a DCO is registered with the Commission, Commission staff periodically examine each DCO to determine whether the DCO is maintaining compliance with the CEA and Commission regulations. In addition, Commission staff monitors the risks posed to and by DCOs, clearing members, and market participants, and conducts independent stress testing.

<sup>126</sup> E.g., historical volatility, intraday volatility, seasonal volatility, liquidity, open interest, market concentration, and potential moves to default. For additional information, each of CME, LCH, and Eurex has published a document outlining its compliance with the Principles for Financial Market Infrastructures (PFMI) published by the Committee on Payments and Market Infrastructures (CPMI; formerly, CPSS) and IOSCO. CPSS-IOSCO Principles for Financial Market Infrastructure (PFMI), Apr. 16, 2012, available at <https://www.bis.org/cpmi/publ/d101.htm>. See CME, CME Clearing: PFMI Disclosure, Nov. 30, 2021, available at [Commission reviews and oversees each of the registered DCOs' risk management practices and development of margin models. Margin models are further refined by stress testing and daily back testing. The Commission also considers stress testing and back testing when assessing whether each of the registered DCOs can clear swaps safely during stressed market conditions.](https://www.cmegroup.com/clearing/risk-</a></p>
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The registered DCOs clearing the RFR OIS subject to this determination design and conduct stress tests, and Commission staff monitors development of these stress tests. Each of the registered DCOs also conducts reverse stress tests to ensure that their default funds are sized appropriately and to ascertain whether any changes to their financial resources or margin models are necessary.<sup>127</sup> Commission staff monitors markets in real-time and also performs stress tests against the DCOs' margin models and may recommend changes to a margin model. The registered DCOs conduct back testing on a daily basis to ensure that the margin models capture market movements for member portfolios.<sup>128</sup>

Before offering a new product for clearing, each of the DCOs considers stress tests and back testing results in determining whether it has sufficient financial resources to offer new clearing services. The Commission also reviews initial margin models and default resources to ensure that the DCOs can risk manage their portfolio of products offered for clearing. This combination of stress testing and back testing in anticipation of offering swaps for clearing provides the registered DCOs with greater certainty that their offerings

*management/files/cme-clearing-principles-for-financial-market-infrastructures-disclosure.pdf*; LCH PFMI Self-Assessment 2020, available at [https://www.lch.com/system/files/media\\_root/CPMI%20IOSCO%20Self%20Qualitative%20Assessment%20of%20LCH%20LTD\\_1.pdf](https://www.lch.com/system/files/media_root/CPMI%20IOSCO%20Self%20Qualitative%20Assessment%20of%20LCH%20LTD_1.pdf); and Eurex Clearing AG, Assessment of Eurex Clearing AG's compliance against the PFMI and disclosure framework associated to the PFMI, Feb. 16, 2021, available at [https://www.eurex.com/resource/blob/2446522/22f4869a8649f15b54a1e86bf35c63c/data/cpss-iosco-pfmi\\_assessment\\_2020\\_en.pdf](https://www.eurex.com/resource/blob/2446522/22f4869a8649f15b54a1e86bf35c63c/data/cpss-iosco-pfmi_assessment_2020_en.pdf).

<sup>127</sup> Reverse stress testing uses plausible market movements that could deplete guaranty funds and cause large losses for top clearing members. For example, CME, LCH, and Eurex may use scenarios for stress testing and reverse stress testing that capture, among other things, historical price volatilities, shifts in price determinants and yield curves, multiple defaults over various time horizons, and simultaneous pressures in funding and asset markets.

<sup>128</sup> Back testing tests margin models to determine whether they are performing as intended, and checks whether margin models produce margin coverage levels that meet the DCO's established standards. Back testing helps CME, LCH, and Eurex determine whether their clearing members satisfy the required margin coverage levels and liquidation timeframe.

will be risk-managed appropriately. The process of stress testing and back testing also gives DCOs practice incorporating new swaps into their models. In addition to the Commission's surveillance and oversight, each of the registered DCOs continues to monitor and test their margin models over time so that they can operate effectively in stressed and non-stressed market environments. Registered DCOs review and validate their margin models regularly.<sup>129</sup>

Each DCO monitors and manages credit risk exposure by asset class, clearing member, account, or individual customer. They manage credit risk by establishing position and concentration limits based on product type or counterparty. These limits reduce potential market risks so that DCOs are better able to withstand stressed market conditions. Each of the DCOs monitors exposure concentrations and may require additional margin deposits for clearing members with weak credit scores, with large or concentrated positions, with positions that are illiquid or exhibit correlation with the member itself, and/or where the member has particularly large exposures under stress scenarios. DCOs also can call for additional margin, on top of collecting initial and variation margin, to meet the current DCO exposure and protect against stressed market conditions.<sup>130</sup>

<sup>129</sup> Exempt DCOs, such as JSCC and HKEX, are subject to oversight by their home country regulators, along with regulations regarding risk management. For instance, JSCC is subject to the supervision of JFSA. JSCC, Principles for Financial Market Infrastructures Disclosure, Mar. 31, 2021, at 19, available at [https://www.jpex.co.jp/jsc/en/company/cimhl0000000osu-att/JSCC\\_PFMI\\_Disclosure\\_20210331\\_EN.pdf](https://www.jpex.co.jp/jsc/en/company/cimhl0000000osu-att/JSCC_PFMI_Disclosure_20210331_EN.pdf). In granting JSCC's order of exemption, the Commission determined that JSCC is subject to comparable, comprehensive supervision and regulation by its home country regulator. See JSCC Order of Exemption from Registration, Oct. 26, 2015, at 1, available at <http://www.cftc.gov/ido/groups/public/@otherif/documents/ifdocs/jscdcoexemptorder10-26-15.pdf>; JSCC Amended Order of Exemption from Registration, May 15, 2017, at 1, available at <https://www.cftc.gov/sites/default/files/ido/groups/public/@otherif/documents/ifdocs/jscdcoexemptamorder5-15-17.pdf>. Among other requirements, JSCC must provide the Commission with an annual certification that it continues to observe the PFMI in all material respects, and the Commission must receive annually, at JSCC's request, a certification from JFSA that JSCC is in good regulatory standing. Likewise, HKEX is overseen by HKMA, which provides ongoing supervision, and must meet the same requirements for an exempt DCO as JSCC. See HKFE Clearing Corporation Limited, Principles for Financial Market Infrastructures Disclosure, Feb. 2021, available at [https://www.hkex.com.hk/-/media/HKEX-Market/Services/Clearing/Listed-Derivatives/PFMI/HKCC\\_PFMI\\_Disclosure\\_Feb2021.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/Services/Clearing/Listed-Derivatives/PFMI/HKCC_PFMI_Disclosure_Feb2021.pdf?la=en).

<sup>130</sup> As a general matter, any DCO offering RFR OIS for clearing, including exempt DCOs, would follow

In support of its ability to clear RFR OIS subject to this determination, CME's regulation § 39.5(b) submissions cite to its rulebook to demonstrate the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear interest rate swap contracts on terms that are consistent with the material terms and trading conventions on which the contracts are traded. LCH's submissions state that it has a well-developed rule framework and support infrastructure for clearing interest rate swaps, which it leverages to offer clearing services for RFR OIS. Eurex's submissions state that Eurex has a well-developed rule framework and support infrastructure for clearing RFR OIS. Eurex further states that it has the appropriate risk management, operations, and technology capabilities to ensure that it is able to liquidate positions in such swaps in an orderly manner in the event of a clearing member default, and that the RFR OIS are subject to margin and clearing fund requirements set forth in Eurex's FCM Regulations and Clearing Conditions.

Commenters supported these positions. In particular, Citadel commented that it is clear that market participants, including FCMs, have the operational and technological infrastructure in place to support the clearing of USD SOFR OIS, pointing out that almost all USD SOFR OIS transactions are cleared. Citadel stated that this significant voluntary clearing activity demonstrates that market participants are confident in current DCO offerings.

For all of these reasons, the Commission has determined that there are available rule frameworks, capacity, operational expertise and resources, and credit support infrastructures, consistent with material terms and trading conventions, to support the required clearing of the RFR OIS subject to this clearing requirement determination. The application of DCO risk management practices to the RFR OIS subject to this clearing requirement determination should ensure that the swaps subject to this rulemaking can be cleared safely, even during times of market stress.<sup>131</sup>

this risk management approach with regard to offering these swaps for clearing.

<sup>131</sup> For additional information related to this factor, please see the public disclosures made by CME, Eurex and LCH. CME, CME Clearing: Principles for Financial Market Infrastructures Disclosure, Nov. 30, 2021, available at <https://www.cmegroup.com/clearing/risk-management/files/cme-clearing-principles-for-financial-market-infrastructures-disclosure.pdf>; LCH Ltd., CPMI—IOSCO Self-Assessment 2020, Mar. 31, 2020, available at <https://www.lch.com/system/files/>

### 3. Factor (III)—Effect on the Mitigation of Systemic Risk

Section 2(h)(2)(D)(ii)(III) of the CEA requires the Commission to consider the effect of the clearing requirement on the mitigation of systemic risk in light of the size of the market for such contract and the resources of the DCO available to clear the contract. As presented in the data and discussion above, the Commission has concluded that the market for each RFR OIS subject to this determination is significant, and mitigating counterparty credit risk through clearing likely will reduce systemic risk in the interest rate swap market generally. While not every individual RFR OIS market has large outstanding notional exposures, each such market is important, and as liquidity shifts from IBOR swaps to RFR OIS, continuity of clearing for RFR OIS serves to reduce systemic risk.

In its regulation § 39.5(b) submissions, CME explains the benefits of centralized clearing, including freer counterparty credit lines, enhanced risk management, operational efficiencies, and ease of offsetting risk exposures. LCH's submissions note that clearing avoids complex bilateral relationships, provides for default management, and enhances transparency into the risks posed by swap positions. Eurex's submissions highlight the benefits of reduction of counterparty risk, margin and collateral efficiencies, protections for customer assets, and legal certainty. Each DCO's submissions indicate that they maintain adequate resources to clear the swaps that are the subject of this rulemaking. Additionally, JSCC noted that it has been clearing JPY TONA OIS since 2014 “without facing any challenge from a governance, rule framework, operational, resourcing, or credit support infrastructure perspective.”<sup>132</sup>

CME commented on the RFI that mitigation of systemic risk is one of the key advantages of centralized clearing over bilateral arrangements.<sup>133</sup> Similarly, LSEG stated that “a clearing requirement will mitigate systemic risk, making sure that USD SOFR risk moves from the bilateral space to the cleared

market to the necessary extent.”<sup>134</sup> In its RFI response, Citadel noted that “[a]pplying a clearing requirement to OTC derivatives referencing SOFR will ensure these markets develop as centrally-cleared markets,” and further noted that “central clearing provides greater systemic risk mitigation than bilateral margining for uncleared swaps.”<sup>135</sup> TD Bank agreed that a clearing requirement for USD SOFR swaps “might increase the clearing rate and therefore mitigate[] systemic risk even more,” but TD Bank also noted that the “bulk” of USD SOFR swaps are already voluntarily cleared.<sup>136</sup>

Commenters on the NPRM further supported these positions. CME, Citadel, ISDA, and MFA each described the importance of central clearing as a means of mitigating systemic risk. ACLI also noted the importance of central clearing.<sup>137</sup> CME stated that the significant and rapid adoption of voluntary clearing of RFR OIS demonstrates the beneficial effects on mitigation of systemic risk in these products, noting that high levels of voluntary clearing mean that there is already a wide range of clearing members supporting clearing of these products. CME stated that it has sufficient diversity in clearing members, as well as the capability to default manage RFR OIS portfolios, regardless of the introduction of a clearing requirement. JSCC stated that amendments to the current interest rate swap clearing requirement to include swaps with RFRs would maintain the momentum in the shift from bilateral to cleared markets, which would enhance safety and transparency, and result in a reduction of systemic risk.

Centrally clearing the RFR OIS subject to this rulemaking through a registered or exempt DCO should reduce systemic risk by providing counterparties with daily mark-to-market valuations upon which to exchange variation margin pursuant to the DCO's risk management framework and requiring posting of initial margin to cover potential future exposures in the event of a default. In

<sup>134</sup> LSEG RFI Letter.

<sup>135</sup> Citadel RFI Letter.

<sup>136</sup> TD Bank RFI Letter. See also Tradeweb RFI Letter (“The swap clearing and execution requirements under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act have increased investor protections, improved market liquidity, and reduced systemic risk, especially in the dealer-to-customer market. It will be critical for the CFTC to maintain these market improvements as new swap transactions increasingly utilize alternative risk-free reference rates . . .”).

<sup>137</sup> ACLI's concerns about use of FCMs and allocation of capital for purposes of margin are discussed below.

*media\_root/CPMI%20IOSCO%20Self%20Qualitative%20Assessment%20of%20LCH%20LTD\_1.pdf*; Eurex, “Assessment of Eurex Clearing AG's compliance against the CPMI—IOSCO Principles for financial market infrastructures (PFMI) and the disclosure framework associated to the PFMI,” Feb. 28, 2022, available at [https://www.eurex.com/resource/blob/2973806/422b675/a412d96e3c8cf97a570b899a2/data/cpsp-ioscopfmi\\_assessment\\_2021\\_en.pdf](https://www.eurex.com/resource/blob/2973806/422b675/a412d96e3c8cf97a570b899a2/data/cpsp-ioscopfmi_assessment_2021_en.pdf). As explained above, similar disclosures are available for JSCC and HKEX.

<sup>132</sup> JSCC Comment Letter.

<sup>133</sup> CME RFI Letter.

addition, swaps transacted through a DCO are secured by the DCO's guaranty fund and other available financial resources, which are intended to cover extraordinary losses that would not be covered by initial margin.

Central clearing was developed and designed to handle significant concentration of risk. Each of the DCOs that clears the RFR OIS covered by this rulemaking has a procedure for closing out and/or transferring a defaulting clearing member's positions and collateral.<sup>138</sup> Transferring customer positions to solvent clearing members in the event of a default is critical to reducing systemic risk. DCOs are designed to withstand defaulting positions and to prevent a defaulting clearing member's loss from spreading further and triggering additional defaults. To the extent that introduction of an RFR OIS clearing requirement increases the number of clearing members and market participants in the interest rate swap market, then DCOs may find it easier to transfer positions from defaulting clearing members if there is a larger pool of potential clearing members to receive the positions.<sup>139</sup>

Each DCO has experience risk managing interest rate swaps, and the Commission believes that the DCOs have the necessary financial resources available to clear the RFR OIS that are the subject of this determination. In addition, the application of DCO risk management practices to the RFR OIS subject to this clearing requirement determination should ensure that the swaps subject to this rulemaking can be cleared safely.

The RFR OIS data presented in this rulemaking indicates varying levels of activity, measured by outstanding notional amounts and trade counts. The Commission acknowledges that the data comes from various, limited periods of time that do not explicitly include periods of market stress. However, the Commission concludes that the data demonstrates sufficient regular trading activity and outstanding notional exposures in these RFR OIS to provide the liquidity necessary for DCOs to successfully risk manage these products and to support the adoption of a clearing requirement.

<sup>138</sup> For further discussion of treatment of customer and swap counterparty positions, funds, and property in the event of the insolvency of a DCO or one or more of its clearing members, please see Factor (V)—Legal certainty in the event of insolvency, in section V.C below.

<sup>139</sup> The Commission recognizes that with high rates of voluntary clearing RFR OIS at this time, the likelihood of adding additional clearing members and market participants in these swaps is limited.

Accordingly, the Commission determines that these DCOs would be able to manage the risk posed by clearing the RFR OIS required to be cleared pursuant to this determination. In addition, the central clearing of the RFR OIS that are added under this rulemaking serves to mitigate counterparty credit risk, thereby potentially reducing systemic risk. Having considered the comments and the likely effect on the mitigation of systemic risk, the Commission is issuing this determination to add these RFR OIS to the clearing requirement.

#### 4. Factor (IV)—Effect on Competition

Section 2(h)(2)(D)(ii)(IV) of the CEA requires the Commission to consider the effect on competition, including appropriate fees and charges applied to clearing. Of particular concern to the Commission is whether this determination would harm competition by creating, enhancing, or entrenching market power in an affected product or service market, or facilitating the exercise of market power.<sup>140</sup> Market power is viewed as the ability to raise prices, including clearing fees and charges, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives.<sup>141</sup>

The Commission has identified one putative service market as potentially affected by this clearing determination: a DCO service market encompassing those clearinghouses that currently clear the RFR OIS subject to this determination.<sup>142</sup> This clearing requirement potentially could impact competition within the affected market. Of particular importance to whether any such impact is positive or negative, is: (1) whether the demand for these clearing services and swaps is sufficiently elastic that a small but significant price increase above competitive levels would prove unprofitable because users of the interest rate swap products and DCO clearing services would substitute other clearing services coexisting in the same market(s); and (2) the potential for new entry into this market. The availability

<sup>140</sup> First Determination, 77 FR 74313; Second Determination, 81 FR 71220.

<sup>141</sup> First Determination, 77 FR 74313 (discussing market power as described under U.S. Department of Justice guidelines). See generally U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines (Horizontal Merger Guidelines) at section 1 (Aug. 19, 2010), available at <https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf>.

<sup>142</sup> First Determination, 77 FR 74298; Second Determination, 81 FR 71220. The DCO service market includes the registered and exempt DCOs that currently offer RFR OIS for clearing.

of substitute clearing services to compete with those encompassed by this determination, and the likelihood of timely, sufficient new entry in the event prices do increase above competitive levels, each operate independently to constrain anti-competitive behavior.

Any competitive import likely would stem from the fact that the determination and regulations would remove the alternative of not clearing for RFR OIS subject to this rulemaking. The determination does not specify who may or may not compete to provide clearing services for the RFR OIS subject to this rulemaking, as well as those not required to be cleared.

Removing the choice to enter into a swap without submitting it for clearing under this rulemaking is not determinative of negative competitive impact. Other factors, including the availability of other substitutes within the market or potential for new entry into the market, may constrain market power. The Commission does not foresee that the determination constructs barriers that would deter or impede new entry into a clearing services market,<sup>143</sup> and the Commission anticipates this determination might foster an environment conducive to new entry. For example, the clearing determination may reinforce, if not encourage, growth in demand for clearing services. Demand growth, in turn, can enhance the sales opportunity, a condition hospitable to new entry.<sup>144</sup> Moreover, to the extent that there are high rates of voluntary clearing in the RFR OIS subject to this determination already, a regulatory requirement to clear such swaps provides additional certainty that those high rates of clearing remain constant.

Respondents to the RFI who provided feedback regarding the potential effect on competition due to a modified clearing requirement did not identify any potential negative effects. To the contrary, Citadel stated that applying a clearing requirement to OTC derivatives referencing USD SOFR would increase liquidity and competition, citing, among

<sup>143</sup> However, the Commission recognizes that (1) to the extent the clearing services market for the interest rate swaps identified in this rulemaking, after foreclosing uncleared swaps, would be limited to a concentrated few participants with highly aligned incentives, and (2) the clearing services market is insulated from new competitive entry through barriers (e.g., high sunk capital cost requirements, high switching costs to transition from embedded incumbents, and access restrictions), the determination could have a negative competitive impact by increasing market concentration.

<sup>144</sup> See, e.g., Horizontal Merger Guidelines, section 9.2 (entry likely if it would be profitable which is in part a function of "the output level the entrant is likely to obtain").

other research, a study that found that “the Commission’s clearing and trading reforms led to a significant reduction in execution costs in the USD interest rate swap market, with market participants saving as much as \$20 million–\$40 million per day.”<sup>145</sup> RFI response letters from LSEG, Eurex, JSCC, and TD Bank similarly stated that they did not identify potential competition-related concerns.<sup>146</sup>

For the reasons described above and in light of the comments received, the Commission concludes that it has considered the effect of the updated clearing requirement on competition and found that it potentially could impact competition within the affected market, but anticompetitive behavior is likely to be constrained and demand for clearing services is expected to grow. Accordingly, the Commission reaffirms its conclusion stated in the NPRM that its consideration of competitiveness is sufficient to modify the existing interest rate swap clearing requirement to include the RFR OIS subject to this rulemaking.

#### 5. Factor (V)—Legal Certainty in the Event of Insolvency

Section 2(h)(2)(D)(ii)(V) of the CEA requires the Commission to consider the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property. The Commission is issuing

this clearing requirement determination based on its view that there is reasonable legal certainty regarding the treatment of customer and swap counterparty positions, funds, and property in connection with cleared swaps, including RFR OIS, in the event of the insolvency of the relevant DCO or one or more of the DCO’s clearing members.

The Commission believes that, in the case of a clearing member insolvency at CME, where the clearing member is the subject of a proceeding under the U.S. Bankruptcy Code, subchapter IV of Chapter 7 of the U.S. Bankruptcy Code (11 U.S.C. 761–767) along with parts 22 and 190 of the Commission’s regulations would govern the treatment of customer positions.<sup>147</sup> Pursuant to section 4d(f) of the CEA, 7 U.S.C. 4d(f), a clearing member accepting funds from a customer to margin a cleared swap must be a registered FCM. Pursuant to 11 U.S.C. 761–767 and part 190 of the Commission’s regulations, the customer’s interest rate swap positions, carried by an insolvent FCM, would be deemed “commodity contracts.”<sup>148</sup> As a result, neither a clearing member’s bankruptcy nor any order of a bankruptcy court could prevent CME from closing out/liquidating such positions. However, customers of clearing members would have priority over all other claimants with respect to customer funds that had been held by the defaulting clearing member to margin swaps, such as the RFR OIS subject to this determination.<sup>149</sup> Thus, customer claims would have priority over proprietary claims and general creditor claims. Customer funds would be distributed to swap customers, including interest rate swap customers, in accordance with Commission regulations and section 766(h) of the Bankruptcy Code. Moreover, the Bankruptcy Code and the Commission’s rules thereunder (in particular 11 U.S.C. 764(b) and 17 CFR 190.07) permit the transfer of customer positions and collateral to solvent clearing members.

Similarly, 11 U.S.C. 761–767 and part 190 would govern the bankruptcy of a DCO where the DCO is the subject of a proceeding under the U.S. Bankruptcy Code, in conjunction with DCO rules providing for the termination of outstanding contracts and/or return of remaining clearing member and customer property to clearing members.

With regard to LCH, the Commission understands that in general the default of an LCH clearing member would be governed by LCH’s rules, and LCH would be permitted to close out and/or transfer positions of a defaulting clearing member. The Commission further understands that, under applicable law, LCH’s rules governing a clearing member default would supersede insolvency laws in the clearing member’s jurisdiction. For an FCM based in the United States and clearing at LCH, the applicable law as a general matter, would be the U.S. Bankruptcy Code and part 190 of the Commission’s regulations. According to LCH’s regulation § 39.5(b) submissions, the insolvency of LCH itself would be governed by English insolvency law, which protects the enforceability of the default-related provisions of LCH’s rulebook, including in respect of compliance with applicable provisions of the U.S. Bankruptcy Code and part 190 of the Commission’s regulations. LCH has obtained, and made available to the Commission, legal opinions that support the existence of such legal certainty in relation to the protection of customer and swap counterparty positions, funds, and property in the event of the insolvency of one or more of its clearing members.<sup>150</sup>

On December 20, 2018, the Commission issued permission for Eurex to begin clearing swap transactions on behalf of customers of FCMs.<sup>151</sup> According to Eurex’s regulation § 39.5(b) submissions, Eurex observes the PFMI. Eurex represented

<sup>150</sup> Letters of counsel on file with the Commission.

<sup>151</sup> Commission Letter Nos. 18–30, 18–31, and 18–32. Additionally, in responding to the RFI, Eurex noted that, with respect to Eurex clearing members that are FCMs and that clear swaps under Eurex’s U.S. regulatory framework, Eurex’s FCM Regulations “foresee a clear process for a potential porting of client-related transactions to a replacement clearing member following the termination of a clearing member.” Eurex RFI Letter. In the event that the termination is based on an Insolvency Termination Event, as defined in Eurex’s FCM Regulations, Eurex will seek to coordinate with the CFTC and bankruptcy trustee with respect to porting the positions. This procedure applies to all cleared products. However, Eurex noted that following IBOR conversion events, it no longer clears any trades where obtaining new GBP LIBOR, JPY LIBOR, or CHF LIBOR fixings (or reliance on the relevant fallback provisions) would be necessary. *Id.*

<sup>145</sup> Citadel RFI response letter.

<sup>146</sup> LSEG RFI letter (“LCH does not believe that adopting a clearing requirement for a new product that references an alternative reference rate, or expanding the scope of an existing clearing requirement to cover additional maturities would create conditions that increase or facilitate an exercise of market power over clearing services by any DCO. Any clearing requirement that applies equally to all DCOs that provide clearing services for a product would not adversely affect competition.”); Eurex RFI letter (“Eurex Clearing believes there is healthy competition currently in the market for the clearing of swaps referencing the RFRs and, previously, the LIBORs. Eurex Clearing does not believe that adopting a clearing requirement for a new product that references an RFR or expanding the scope of the Clearing Requirement to cover additionally maturities would cause [adverse effects related to competition or an increase in the cost of clearing services.]”); JSCC RFI letter (“In relation to TONA OIS, it has been accepted for clearing at 3 registered DCOs . . . . Therefore, we believe that replacing JPY–LIBOR with TONA OIS would not change (i) the existing competition for clearing services of JPY swaps nor (ii) the cost of clearing services, in any regard.”); and TD Bank RFI letter (“We do not perceive these issues [related to adverse competitive effects or increasing costs of clearing services] to come” as a result of a clearing requirement for a new product that references an alternative reference rate or expanding the scope of the clearing requirement to cover additional maturities).

<sup>147</sup> An FCM or DCO also may be subject to resolution under Title II of the Dodd-Frank Act to the extent it would qualify as a covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Act). Under Title II, different rules would apply to the resolution of an FCM or DCO. Discussion in this section relating to what might occur in the event an FCM or DCO defaults or becomes insolvent describes procedures and powers that exist in the absence of a Title II receivership.

<sup>148</sup> If an FCM is registered as a broker-dealer, certain issues related to its insolvency proceeding would be governed by the Securities Investor Protection Act, as well.

<sup>149</sup> Claims seeking payment for the administration of customer property would share this priority.

that in February 2015, it published an assessment of its compliance with the PFMI, which was reviewed and validated by an independent outside auditor. The assessment concluded that Eurex fully complies with the PFMI, and Eurex's default management procedures were assessed to be certain in the event of its or a clearing member's insolvency with regard to the treatment of customer and counterparty positions and collateral. Such certainty continues to be reflected in Eurex's most recent PFMI assessment.<sup>152</sup> According to Eurex's regulation § 39.5(b) submissions, a potential insolvency of Eurex Clearing, and the operation of default management procedures under Eurex's Clearing Conditions, would be governed by German law, with the exception of certain FCM Regulations and Clearing Conditions that relate to cleared swaps customer collateral that are governed by U.S. law.<sup>153</sup>

In response to the NPRM, CME stated that the legal framework on which it operates complies with DCO Core Principle R and regulation § 39.27(b) (requiring legal certainty of clearing arrangements). CME stated that its legal framework is sound, tested, and provides a high degree of assurance that it will be able to conduct its clearing and settlement activities on an ongoing basis, including managing a clearing member default, and that its legal framework also provides arrangements for the failure of a DCO. CME stated that the U.S. Bankruptcy Code and part 190 of the Commission's regulations provide safe harbors that protect a DCO's right to immediately enforce its interest in the collateral it holds to margin positions and to guarantee performance of its clearing members' obligations.

Finally, as exempt DCOs, JSCC and HKEX demonstrate they are subject to ongoing comparable, comprehensive supervision by their home country regulator with regard to legal certainty in the event of insolvency.<sup>154</sup> Both

exempt DCOs maintain disclosures discussing the ways in which they comply with the PFMI, including principles related to legal certainty in the event of insolvency.<sup>155</sup> Principle 1 of the PFMI provides that a CCP should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities, in all relevant jurisdictions.<sup>156</sup> Among other key considerations for this factor, "[t]he legal basis should provide a high degree of certainty for each material aspect of an FMI's activities in all relevant jurisdictions."<sup>157</sup> The PFMI also provide that a CCP should have effective and clearly defined rules and procedures to manage a participant default.<sup>158</sup> JSCC's and HKEX's PFMI disclosures provide, among other information, a discussion of the applicable law and legal basis for their clearing activities, as well as the way in which their rules address insolvency events.<sup>159</sup>

Lastly, JSCC provided information regarding how it would address a default by a clearing member under its rules,<sup>160</sup> including information regarding the treatment of certain RFR swaps for default management purposes. Specifically, JSCC described the process by which it offered JPY TIBOR-TONA basis swaps as a way to transition away from IBOR swaps without incident.<sup>161</sup> JSCC's comment supported the Commission's conclusions regarding the bankruptcy regime under Japanese law, as well as

and HKEX's insolvency regimes does not address issues related to U.S. customer clearing.

<sup>155</sup> JSCC, Principles for Financial Market Infrastructures Disclosure, Mar. 31, 2021, available at [https://www.jpjx.co.jp/jsc/en/company/cimhll000000osu-att/JSCC\\_PFMI\\_Disclosure\\_20210331\\_EN.pdf](https://www.jpjx.co.jp/jsc/en/company/cimhll000000osu-att/JSCC_PFMI_Disclosure_20210331_EN.pdf); and HKFE Clearing Corporation Limited, Principles for Financial Market Infrastructures Disclosure, Feb. 2021, available at [https://www.hkex.com.hk/-/media/HKEX-Market/Services/Clearing/Listed-Derivatives/PFMI/HKCC\\_PFMI\\_Disclosure\\_Feb2021.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/Services/Clearing/Listed-Derivatives/PFMI/HKCC_PFMI_Disclosure_Feb2021.pdf?la=en).

<sup>156</sup> PFMI, Principle 1.

<sup>157</sup> PFMI, Principle 1, Key consideration 1.

<sup>158</sup> PFMI, Principle 13.

<sup>159</sup> JSCC, Principles for Financial Market Infrastructures Disclosure, Mar. 31, 2021, at 19–24, 83–91, available at [https://www.jpjx.co.jp/jsc/en/company/cimhll000000osu-att/JSCC\\_PFMI\\_Disclosure\\_20210331\\_EN.pdf](https://www.jpjx.co.jp/jsc/en/company/cimhll000000osu-att/JSCC_PFMI_Disclosure_20210331_EN.pdf); and HKFE Clearing Corporation Limited, Principles for Financial Market Infrastructures Disclosure, Feb. 2021, at 20–21, 58–60, available at [https://www.hkex.com.hk/-/media/HKEX-Market/Services/Clearing/Listed-Derivatives/PFMI/HKCC\\_PFMI\\_Disclosure\\_Feb2021.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/Services/Clearing/Listed-Derivatives/PFMI/HKCC_PFMI_Disclosure_Feb2021.pdf?la=en).

<sup>160</sup> See JSCC's relevant PFMI disclosures.

<sup>161</sup> JSCC RFI letter (stating that, for default management purposes, JPY TIBOR-TONA basis swaps will be treated in the same manner as cleared JPY TONA OIS. JSCC noted that creation of these basis swaps was a temporary measure and the basis swaps will expire at the settlement of the rates that were fixed prior to the end of 2021).

customer protection through global bankruptcy regimes for exempt DCOs.

JSCC's comment also recommended that the Commission reconsider its restrictions on exempt DCOs offering clearing services for U.S. customers in order to allow U.S. customers access non-U.S. swap markets. The Commission issued JSCC an order of exemption from registration as a DCO in 2015.<sup>162</sup> This order remains in place, and JSCC is providing non-client clearing services to U.S.-based entities pursuant to this order. As exempt DCOs, both JSCC and HKEX are not permitted to offer clearing services for U.S. customers. JSCC's additional comments regarding exempt DCOs and client clearing are beyond the scope of this rulemaking.<sup>163</sup>

The Commission received no other comments related to legal certainty in the event of insolvency. For the reasons described above and in light of the comments received, the Commission reaffirms its conclusion stated in the NPRM that reasonable legal certainty exists in the event of the insolvency of each of the relevant DCOs or one or more of their clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property to modify the interest rate swap clearing requirement to include the RFR OIS subject to this rulemaking.

## VI. Implementation Schedule

The Commission phased in the First Determination according to the schedule contained in regulation § 50.25.<sup>164</sup> Under this schedule, implementation was phased in by the type of market participant. The phase-in occurred over a 270-day period following publication of the final rule in the **Federal Register**. The Commission phased in its Second Determination based on the first compliance date for market participants in non-U.S. jurisdictions pursuant to a schedule in regulation § 50.26.<sup>165</sup> The decision to adopt one implementation date for all market participants was driven by the fact that most market

<sup>162</sup> The order was amended in 2017.

<sup>163</sup> JSCC's interest in providing clearing services for U.S. customers would be considered by the Commission as a separate matter of DCO registration. As the Commission explained in the Second Determination, exempt DCOs "could apply to the Commission for DCO registration in order to clear for U.S. customer accounts should they decide to pursue that line of business at any time in the future." Second Determination, 81 FR 71221. Section VII contains additional discussion of JSCC's comment regarding the benefits of exempt DCOs offering client clearing.

<sup>164</sup> Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the CEA, 77 FR 44441 (July 30, 2012).

<sup>165</sup> Second Determination, 81 FR 71227–71228.

<sup>152</sup> Eurex Clearing AG, Assessment of Eurex Clearing AG's compliance against the PFMI and disclosure framework associated to the PFMI, available at [https://www.eurex.com/resource/blob/2446522/22f4869a8649f15b54a1e86bf635c63c/data/cpss-iosco-pfmi\\_assessment\\_2020\\_en.pdf](https://www.eurex.com/resource/blob/2446522/22f4869a8649f15b54a1e86bf635c63c/data/cpss-iosco-pfmi_assessment_2020_en.pdf).

<sup>153</sup> For example, in the case of an insolvency termination event, as defined in Eurex's Clearing Conditions, the relevant FCM clearing member would be subject to an insolvency proceeding pursuant to applicable U.S. law, and Eurex would seek to coordinate with the Commission and the bankruptcy trustee (or comparable person responsible for administering the proceeding) with respect to the transfer of FCM client transactions and eligible margin assets allocated to the relevant FCM client. *Id.* at 100.

<sup>154</sup> Exempt DCOs are not permitted to clear swaps for U.S. customers pursuant to regulation § 39.6(b)(1). Accordingly, this discussion of JSCC's

participants were already clearing the swaps subject to the Second Determination, as well as the successful implementation of the 2012 clearing requirement determination over a nine-month period in 2013.<sup>166</sup> In both cases, the Commission took into account global efforts in support of central clearing for swaps and input from market participants regarding implementation.

In arriving at an appropriate implementation schedule, the Commission considered the fact that EUR EONIA and non-USD LIBOR rates have now entirely ceased publication or become nonrepresentative,<sup>167</sup> DCOs have largely completed IBOR swap conversions, and many market participants already clear the vast majority of RFR OIS subject to this rulemaking. The Commission also considered recent and anticipated changes to interest rate swap clearing requirements in other jurisdictions. Additionally, the Commission considered comments received in response to the RFI and NPRM. While some commenters recommended that the Commission proceed through an interim final rule process, other responses asked for longer periods of time for market participants to come into compliance with proposed rule changes.

Significantly, no DCOs offering OIS for clearing identified any operational challenges with regard to prompt implementation of the RFR OIS clearing requirement. During its IBOR conversion processes, LCH has not encountered any operational challenges nor have its members identified any issues related to proprietary or customer clearing.<sup>168</sup> In addition, the Commission is not aware of any operational or other issues that are likely to impede other DCOs' conversion plans. Comments from CME and JSCC similarly support this conclusion. Smooth DCO conversion from USD LIBOR interest rate swaps to USD SOFR OIS will facilitate smooth implementation of the modified clearing requirement.

#### A. Overview of Changes to Regulation § 50.26(a)

As stated above, these final amendments to part 50 will become legally effective 30 days after publication of the final rule in the **Federal Register**. However, the implementation schedule discussed below accounts for non-U.S. jurisdictions' mandatory clearing timelines and incorporates feedback from DCOs and market participants. In this manner, the Commission seeks to provide flexibility and facilitate efficient implementation of the amendments.

The implementation date of the requirement to clear RFR OIS for which the corresponding IBOR rate has ceased publication or become nonrepresentative will be the same as the effective date of the final rulemaking, *i.e.* 30 days after publication in the **Federal Register**. However, the implementation date for the requirement to clear OIS referencing USD SOFR and SGD SORA will be October 31, 2022.

Amendments to remove clearing requirement rules for IBOR swaps from regulation § 50.4(a) will be implemented in two stages. For the removal of the requirement to clear all interest rate swaps for which the IBOR rate has ceased publication or become nonrepresentative,<sup>169</sup> the implementation date will be the same as the effective date of the final rulemaking, *i.e.* 30 days after publication in the **Federal Register**. However, for the reasons discussed below, the removal of the requirement to clear USD LIBOR and SGD SOR–VWAP swaps will be implemented on July 1, 2023.

#### B. Consideration of Comments on Implementation

The majority of commenters supported the Commission's proposal to implement the final rulemaking 30 days after publication in the **Federal Register**. These commenters, including AIMA, CCP12, Citadel, CME, and MFA, pointed to the extremely high rates of voluntary clearing and overall industry preparedness as support for that view.<sup>170</sup> These commenters also largely

agreed with the Commission's proposal to remove swaps referencing USD LIBOR and SGD SOR–VWAP from existing regulations effective July 1, 2023.

By contrast, ACLI stated that implementation of the USD SOFR OIS clearing requirement should be delayed until June 30, 2023, which would coincide with the date USD LIBOR swaps are removed from the clearing requirement. In ACLI's view, this alignment would create an incentive for market participants concerned about clearing trades to move from USD LIBOR to USD SOFR swaps, thereby supporting overall LIBOR transition objectives.

ISDA recommended a date that would promote "efficient implementation" of the amended rules for all RFR OIS and suggested October 31, 2022, as such a date. In ISDA's view, this date would serve two purposes: (1) harmonizing with Bank of England's proposed implementation date for its USD SOFR OIS clearing requirement; and (2) avoiding unnecessary strain on market participants' resources and operational capabilities. ISDA also recommended March 6, 2023, as the date for removal of the requirement to clear interest rate swaps referencing USD LIBOR.<sup>171</sup>

#### C. EUR €STR, GBP SONIA, CHF SARON, and JPY TONA OIS Implementation

CME, LCH, Eurex, and JSCC have completed their conversion plans for all cleared EUR EONIA and non-USD LIBOR swaps into RFR OIS. Moreover, EUR EONIA and non-USD LIBOR interest rate swaps are generally no longer offered for clearing.<sup>172</sup> Beyond ISDA, discussed above, no commenter raised concerns specifically about a 30-day implementation period for requiring clearing of the OIS referencing EUR €STR, GBP SONIA, CHF SARON, and JPY TONA, which are the alternative reference rates corresponding to these IBORs.

Non-USD LIBOR rates ceased publication or became nonrepresentative at the end of 2021, and EUR EONIA ceased publication in early 2022. In many instances, non-U.S. jurisdictions have updated their clearing mandates to reflect this fact already, and market participants are voluntarily clearing the vast majority of the OIS subject to this rulemaking. By adding these OIS to the clearing requirement as

<sup>171</sup> See summary of comments in section III above.

<sup>172</sup> Clearing services also are no longer available for EUR LIBOR swaps, but these swaps are not subject to required clearing under regulation § 50.4(a).

<sup>166</sup> *Id.* at 71227.

<sup>167</sup> Remaining USD LIBOR settings, as well as SGD SOR–VWAP settings, will cease publication or become nonrepresentative after June 30, 2023.

<sup>168</sup> LSEG RFI Letter (stating that the implementation date be set "not too far from the completion of the Commission's review" in order to "reduce uncertainty in the market and limit the risk of bifurcation of liquidity between the cleared and uncleared market for the LIBOR rates that ceased on December 31, 2021 and their respective replacement rates."). Comments from CME and JSCC support this concern about splitting liquidity.

<sup>169</sup> This includes removing all interest rate swaps referencing non-USD LIBOR and EUR EONIA from regulations §§ 50.4(a) and 50.26 30 days after publication of the final rules. The Commission is removing IBOR swaps from regulation § 50.4, with swaps referencing non-USD LIBOR and EUR EONIA removed 30 days after publication of the final rule in the **Federal Register**. Removal of clearing requirement rules for interest rate swaps referencing USD LIBOR and SGD SOR–VWAP will be implemented on July 1, 2023.

<sup>170</sup> See section III above for additional information regarding comments received.

promptly as possible, the final rules modify the existing clearing requirement to reflect the cessation or loss of representativeness of EUR EONIA and non-USD LIBOR swaps.

Given the overwhelming amount of voluntary clearing, reflecting a significant volume of the outstanding market for these OIS, and the fact that DCOs no longer offer EUR EONIA and non-USD LIBOR interest rate swaps for clearing, the Commission is adopting its implementation schedule for required clearing of EUR €STR, GBP SONIA, CHF SARON, and JPY TONA OIS as proposed. Accordingly, rules requiring clearing of these OIS will be implemented 30 days after publication of the final rules in the **Federal Register**. If this date falls on a Saturday, Sunday, or U.S. Federal public holiday, the date will be the next available business day when markets are open in the United States.

#### *D. USD SOFR and SGD SORA OIS Implementation*

To the extent practicable, the Commission believes that an implementation schedule for these modified rules should provide flexibility for market participants and further the Commission's goals of harmonizing its clearing requirement rules with those abroad. Commenters generally supported the Commission's efforts to implement a modified clearing requirement in a manner that provides certainty and fosters further international harmonization with regard to swap clearing requirements. Over the years, commenters have applauded Commission efforts to work cooperatively with regulators in other jurisdictions while responding to the operational needs of market participants in a flexible manner.

Recognizing all these factors and striking a middle ground, the Commission is adjusting its proposed implementation schedule with respect to clearing requirement rules for OIS referencing USD SOFR and SGD SORA to reflect input from commenters and align with Bank of England's proposed implementation date for mandatory clearing of USD SOFR OIS under UK law. Accordingly, the implementation date for required clearing of USD SOFR and SGD SORA OIS will be October 31, 2022.

#### *E. Removal of Rules for Swaps No Longer Offered for Clearing*

In addition to adding certain RFR OIS to the clearing requirement, these amendments modify the existing clearing requirement to reflect the cessation or loss of representativeness of

certain IBORs. For purposes of this rulemaking, all relevant LIBOR settings with the exception of overnight, one-month, three-month, six-month, and 12-month USD LIBOR, and EUR EONIA, have ceased publication or become nonrepresentative.

As discussed above, DCOs no longer offer these IBOR swaps for clearing. In addition, regulators in the United States and other jurisdictions have called on market participants to transfer their swap positions from IBORs to RFRs, with corresponding liquidity shifting, and continuing to shift, from swaps referencing these IBORs to swaps referencing RFRs. No commenter raised concerns regarding removing the requirement to clear swaps referencing IBOR rates that have ceased publication or become nonrepresentative.

For these reasons, the Commission will implement the rules removing all interest rate swaps referencing EUR EONIA, GBP LIBOR, CHF LIBOR, and JPY LIBOR as proposed. Accordingly, the implementation date for the removal of these swaps from regulation § 50.4 shall be 30 days after publication of the final rule in the **Federal Register**. If this date falls on a Saturday, Sunday, or U.S. Federal public holiday, the date will be the next available business day when markets are open in the United States.

#### *F. Removal of USD LIBOR and SGD SOR-VWAP Swap Clearing Requirement*

In the interests of international harmonization and in alignment with many commenters, the Commission will retain its existing requirement to clear swaps referencing USD LIBOR and SGD SOR-VWAP until July 1, 2023. International authorities are in the process of updating their clearing mandates to reflect the fact that USD LIBOR will cease publication or become nonrepresentative after June 30, 2023. Bank of England has indicated that existing clearing mandates will remain in place until near the time USD LIBOR ceases publication.

Remaining USD LIBOR settings will cease publication or become nonrepresentative after June 30, 2023. SGD SOR-VWAP, which relies on USD LIBOR as an input, will also cease after June 30, 2023. The Commission expects that there will be no new interest rate swaps referencing USD LIBOR entered into on or after July 1, 2023. In anticipation of USD LIBOR ceasing publication, DCOs will continue to conduct conversion events to replace all outstanding USD LIBOR swaps with USD SOFR OIS, and will cease offering clearing services for USD LIBOR swaps.

International authorities are in the process of updating their clearing

mandates to reflect the fact that USD LIBOR will cease publication or become nonrepresentative after June 30, 2023. Bank of England's recent proposal indicated support for leaving its existing clearing mandates in place until close to the time that USD LIBOR ceases publication or becomes nonrepresentative. Bank of England proposed removing its USD LIBOR interest rate swap clearing requirement "around the same time as a number of CCPs contractually convert" USD LIBOR swaps and remove these swaps from clearing eligibility.<sup>173</sup>

Last year, ESMA adopted regulatory technical standards that removed its existing USD LIBOR clearing obligation and added a requirement to clear USD SOFR OIS (seven days to three years).<sup>174</sup> ASIC has not yet proposed changes to its USD LIBOR interest rate swap clearing requirement, and has indicated it may be waiting for the finalization of changes to the Commission's part 50 interest rate swap clearing rules before doing so.<sup>175</sup>

As noted above, commenters, including AIMA, Citadel, CME, and MFA, were generally supportive of the Commission's proposal to retain USD LIBOR and SGD SOR-VWAP swap clearing requirements until July 1, 2023, while ISDA suggested March 6, 2023 or, in the alternative, the first conversion date at any registered or exempt DCO clearing USD LIBOR swaps.

Setting a specified date for the removal of the Commission's USD LIBOR (and SGD SOR-VWAP) interest rate swap clearing requirement will provide clarity to the interest rate swap market as a whole. Removing the USD LIBOR and SGD SOR-VWAP interest rate swap clearing requirement on July 1, 2023, also reflects both international coordination and input from the public. Retaining these clearing requirement rules until such time as USD LIBOR is

<sup>173</sup> Bank of England SOFR Proposal.

<sup>174</sup> In choosing to replace its USD LIBOR interest rate swap clearing requirement with a USD SOFR OIS clearing requirement, ESMA stated, "ESMA believes it is important to be consistent for the [clearing obligation] with the communication made by ESMA and other EU authorities, as well as the communications made by several other authorities in other jurisdictions and at the international level who expect entities to stop referencing LIBOR (including USD LIBOR) by the end of the year. If ESMA and other regulators' expectations are fulfilled, there should no longer be material liquidity in OTC interest rate derivatives referencing USD LIBOR from the start of next year. Therefore, the liquidity criteria of the [European Market Infrastructure Regulation] procedure would no longer be met at the end of the year. Following from this, ESMA is proposing to remove the USD LIBOR classes from the clearing obligation and the RTS has been modified accordingly." ESMA Final Report.

<sup>175</sup> ASIC Derivative Transaction Rules.

no longer available also serves to continue to mitigate systemic risk while there remains outstanding USD LIBOR swap activity. In addition, by not tying the removal of its USD LIBOR (and SGD SOR-VWAP) interest rate swap clearing requirement to any particular DCOs' conversion plans, the Commission is not signaling a preferred DCO conversion plan.

Lastly, the Commission observes that its clearing requirement for interest rate swaps referencing EUR EONIA and non-USD LIBOR has remained in place for months after the DCO conversion events for those rates, and the Commission is unaware of any market difficulties resulting from those rules remaining in place, despite U.S. market participant activity throughout global interest rate swap markets.

The Commission will continue to monitor the use of interest rate swaps referencing USD LIBOR and SGD SOR-VWAP as the IBOR transition process concludes.

#### G. Technical Changes

As a technical amendment, because the Commission is removing certain interest rate swaps from regulation § 50.4, it is also removing those same swaps from regulation § 50.26. The Commission is changing this regulation for consistency and to eliminate any confusion that might arise if different swap products are included in regulations §§ 50.4 and 50.26. Additionally, the Commission is making technical revisions related to the formatting of the table of compliance dates for required clearing of credit default swaps in regulation § 50.26.

### VII. Cost Benefit Considerations

#### A. Statutory and Regulatory Background

Amended regulation § 50.4(a) identifies certain swaps that are required to be cleared under section 2(h)(1)(A) of the CEA in addition to those required to be cleared by existing regulations §§ 50.2 and 50.4(a), and removes certain other swaps from the clearing requirement. These clearing requirement amendments are designed to update the Commission's regulations in light of the interest rate swap market's move away from use of swaps referencing IBORs to swaps referencing RFRs. Currently, most RFR OIS are being cleared voluntarily, so the amended regulation largely serves to ensure that the swap market under the Commission's jurisdiction continues to clear all RFR OIS subject to this clearing requirement determination. The continued central clearing of RFR OIS may limit the counterparty risk

associated with such swaps, thereby mitigating the possibility of such risks having a systemic impact, which might cause or exacerbate instability in the financial system. In addition, required clearing of RFR OIS would reflect the global effort to rely on benchmark rates that are less susceptible to manipulation.

This determination is consistent with one of the fundamental premises of the Dodd-Frank Act and the 2009 commitments adopted by the G20 nations: the use of central clearing can reduce systemic risk. The following discussion is a consideration of the costs and benefits of the Commission's action in this rulemaking, pursuant to the regulatory requirements discussed above.

#### B. Overview of Swap Clearing

##### 1. How Clearing Reduces Risk

When a bilateral swap is cleared, the DCO becomes the counterparty to each original swap counterparty. This arrangement mitigates counterparty risk to the extent that the DCO may be a more creditworthy counterparty than the original swap counterparties. Central clearing reduces the interconnectedness of market participants' swap positions because the DCO, an independent third party that takes no market risk, guarantees the collateralization of swap counterparties' exposures. DCOs have demonstrated resilience in the face of past market stress.

The Commission anticipates that DCOs will continue to be some of the most creditworthy swap counterparties because, among other things, they are able to monitor and manage counterparty risk effectively through (1) collection of initial and variation margin associated with outstanding swap positions; (2) marking positions to market regularly, usually multiple times per day, and issuing margin calls when the margin in a customer's account has dropped below predetermined levels that the DCO sets; (3) adjusting the amount of margin that is required to be held against swap positions in light of changing market circumstances, such as increased volatility in the underlying product; and (4) closing out swap positions if margin calls are not met within a specified period of time.

##### 2. The Clearing Requirement and Role of the Commission

With the passage of the Dodd-Frank Act, Congress gave the Commission the responsibility for determining which swaps would be required to be cleared pursuant to section 2(h)(1)(A) of the

CEA. Since 2012, there is ample evidence that the interest rate swap market has been moving toward increased use of central clearing in response to both market incentives and clearing requirements.<sup>176</sup> Now with the IBOR transition completed for most LIBOR rates and with most RFR OIS already being voluntarily cleared, as discussed further below, it is possible that the effect of this rulemaking will be limited to ensuring that market participants continue to clear the RFR OIS that are subject to this clearing requirement determination.<sup>177</sup> The Commission has determined that the costs and benefits related to the required clearing of the RFR OIS to be added under this determination are attributable, in part to (1) Congress's stated goal of reducing systemic risk by, among other things, requiring clearing of swaps; and (2) the Commission's exercise of its discretion in selecting swaps or classes of swaps to achieve those ends.

#### C. Consideration of the Costs and Benefits of the Commission's Action

##### 1. CEA Section 15(a)

Section 15(a) of the CEA requires the Commission to "consider the costs and benefits" of its actions before promulgating a regulation under the CEA or issuing certain orders.<sup>178</sup> Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness and financial integrity; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations (collectively referred to herein as the Section 15(a) Factors). Accordingly, the Commission considers the costs and benefits associated with the clearing requirement determination in light of the Section 15(a) Factors. In the sections that follow, the Commission considers: (1) The costs and benefits of required clearing for the

<sup>176</sup> Second Determination, 81 FR 71210; BIS, "Statistical release: OTC derivatives at end-December 2020," May 12, 2021, at 4, Graph 4, available at <https://www.bis.org/publ/otchy2105.pdf> (charting central clearing rates for interest rate swaps from 2012 to 2020 and noting a particularly significant rise during the 2012–2015 period). CCP12 and CME also discussed the adoption of central clearing in their RFI responses.

<sup>177</sup> It is possible that some market participants might respond to the requirement that RFR OIS be cleared by decreasing their use of such swaps, particularly if the cost of clearing increases in the future relative to the cost of not clearing. Thus, there is some uncertainty regarding how the determination will affect the quantity of swaps that are cleared.

<sup>178</sup> 7 U.S.C. 19(a).

RFR OIS to be added under this determination as well as the costs and benefits of removing certain swaps from required clearing; (2) the alternatives contemplated by the Commission and their costs and benefits; and (3) the impact of required clearing for the swaps subject to this determination and listed in amended regulation § 50.4(a) in light of the Section 15(a) Factors.

The Commission is considering these costs and benefits against a baseline of the current set of interest rates swaps subject to the clearing requirement adopted under regulation § 50.4. This determination adds specified RFR OIS to the clearing requirement and it removes certain swaps referencing IBORs from the clearing requirement.

In most cases, this will be a simultaneous exchange: as an IBOR swap is removed from the clearing requirement, an RFR swap is added. This is the case for almost all non-USD LIBOR and non-SGD SOR-VWAP interest rate swaps. (For the existing GBP SONIA OIS clearing requirement, the termination date range will be extended to include 7 days to 50 years.) However, for USD SOFR OIS and SGD SORA OIS there will be a delay in this substitution. The Commission is adopting a clearing requirement for USD SOFR and SGD SORA OIS that will be implemented on October 31, 2022, but it is not removing the requirement to clear USD LIBOR and SGD SOR-VWAP interest rate swaps until July 1, 2023. Thus, the requirement to clear USD LIBOR and SGD SOR-VWAP swaps will coexist with requirement to clear USD SOFR and SGD SORA OIS for approximately eight months. The period includes the planned DCO conversion processes.

As explained above, almost all RFR OIS that are subject to this determination are cleared voluntarily today, so the percentage of such swaps that would be cleared following implementation of this rulemaking is unlikely to increase materially. The Commission's analysis below compares amendments in this rulemaking to the clearing requirement in effect today. The costs and benefits discussed below are, for the most part, already accounted for in the market through the current industry practice of high levels of RFR OIS clearing.

The swap market functions internationally with (i) transactions that involve U.S. firms and DCOs occurring across different international jurisdictions; (ii) some entities organized outside of the United States that are, or may become, Commission registrants or registered entities; and (iii) some entities that typically operate both

within and outside the United States and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, this discussion of costs and benefits refers to the effects of the determination on all relevant swaps activity, whether based on their actual occurrence in the United States or on their connection with activities in, or effect on, commerce of the United States, pursuant to section 2(i) of the CEA.<sup>179</sup>

## 2. Costs and Benefits of Required Clearing Under the Final Rule

Market participants may incur certain costs in order to clear the RFR OIS included in this determination. For example, to the extent that there are market participants entering into RFR OIS that are not already clearing interest rate swaps voluntarily or pursuant to the Commission's prior clearing requirement determinations, such market participants may incur certain startup and ongoing costs related to developing technology and infrastructure, updating or creating new legal agreements, service provider fees, and collateralization of the cleared positions.<sup>180</sup> The costs of collateralization, on the other hand, are likely to vary depending on whether an entity is subject to capital and margin requirements for uncleared swaps,<sup>181</sup> and the differential between the cost of capital for the assets they use as

<sup>179</sup> Pursuant to section 2(i) of the CEA, activities outside of the United States are not subject to the swap provisions of the CEA, including any rules prescribed or regulations promulgated thereunder, unless those activities either "have a direct and significant connection with activities in, or effect on, commerce of the United States"; or contravene any rule or regulation established to prevent evasion of a CEA provision enacted under the Dodd-Frank Act. 7 U.S.C. 2(i).

<sup>180</sup> These per-entity costs would vary widely depending on the needs of such market participants. Costs likely would be lower for market participants who already clear interest rate swaps covered by the Commission's prior clearing requirement determinations. The opposite would be true for market participants that start clearing because of the determination. However, given the high rates of voluntary clearing, there are likely to be few, if any, new participants. In addition, these market participants may have otherwise incurred costs associated with margining their uncleared swaps with bilateral counterparties, as well as incurring other costs associated with bilateral uncleared swaps, such as startup or ongoing costs related to developing technology and infrastructure, and updating or creating new legal agreements related to their uncleared swap positions. Moreover, operational costs for these market participants would increase based on the number of different counterparties with whom they enter into uncleared swaps.

<sup>181</sup> The Commission's capital and margin requirements for uncleared swaps are codified in subpart E of part 23 of the Commission's regulations.

collateral and the returns realized on those assets.

As noted above, almost all RFR OIS subject to this determination are already cleared voluntarily, and market participants currently clearing RFR OIS already realize the benefits of clearing. The Commission believes that this determination will ensure that the percentage of RFR OIS that are cleared remains high in the future and that these benefits continue to be realized. These benefits include reduced and standardized counterparty credit risk, increased transparency, and easier swap market access for market participants who are required to clear. Together, these benefits contribute significantly to the stability and efficiency of the financial system, but they are difficult to quantify with any degree of precision.

While there may be a benefit to removing certain swaps from required clearing, such as fewer costs to market participants who no longer have to submit such swaps to clearinghouses, in this instance, the reason the Commission is removing certain swaps referencing IBORs from the clearing requirement is because they are, with limited exceptions, no longer offered for clearing. The swap rates that the Commission is removing from the clearing requirement, other than USD LIBOR and SGD SOR-VWAP, should no longer be available or used by market participants, pursuant to broad international consensus and industry progress, as described above.<sup>182</sup> Therefore, removing these swaps referencing IBORs from the clearing requirement should not impose additional costs on market participants and should result in the benefit of market and regulatory certainty. There may be no meaningful benefit to market participants from this removal because they generally cannot clear these swaps today. However, there may be benefits associated with the effort to reach broad consensus around the transition away from IBORs.

Any potential costs associated with this determination should be viewed in light of the fact that each new RFR OIS that is required to be cleared is already widely cleared voluntarily, and stands in the place of an IBOR swap that is already subject to required clearing and is being removed from required clearing under this rulemaking.<sup>183</sup>

<sup>182</sup> Regulators in the United States and internationally have called on market participants to cease new USD LIBOR activity.

<sup>183</sup> As explained in section VI, the Commission is requiring clearing of USD SOFR and SGD SORA OIS beginning on October 31, 2022. Rules removing the requirement to clear swaps referencing USD

Liquidity tied to IBORs has shifted, and will continue to shift, to RFRs as those IBORs are discontinued or become nonrepresentative. That shift has occurred, and continues to occur, as a result of numerous market events, including DCO conversions of IBOR swaps to RFR swaps, the operation of contractual fallbacks, and new use of RFRs in parallel with declining liquidity in IBOR swaps. The RFR OIS subject to this determination are already widely cleared so that the costs associated with clearing these swaps are already being incurred. In the NPRM, the Commission stated that the additional cost of compliance for market participants would be *de minimis* and invited comment on all aspects of the costs and benefits associated with this rulemaking, including the extent to which such costs are already being incurred.

### 3. Overview of Comments Received

As stated above, the Commission received 12 comment letters following publication of the NPRM, and almost all of these commenters supported the rulemaking. Some commenters specifically addressed the costs and benefits of the proposed rule. This summary of the comments is divided into categories of costs and benefits, but all commenters accounted for the fact that the Commission's rulemaking updates rather than materially expands or alters the underlying interest rate swap clearing requirement.

Commenters made several key points regarding *costs* associated with this rulemaking. ACLI stated that mandatory clearing elevates concentration of risk in CCPs and FCMs insofar as when a large FCM faces financial difficulties, then end-users clearing swaps through the FCM face elevated credit risk, and in the event of an FCM default may have difficulty porting positions on short notice. ACLI also stated that the process of negotiating new FCM arrangements, completing operational setup, and porting positions from one FCM to another takes significant time and is operationally burdensome. Finally, ACLI stated that some smaller life insurers may have difficulty finding FCMs that will take on their business at competitive costs.<sup>184</sup>

The potential costs of using FCMs identified by ACLI are not increased by this rulemaking. As ACLI acknowledges,

LIBOR and SGD SOR-VWAP will be implemented on July 1, 2023.

<sup>184</sup> ACLI stated that practical solutions to allow end-users to directly clear at CCPs do not currently exist, and there are significant operational and regulatory hurdles to their creation. This issue is beyond the scope of this rulemaking.

these potential costs are associated with central clearing as a general matter, and are applicable as much to RFR OIS as to IBOR swaps (and other types of swaps) that are required to be cleared. Additionally, ACLI did not submit data regarding the number of life insurers who might need establish a business relationship with an FCM or associated costs resulting from an RFR OIS clearing requirement.<sup>185</sup>

CCP12 stated that the overall cost of the transition to non-USD RFR IRS has already been borne by the market and so the introduction of clearing requirements for these swaps should not increase the cost of clearing. JSCC stated that JPY TONA OIS is accepted for clearing at three registered DCOs (CME, LCH, and Eurex) and one exempt DCO (JSCC), and that, therefore, replacing JPY LIBOR with JPY TONA OIS in regulation § 50.4 would not change the cost of clearing services in any regard.

Commenters made several key points regarding *benefits* associated with this rulemaking. AIMA stated that voluntary clearing is not a substitute for mandatory clearing and mandatory clearing provides an array of market improvements and benefits. These benefits include increasing the availability of client clearing offerings, consolidating liquidity, and providing clients with confidence that there will be sufficient liquidity to properly manage risk.

CCP12 stated that the benefits of central clearing and the voluntary market move towards CCP clearing of RFR swaps is consistent with the 2009 Pittsburgh G20 commitments, which supports the Commission's appropriate decision to require clearing for RFR swaps. CME stated that the benefits of central clearing include CCP risk management protections, multilateral netting, and reduced capital requirements for exposures to DCOs. CME stated that these benefits have incentivized, and will continue to incentivize, voluntary clearing ahead of any clearing requirement determination. JSCC stated that the proposal would harmonize the CFTC's interest rate swap clearing requirement with those of other jurisdictions, which would lower operational and compliance burdens for market participants active across multiple jurisdictions.

JSCC also stated that the benefits of the proposal would be significantly enhanced if the CFTC's swap customer

<sup>185</sup> As discussed more fully below, FCMs are currently being used to facilitate clearing of RFR OIS swaps for clients; therefore, the Commission anticipates that there will be no additional costs in establishing a business relationship between current clients and their FCMs.

clearing regime, which currently limits clearing to DCOs registered with the CFTC through CFTC-registered FCMs, is reviewed with an eye toward giving U.S. customers expanded access to non-U.S. swap markets cleared by non-U.S. exempt DCOs. JSCC contended that, under the current regime, these non-U.S. exempt DCOs are subject to comparable and comprehensive supervision and regulation by their home country regulators, but U.S. customers are not able to access their clearing services because registration with the CFTC would require application of the U.S. Bankruptcy Code and the relevant CFTC regulations to the local operations of non-U.S. exempt DCOs. This application of U.S. law may create legal conflicts in some jurisdictions. JSCC recommended that the Commission prioritize a review of these restrictions for U.S. customers with a view toward allowing U.S. customers to access non-U.S. swap markets.

#### a. Technology, Infrastructure, and Legal Costs

Market participants already clearing swaps may incur costs in making necessary changes to technology systems if they are not yet clearing RFR OIS. Such market participants may incur costs if they need to implement technology to connect to FCMs that will clear their transactions.<sup>186</sup> Market participants who do not currently have established clearing relationships with an FCM will have to set up and maintain such a relationship in order to clear swaps that are required to be cleared. Market participants who transact a limited number of swaps per year likely will be required to pay monthly or annual fees that FCMs charge to maintain both the relationship and outstanding swap positions belonging to the customer. In addition, the FCM is likely to pass along fees charged by the DCO for establishing and maintaining open positions.

As a general matter, it is likely that most market participants already complied with prior clearing requirements and that the incremental burdens associated with clearing any of the new RFR OIS should be minimal, especially given that these products are intended to replace already widely

<sup>186</sup> As stated in the NPRM, the Commission does not have the information necessary to determine either the costs associated with entities that need to establish relationships with one or more FCMs or the costs associated with entities that already have relationships with one or more FCMs but need to revise their agreements. The Commission requested commenters provide the necessary data where available. No commenter provided data in response to this request.

cleared swaps,<sup>187</sup> and most market participants already will have undertaken the steps necessary to move away from the use of IBOR swaps in the cleared interest rate swap market.<sup>188</sup> Any new costs, including legal costs, are likely to depend on the specific business needs of each entity and therefore would vary widely among market participants.

In the NPRM, the Commission requested comment, including any quantifiable data and analysis, on the changes that market participants would have to make to their technological and legal infrastructures in order to clear the RFR OIS subject to the proposed determination.<sup>189</sup> No commenter

<sup>187</sup> In responding to the RFI, TD Bank noted that the implementation of new clearing requirements to address the transition from IBORs to RFRs “should not materially increase costs” (but should be “forecasted appropriately to allow firms to become operationally ready”). TD Bank RFI Letter. JSCC noted that “DCOs and market participants have already incurred significant costs to transition LIBOR swaps denominated in non-USD currencies to alternative reference rates” and stated that JSCC “[does] not believe there would be any additional costs to be borne by DCOs and market participants if the CFTC includes alternative reference rates, such as TONA OIS, in the Clearing Requirement.” JSCC RFI Letter. ISDA stated that “[w]hile the changes in [the clearing requirement] will have a cost attached . . . these costs are part of the overall cost of LIBOR transition and spread across multiple jurisdictions.” ISDA RFI Letter. ISDA noted that for institutional clients, additional costs “will be incremental as opposed to something completely new and potentially prohibitive,” but also noted that “[f]or smaller less sophisticated counterparties who do not have to currently clear, [a new clearing requirement] could be a significant cost that could deter them from hedging using swaps.” *Id.* ISDA requested that the Commission “not enact a [clearing requirement] . . . in a way that increases cost, for instance by providing [a] short notice period that would require the implementation of tactical solutions to meet short deadlines.” *Id.* ACLI encouraged the Commission to “consider whether the marginal risk mitigation benefits of an expanded clearing requirement outweigh the costs of compliance” in light of uncleared swap margin rules. ACLI RFI Letter.

<sup>188</sup> *E.g.*, Tradeweb RFI Letter (“In effect, the CFTC is not expanding the existing clearing determinations, rather it will be applying the existing IBOR determinations to contracts based on the new RFRs.”); Citadel RFI Letter (“As noted above, OTC derivatives referencing SOFR are currently being cleared by DCOs in material volumes, demonstrating that the rule frameworks and operational infrastructure already exist to support a clearing requirement. Significant voluntary clearing demonstrates the confidence market participants have in the current DCO offerings.”); Eurex RFI Letter (“Eurex Clearing does not believe that adopting a clearing requirement for swaps referencing SOFR would be any hindrance to trading activity in those swaps. Any such clearing requirements for the RFRs, if adopted, were already in effect for the IBOR-based rates being replaced.”).

<sup>189</sup> The Commission further requested comment on how many market participants, if any, may have to establish new relationships with FCMs, or significantly upgrade those relationships based on the clearing requirement proposal. The Commission also requested comment regarding the fee structures of FCMs in general, and in particular as they relate to the clearing of the types of RFR OIS covered by

provided any such data. As described above, ACLI stated that small life insurers may have to establish new clearing relationships with FCMs and face other potential costs and risks of central clearing, but did not offer specific examples or data. Given that this final rulemaking constitutes an update to reflect the end of certain IBOR swaps and the market-wide shift to alternative RFR OIS, rather than an expansion of the interest rate swap clearing requirement, and in light of the high rates of voluntary clearing in the RFR OIS subject to this determination, it is unlikely that new clearing arrangements will need to be made for most, if not all, interest rate swap market participants.

#### b. Ongoing Costs Related to FCMs and Other Service Providers

In addition to costs associated with technological and legal infrastructures, market participants transacting in RFR OIS subject to the determination face ongoing costs associated with fees charged by FCMs. DCOs typically charge FCMs an initial transaction fee for each cleared interest rate swap its customers enter, as well as an annual maintenance fee for each open position. The Commission understands that customers that occasionally transact in swaps are typically required to pay a monthly or annual fee to each FCM.<sup>190</sup> Because most RFR OIS are already cleared these costs are largely being incurred by market participants.

As discussed above, it is difficult to predict precisely how the requirement to clear RFR OIS will promote the use of swap clearing, as compared to the use of clearing that would occur in the absence of the requirement. However, as presented by the data above, voluntary clearing rates are so high that the percentage of swaps that would be cleared pursuant to the rule is unlikely to increase materially. The estimated percentage of USD SOFR OIS (based on monthly notional transacted) that were cleared in April 2022 was approximately 96 percent.<sup>191</sup> Some RFR OIS will continue to be uncleared pursuant to the exceptions and exemptions

the proposed rule. No commenter provided specific feedback on these matters.

<sup>190</sup> As stated in the NPRM, the Commission does not have current information regarding such fees and requested that commenters provide the necessary data where available. No commenter provided such data.

<sup>191</sup> This estimate is based on swaps transacted after the most recent revisions to subpart C of part 50 went into effect (on or after December 30, 2020), so it captures all applicable exemptions from the swap clearing requirement.

set out in subpart C of part 50 of the Commission’s regulations.

The Commission anticipates that a similar percentage of RFR OIS subject to this determination will continue to be cleared given that subpart C of part 50 has not changed. Because the clearing percentages for non-USD RFR OIS are even higher than for USD SOFR OIS, the increase in clearing as a result of this rule also will likely be *de minimis*. Any increase in the use of clearing due to this determination would lead in most cases to an incremental increase in the transaction costs noted above. However, because most market participants already undertook the steps necessary to accommodate the clearing of swaps subject to required clearing, the Commission anticipates that the burden associated with clearing RFR OIS should be *de minimis*.

#### c. Costs Related to Collateralization of Cleared Swap Positions

Market participants that enter into RFR OIS subject to the amended rule will be required to post initial margin at a DCO. The Commission understands that the RFR OIS subject to this clearing requirement determination already are being widely cleared on a voluntary basis, and so any additional amounts of initial margin that market participants would be required to post to a DCO as a result of this determination likely would be relatively small. In reaching this view, the Commission considered situations where (1) uncleared RFR OIS may be otherwise collateralized;<sup>192</sup> (2) uncleared RFR OIS between certain swap dealers and “financial end-users” are, or will be, subject to initial and variation margin requirements under the Commission’s margin regulations for uncleared swaps;<sup>193</sup> (3) the pricing of certain uncleared swaps may account for implicit contingent liabilities and counterparty risk; (4) not all RFR OIS will necessarily be eligible for clearing if they have terms that prevent them from being cleared;<sup>194</sup> and (5) certain entities may elect an exception or exemption from the clearing requirement.<sup>195</sup>

<sup>192</sup> *E.g.*, under the terms of a credit support annex.

<sup>193</sup> Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 FR 71246 (Nov. 9, 2020). Swap dealers that are banks are subject to capital and margin rules promulgated by U.S. prudential authorities.

<sup>194</sup> For example, if such swaps do not meet the specifications set forth in revised regulation § 50.4(a).

<sup>195</sup> See subpart C of part 50 (Exceptions and Exemptions to the Clearing Requirement).

The Commission acknowledges that market participants who are not clearing voluntarily and not otherwise required to post margin or collateral may incur costs related to funding collateral once they are required to clear. The greater the funding cost relative to the rate of return on the asset used as initial margin, the greater the cost of procuring collateral.<sup>196</sup> Quantifying this cost with any precision is challenging because different entities may have different funding costs and may choose assets with different rates of return.

In the NPRM, the Commission requested comments on all aspects of quantifying the cost of funding initial margin that would be required to be posted at a DCO pursuant to the proposed rule. ACLI commented on the ability of life insurers to be able to choose how to allocate financial resources as between cleared and uncleared interest rate swaps. In ACLI's view this choice should rest with life insurers.<sup>197</sup>

ACLI did not assert or provide any evidence that life insurers are choosing to clear the RFR OIS subject to this rulemaking at a lower rate than they would if such swaps were subject to required clearing, nor that life insurers are clearing these swaps at a lower rate than they cleared swaps referencing the corresponding IBOR rates. Data presented in Table 4 above, indicates there is an overwhelming preference for clearing in the RFR OIS market. The Commission estimates that more than 94% of notional transacted each month between November 2021 and April 2022 in non-inter-affiliate trades in USD SOFR OIS has been cleared, with clearing rates for other RFR OIS subject to this rulemaking approaching 100%.

Regarding the requirement to post cash collateral, ACLI stated that posting such collateral to a clearinghouse could pose liquidity risk for life insurers if they were required to liquidate higher-yielding securities for cash. ACLI did not provide any quantifiable data in support of this comment. As ACLI acknowledged in its comment, the requirement to post cash collateral is

<sup>196</sup> Certain entities, such as pension funds and asset managers, may use as initial margin assets that they already own. In such cases, market participants would not incur funding costs in order to post initial margin.

<sup>197</sup> ACLI also stated that requirement to post cash collateral to a clearinghouse could pose liquidity risk for life insurers (e.g., those that may need to liquidate higher-yielding securities for cash), despite the benefits of a reduction in counterparty credit risk, and that the application of bilateral uncleared margin requirements decreases the risk-mitigation benefits of required clearing.

imposed by DCOs and FCMs.<sup>198</sup> To the extent some life insurers could face greater collateralization costs if required to clear RFR OIS, those costs are not imposed by this rulemaking.

As explained in prior clearing requirement determinations, the CEA directs the Commission to consider whether swaps should be required to be cleared. In 2012 and 2016, the Commission issued rules requiring the clearing of certain interest rate swaps. Additionally, in issuing its 2016 clearing requirement determination, the Commission noted specific benefits offered by central clearing over bilateral margining in terms of mitigation of systemic risk for swaps that are sufficiently standardized and meet the Commission's suitability requirements, including applicability to a wider set of counterparties and the security offered by a DCO's guaranty fund and other resources.<sup>199</sup> In this rulemaking the Commission is updating its 2012 and 2016 rules to account for the IBOR transition.<sup>200</sup>

Additionally, the Commission recognizes that the new initial margin amounts required to be posted to DCOs for cleared RFR OIS will, for entities required to post initial margin under the uncleared swap margin regulations, replace the initial margin amount that has been, or will be, required to be posted to their swap counterparties, pursuant to the uncleared swap margin regulations. The uncleared swap margin regulations require swap dealers and certain "financial end-users" to post and collect initial and variation margin for uncleared swaps, subject to various conditions and limitations.<sup>201</sup>

The Commission anticipates that initial margin required to be posted for a cleared swap to be added under this

<sup>198</sup> While Commission regulation § 39.13(g)(10) provides that DCOs may accept as initial margin certain non-cash assets, DCOs (and FCMs) may impose more stringent collateral requirements.

<sup>199</sup> See Second Determination, 81 FR 71219.

<sup>200</sup> In the NPRM, the Commission also requested comment on funding costs that market participants may face due to interest rates on bonds issued by a sovereign nation that also issues the currency in which the RFR OIS subject to the proposed determination is denominated. By way of background, CME, LCH, and Eurex accept as initial margin bonds issued by several sovereigns, and market participants may post such bonds as initial margin under this rulemaking. No commenter addressed this issue.

<sup>201</sup> See generally subpart E of part 23 of the Commission's regulations. The swap clearing requirement under part 50 of the Commission's regulations applies to a broader scope of market participants than the uncleared swap margin regulations. For example, under subpart E of part 23, a "financial end-user" that does not have "material swaps exposure" (as defined by regulation § 23.151) is not required to post initial margin, but such an entity may be subject to the swap clearing requirement. 17 CFR 23.151.

determination typically will be less than the initial margin that would be required to be posted for uncleared swaps pursuant to the uncleared swap margin regulations. Whereas the initial margin requirement for cleared swaps must be established according to a margin period of risk of at least five days,<sup>202</sup> under the uncleared swap margin regulations, the minimum initial margin requirement is set with a margin period of risk of 10 days or, under certain circumstances, less or no initial margin for inter-affiliate transactions.<sup>203</sup> Phase-in of the initial margin requirements for uncleared swaps began on September 1, 2016, and will be fully implemented by September 1, 2022. The requirement for entities subject to uncleared swap margin regulations to exchange variation margin was fully implemented on March 1, 2017.

With respect to swaps added to the clearing requirement under this determination, but not subject to the uncleared swap margin regulations, the Commission believes that the new initial margin amounts to be deposited will displace costs that are currently embedded in the prices and fees for transacting the swaps on an uncleared and uncollateralized basis, rather than add a new cost. Entering into a swap is costly for any market participant because of the default risk posed by its counterparty. When a market participant faces a DCO, the DCO accounts for that counterparty credit risk by requiring the market participant to post collateral, and the cost of capital for the collateral is part of the cost that is necessary to maintain the swap position.

When a market participant faces a swap dealer or other counterparty in an uncleared swap, however, the uncleared swap contains an implicit line of credit upon which the market participant effectively draws when its swap position is out of the money. Typically, counterparties charge for this implicit line of credit in the spread they offer on uncollateralized, uncleared swaps.<sup>204</sup> Additionally, because the counterparty credit risk that the implicit line of credit

<sup>202</sup> Commission regulation § 39.13(g)(2)(ii)(c), 17 CFR 39.13(g)(2)(ii)(c).

<sup>203</sup> Commission regulations §§ 23.154(b)(2)(i) and 23.159. See generally Margin and Capital Requirements for Covered Swap Entities, 80 FR 77840 (Nov. 3, 2015).

<sup>204</sup> It has been argued that the cash flows of an uncollateralized swap (i.e., a swap with an implicit line of credit) are over time substantially equivalent to the cash flows of a collateralized swap with an explicit line of credit. See generally Antonio S. Mello & John E. Parsons, Margins, Liquidity, and the Cost of Hedging, MIT Center for Energy and Environmental Policy Research, May 2012, available at <http://dspace.mit.edu/bitstream/handle/1721.1/70896/2012-005.pdf?sequence=1>.

creates is the same as the counterparty risk that would result from an explicit line of credit provided to the same market participant, to a first order approximation, the charge for each should be the same as well.<sup>205</sup> This means that the cost of capital for additional collateral posted as a consequence of requiring uncollateralized swaps to be cleared takes a cost that is implicit in an uncleared, uncollateralized swap and makes it explicit.<sup>206</sup> This observation applies to capital costs associated with both initial margin and variation margin.

The amended rule also may result in added operational costs for those few market participants who are not already clearing these swaps voluntarily. With uncleared swaps, under some circumstances, counterparties may agree not to collect variation margin until certain thresholds are reached thereby reducing or eliminating the need to exchange daily variation margin.<sup>207</sup> By contrast, DCOs collect and pay variation margin daily and sometimes more frequently. Increased required clearing therefore may increase certain operational costs associated with paying variation margin to the DCO.<sup>208</sup>

The amended rule may result in slight additional costs for clearing members in the form of guaranty fund contributions that are held by the DCO. However, it also could decrease guaranty fund contributions for certain clearing members. Once the determination takes effect, there may be market participants who currently trade swaps bilaterally who would have to either become clearing members of a DCO or submit such swaps for clearing through an existing clearing member. A market participant who becomes a direct clearing member must make a guaranty fund contribution, while a market participant who clears its swaps through a clearing member may pay higher fees

if the clearing member passes the costs of the guaranty fund contribution to its customers. While the addition of new clearing members and new customers for existing clearing members may result in an increase in guaranty fund requirements, it should be noted that if (1) new clearing members are not among the two clearing members used to calculate the guaranty fund and (2) any new customers trading through a clearing member do not increase the size of uncollateralized risks at either of the two clearing members used to calculate the guaranty fund, all else held constant, existing clearing members may experience a decrease in their guaranty fund requirement.

In the NPRM, the Commission requested comment regarding the total amount of additional collateral that would be posted due to required clearing of the RFR OIS covered by the proposed determination. The Commission also invited comment, and the provision of quantifiable data and analysis, regarding (1) the cost of capital and returns on capital for that collateral, (2) the effects of required clearing on the capital requirements for financial institutions, and (3) the costs and benefits associated with operational differences related to the collateralization of uncleared versus cleared swaps.

As discussed above, only ACLI raised the issue of allocation of capital as between cleared and uncleared interest rate swaps. ACLI did not provide specific data in support of its comment. Life insurers are not eligible to elect an exception or exemption from the swap clearing requirement under the section 2(h)(7)(C) of the CEA, as implemented by subpart C of part 50 of the Commission's regulations. Similarly, life insurers entering into bilateral swaps with swap dealers are considered to be financial entities for purposes of margin requirements under part 23 of the Commission's regulations.<sup>209</sup> As explained above, the potentially greater collateralization costs for life insurance companies required to clear RFR OIS flow from the requirements of individual DCOs and FCMs rather than the Commission's determination that

certain RFR OIS are required to be cleared.

Moreover, the CEA and Commission rules direct the Commission to determine which swaps are required to be cleared.<sup>210</sup> Maintaining updated rules is important, particularly where, as here, benchmarks become unavailable and liquidity shifts into swaps referencing new rates.

### 3. Benefits of Clearing

As noted above, there are significant benefits to central clearing of swaps. These benefits include reducing and standardizing counterparty credit risk, improving market transparency, and promoting access to clearing services. Specifically, there are important risk mitigation benefits of clearing RFR OIS that replace IBOR swaps (which are removed from the clearing requirement under this rulemaking). In addition, requiring the central clearing of RFR OIS promotes regulatory continuity and cross-border harmonization of clearing requirements.

The Commission believes that while the requirement to margin uncleared swaps mitigates counterparty credit risk, such risk is mitigated further for swaps that are cleared through a central counterparty. Moreover, the determination applies to a larger set of market participants than the uncleared swaps margin requirements. Thus, to the extent that the determination to add RFR OIS to the clearing requirement leads to increased clearing overall, these benefits are likely to result. As is the case for the costs noted above, it is likely that the use of clearing will not increase materially as a result of the amended rule, but implementing a clearing requirement helps ensure the benefits of the rule continue to be realized as market participants continue to clear RFR OIS.

The amended rule's requirement that certain swaps be cleared is intended to ensure that market participants face a DCO, and therefore, face a highly creditworthy counterparty. As discussed above, DCOs are some of the most creditworthy counterparties in the swap market because of the risk management tools they have available. The Commission recognizes that the beneficial value of adding RFR OIS to the clearing requirement may be lessened, in part, because the swap volumes that will be subject to a new clearing requirement are expected to be shifting from one set of swaps (IBORs) to another (RFRs) rather than a straightforward addition of new swap

<sup>205</sup> *Id.* Mello and Parsons state, “[h]edging is costly. But the real source of the cost is not the margin posted, but the underlying credit risk that motivates counterparties to demand that margin be posted.” *Id.* at 12. They also note that, “[t]o a first approximation, the cost charged for the non-margined swap must be equal to the cost of funding the margin account. This follows from the fact that the non-margined swap just includes funding of the margin account as an embedded feature of the package.” *Id.* at 15–16.

<sup>206</sup> But note that the cost may be greater for uncleared swaps as the initial margin is computed on a counterparty by counterparty basis, whereas in the clearing context, there is most likely greater opportunity for netting exposures at the DCO.

<sup>207</sup> However, part 23 regulations require the mandatory exchange of variation margin under certain circumstances. 17 CFR 23.151 and 23.153.

<sup>208</sup> However, exchange of variation margin will lower the build-up of current exposure.

<sup>209</sup> 17 CFR 23.151 (defining “financial end user”). ACLI stated that the benefits of central clearing are reduced by the requirement to margin uncleared swaps entered into with swap dealers. Central clearing provides a number of benefits over bilateral margining of uncleared swaps, including, in the case of required clearing, use of central clearing by a broad set of market participants, ensuring that market participants face a highly creditworthy counterparty, and the availability of DCO default and risk management resources and processes.

<sup>210</sup> Section 2(h) of the CEA and 17 CFR 39.5.

products to the clearing requirement.<sup>211</sup> Moreover, as noted, these benefits are already being realized for the large majority of these swaps that are cleared voluntarily.

In the NPRM, the Commission requested comment on the benefits of the proposed rule, such as the expected magnitude of such benefits and whether the rule would further international harmonization of swap clearing requirements. As explained throughout the preamble, many commenters noted the benefits of central clearing for interest rate swaps generally and the importance of international harmonization for the IBOR transition in particular.

One commenter, JSCC, stated that the benefits of the proposal would be enhanced if the Commission's swap customer clearing regime is reviewed in order to provide U.S. customers with expanded access to non-U.S. swap markets cleared by non-U.S. DCOs. JSCC stated that, under the current regime, exempt DCOs are subject to comparable and comprehensive regulation by their home country regulators, but U.S. customers are not able to access their clearing services. Currently, DCO registration is limited to registered DCOs and FCMs because registration with the CFTC requires application of the U.S. Bankruptcy Code and the relevant CFTC regulations. As explained above, because this issue is outside the scope of this rulemaking, this benefit is not applicable.

Lastly, with regard to the benefits of clearing, the current high rates of voluntary clearing for the RFR OIS subject to this rulemaking reflect the high value that market participants place on central clearing. Amending the interest rate swap clearing requirement to remove IBOR swaps and add RFR OIS will ensure the continuation of these benefits, including by shifting market activity into RFR OIS markets and away from IBOR swap markets.

#### *D. Costs and Benefits of the Amendments as Compared to Alternatives*

The final rule accounts for the market importance of the RFR OIS subject to this clearing requirement determination and the fact that these swaps already are widely cleared. The Commission believes that these interest rate swaps should be required to be cleared because they are widely used and infrastructure for clearing and risk management of these swaps already exists.

DCOs, FCMs, and market participants already have experience clearing the

swaps subject to this determination. Because of the wide use of these swaps and their importance to the market, and because these swaps are already successfully being cleared, the Commission is adding RFR OIS to the interest rate swap clearing requirement. The Commission believes that RFR OIS should be added to the swap clearing requirement after analyzing the factors under section 2(h)(2)(D) of the CEA, in order to promote consistency with its regulatory counterparts in other jurisdictions and to ensure that the benefits of required clearing accrue to the RFR OIS that replace IBOR swaps no longer offered for clearing.

The Commission considered alternative implementation scenarios for this RFR OIS clearing requirement. Specifically, the Commission considered the implementation plan for removing existing requirements to clear USD LIBOR and SGD SOR-VWAP swaps 30 days after publication of the final rule in the **Federal Register** instead of on July 1, 2023.

As discussed in section VI, the Commission modified its implementation plan in response to input from commenters. For example, rather than going into effect 30 days after the final rules are published, the requirement to clear USD SOFR OIS and SGD SORA OIS will be implemented on October 31, 2022.

In declining to delay implementation of the proposed requirement to clear USD SOFR and SGD SORA OIS until July 1, 2023, the Commission considered the alternative in light of whether there is sufficient outstanding notional and liquidity (or pricing data) to support requiring clearing of USD SOFR OIS out to 50 years, and SGD SORA OIS out to 10 years. Both the data discussed with regard to Factor I in section V above and input from commenters support the Commission's decision to require these swaps be cleared and implement the clearing requirement on October 31, 2022. Proceeding with this alternative reflects a compromise approach that harmonizes with international counterparts and incorporates feedback from market participants.

Similarly, the Commission accounted for market input when declining to adjust the implementation plan for removing the requirements to clear interest rate swaps referencing IBORs. For the reasons discussed above, removal of USD LIBOR and SGD SOR-VWAP swaps from the existing interest rate swap clearing requirement will not take place 30 days after the final rules go into effect, but will remain in place until the underlying IBOR rates upon

which the swap is based cease publication or become nonrepresentative.

Finally, the Commission considered an alternative scenario in which it did not adopt any new clearing requirement for RFR OIS. Under this alternative, the cost to the market would be an increased risk of uncleared swaps (and the associated financial stability risks) should market participants decide to clear less in the future. This cost may be significant because of the potential effect on the market-wide effort to replace IBOR swaps with RFR swaps, but may be mitigated given the current high level of clearing. The benefit of not adopting any new clearing requirements would be a savings experienced by market participants that would not be required to clear new swaps referencing an RFR and that would not otherwise find it beneficial to do so. However, given the high rate of voluntary clearing, any cost savings in the aggregate would be *de minimis*, and it is likely that many, if not most market participants entering into the RFR OIS subject to this determination find it beneficial to clear such swaps. In light of this, and in the absence of significant change in the interest rate swap markets, the Commission determined not to pursue this alternative.

#### *E. Section 15(a) Factors*

The Commission anticipates that the amendments to add certain swaps to the clearing requirement while removing others will result in a slight increase in the already high use of clearing, although it is impossible to quantify with certainty the extent of that increase.<sup>212</sup> This section discusses the expected results from an overall increase, or maintenance at high levels, in swap clearing based on factors set forth in section 15(a) of the CEA.

##### 1. Protection of Market Participants and the Public

The required clearing of the RFR OIS added under this rulemaking should ensure the reduction of counterparty risk for market participants that clear those swaps, because they will be required to face the DCO rather than another market participant that lacks the full set of risk management tools that the DCO possesses. This also should reduce uncertainty in times of market stress because, for cleared trades, market participants facing a DCO would not be concerned with the impact of such stress on the solvency of their original

<sup>212</sup> It is possible that the level of clearing overall may remain similar if the use of swaps referencing RFRs replaces the use of swaps referencing IBORs.

<sup>211</sup> As discussed in section IV.A above.

counterparty. By requiring clearing of RFR OIS, all of which are already available for clearing and predominantly cleared voluntarily, the Commission aims to further encourage a smooth transition away from IBORs. More specifically, the Commission expects that the registered DCOs currently clearing these RFR OIS will clear a slightly increased volume of swaps that they already understand and have experience managing.<sup>213</sup> Similarly, FCMs may realize slightly increased customer and transaction volume as a result of the requirement, but would not have to simultaneously learn how to operationalize clearing for the covered interest rate swaps.

In addition, uncleared swaps subject to collateral agreements can be the subject of valuation disputes, which sometimes require several months or longer to resolve. Potential future exposures can grow significantly and even beyond the amount of initial margin posted during that time, leaving one of the two counterparties exposed to counterparty credit risk. DCOs virtually eliminate valuation disputes for cleared swaps, as well as the risk that uncollateralized exposure can develop and accumulate during the time when such a dispute would have otherwise occurred, thus providing additional protection to market participants who transact in swaps that are cleared. Because most RFR OIS are cleared voluntarily, these protections are currently being widely realized by market participants. Requiring clearing under part 50 of the Commission's regulations ensures that they continue to be realized.

As noted above, while required clearing of RFR OIS may result in certain costs for market participants

<sup>213</sup> See CME RFI Letter ("CME Clearing currently accepts OIS referencing SOFR, SARON, €STR, SONIA and TONA. . . . CME Clearing is therefore already in a position to support a Clearing Requirement in relation to these swaps."); LSEG (noting RFR OIS that LCH already clears and discussing significant recent increases in liquidity in certain swaps, particularly swaps referencing JPY TONA and USD SOFR); Eurex RFI Letter ("Eurex Clearing has a well-developed rule framework, compliance process and procedures, and support infrastructure to support clearing of swaps referencing the RFRs and already offers clearing of these swaps. Eurex Clearing has leveraged and will continue to leverage this operational capacity for the clearing of swaps referencing the RFRs and has the appropriate risk management, operations, technology, and compliance capabilities in place to continue to provide for compliance with all CEA core principles for DCOs."). See also JSCC RFI Letter (noting that JSCC has been clearing JPY TONA OIS since 2014 and that because "JPY swap market liquidity has already fully transitioned from IRS referencing LIBOR to TONA OIS," there is "no concern for DCOs to accept [JPY TONA OIS] for clearing."). See also CME and JSCC comment letters.

(e.g., costs related to establishing and maintaining relationships with FCMs), the incremental burdens associated with clearing the RFR OIS subject to this determination should be *de minimis* because most market participants already will have had experience complying with prior clearing requirements, the determination effectively replaces IBORs already subject to the clearing requirement with RFR OIS, and there is existing widespread voluntary clearing of RFR OIS.

## 2. Efficiency, Competitiveness, and Financial Integrity of Swap Markets

Swap clearing, in general, reduces uncertainty regarding counterparty risk in times of market stress and promotes liquidity and efficiency during those times. Increased liquidity promotes the ability of market participants to limit losses by exiting positions effectively and efficiently when necessary in order to manage risk during a time of market stress. In addition, to the extent that positions move from facing multiple counterparties in the bilateral market to being cleared through a smaller number of clearinghouses, clearing facilitates increased netting. This reduces the amount of collateral that a party must post in margin accounts. As discussed above, in formulating this determination, the Commission considered a number of specific factors that relate to the financial integrity of the swap markets. Specifically, the Commission assessed whether the registered DCOs that clear RFR OIS have the rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear these swaps on terms that are consistent with the material terms and trading conventions on which the contract is then traded.<sup>214</sup> The Commission also considered the resources of DCOs to handle additional clearing during stressed and non-stressed market conditions, as well as the existence of reasonable legal certainty in the event of a clearing member or DCO insolvency.

Also, as discussed above, bilateral swaps create counterparty risk that may lead market participants to discriminate among potential counterparties based on their creditworthiness. Such discrimination is expensive and time consuming insofar as market participants must conduct due diligence in order to evaluate a potential counterparty's creditworthiness. Requiring certain types of swaps to be cleared reduces the number of transactions for which such due

diligence is necessary, thereby contributing to the efficiency of the swap markets.

In adopting a clearing requirement for RFR OIS, the Commission must consider the effect on competition, including appropriate fees and charges applied to clearing. There are a number of potential outcomes that may result from required clearing. Some of these outcomes may impose costs, such as if a DCO possessed market power and exercised that power in an anti-competitive manner, and some of the outcomes would be positive, such as if the clearing requirement facilitated a stronger entry opportunity for competitors.<sup>215</sup> Because most of these swaps are cleared voluntarily, these effects on efficiency, competitiveness, and financial integrity are, to a large degree, currently being realized. Requiring clearing ensures that they continue to be realized.

## 3. Price Discovery

Clearing, in general, encourages better price discovery because it eliminates the importance of counterparty creditworthiness in pricing swaps cleared through a given DCO. By making the counterparty creditworthiness of all swaps of a certain type essentially the same, prices should reflect factors related to the terms of the swap, rather than the idiosyncratic risk posed by the entities trading it. Because most of these swaps are cleared voluntarily, these effects on price discovery are currently being realized. Requiring clearing ensures that they continue to be realized.

As discussed above, CME, LCH, and Eurex obtain adequate pricing data for the interest rate swaps that they clear. Each of these DCOs establishes a rule framework for its pricing methodology and rigorously tests its pricing models to ensure that its risk management regime is as sound as possible.

## 4. Sound Risk Management Practices

If a firm enters into uncleared and uncollateralized swaps to hedge certain positions and then the counterparty to those swaps defaults unexpectedly, the firm could be left with large outstanding exposures. Even for uncleared swaps that are subject to the Commission's uncleared swap margin regulations, some counterparty credit risk remains.<sup>216</sup> As stated above, when a

<sup>215</sup> Issues related to competition also are considered in sections V and VIII.

<sup>216</sup> For example, there is a small risk of a sudden price move so large that a counterparty would be unable to post sufficient variation margin to cover

<sup>214</sup> See section V above.

swap is cleared the DCO becomes the counterparty facing each of the two original participants in the swap. This standardizes and reduces counterparty risk for each of the two original participants. To the extent that a market participant's hedges comprise swaps that are required to be cleared and would not be cleared voluntarily, the requirement enhances their risk management practices by reducing their counterparty risk.

In addition, to the extent that required clearing reduces or deters a potential increase in bilateral trading, it reduces the complexity of unwinding or transferring swap positions from large entities that default. Procedures for transfer of swap positions and mutualization of losses among DCO members are already in place, and the Commission anticipates that they are much more likely to function in a manner that enables rapid transfer of defaulted positions than legal processes that would surround the enforcement of bilateral contracts for uncleared swaps.<sup>217</sup>

Central clearing has evolved since the 2009 G20 Pittsburgh Summit, when G20 leaders committed to central clearing of all standardized swaps.<sup>218</sup> The percentage of the swap market that is centrally cleared has increased significantly, clearinghouses have expanded their offerings, and the range of banks and other financial institutions that submit swaps to clearinghouses has broadened. At the same time, the numbers of swap clearinghouses and swap clearing members has remained highly concentrated. This has created concerns about a concentration of credit and liquidity risk at clearinghouses that could have systemic implications.<sup>219</sup>

the loss, which may exceed the amount of initial margin posted, and could be forced into default.

<sup>217</sup> Sound risk management practices are critical for all DCOs, especially those offering clearing for interest rate swaps given the size and interconnectedness of the global interest rate swap market. The Commission considered whether each regulation § 39.5(b) submission under review was consistent with the DCO core principles. In particular, the Commission considered the DCO submissions in light of Core Principle D, which relates to risk management. This determination also considers the effect on the mitigation of systemic risk in the interest rate swap market, as well as the protection of market participants during insolvency events at either the clearing member or DCO level.

<sup>218</sup> The G20 Leaders Statement made in Pittsburgh is available at <http://www.g20.utoronto.ca/2009/2009communiqu0925.html>.

<sup>219</sup> See Dietrich Domanski, et al., "Central clearing: Trends and current issues," BIS Quarterly Review, Dec. 2015, available at [https://www.bis.org/publ/qtrpdf/r\\_qt1512g.pdf](https://www.bis.org/publ/qtrpdf/r_qt1512g.pdf); U.S. Department of the Treasury, Office of Financial Research, Financial Stability Report, at 35 (Nov. 2018), available at <https://www.federalreserve.gov/publications/files/financial-stability-report-201811.pdf>; Umar

However, the Commission believes that DCOs are capable of risk managing the swaps that are the subject of this determination. Moreover, because most of the RFR OIS to be added to the clearing requirement are already cleared voluntarily, the Commission anticipates that the extent to which this determination will increase the credit risk and liquidity risk that is concentrated at DCOs will be relatively small.

The Commission requested comment on the extent to which the determination would increase the credit risk and liquidity risk that is concentrated at DCOs. As discussed above, ACLI raised concerns about concentrating credit and liquidity risk in DCOs. Other commenters, including CCP12 and two DCOs, responded to questions and provided an explanation to account for such concerns.<sup>220</sup> The Commission believes that this clearing requirement determinations fully accounts for those issues.

#### 5. Other Public Interest Considerations

In September 2009, the President and other leaders of the G20 nations met in Pittsburgh and committed to a program of action that includes, among other things, central clearing of all standardized swaps.<sup>221</sup> The Commission believes that this clearing requirement determination is consistent with the G20's commitment and reflects the Commission's ongoing confidence in central clearing for swaps and other derivatives. As discussed throughout this rulemaking, central clearing of derivatives by DCOs can serve the public interest in numerous ways.

### VIII. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider whether their rules have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis with respect to such impact.<sup>222</sup> This determination will not affect any small entities, as the RFA uses that term. Only eligible contract participants (ECPs) may enter into swaps, unless the swap is listed on a designated contract market (DCM),<sup>223</sup>

Faruqui, et al., "Clearing risks in OTC derivatives markets: the CCP-bank nexus," at 77–79 (2018), available at [https://www.bis.org/publ/qtrpdf/r\\_qt1812h.pdf](https://www.bis.org/publ/qtrpdf/r_qt1812h.pdf).

<sup>220</sup> See section III above.

<sup>221</sup> The G20 Leaders Statement made in Pittsburgh is available at <http://www.g20.utoronto.ca/2009/2009communiqu0925.html>.

<sup>222</sup> 5 U.S.C. 601 et seq.

<sup>223</sup> Section 2(e) of the CEA, 7 U.S.C. 2(e).

and the Commission has determined that ECPs are not small entities for purposes of the RFA.<sup>224</sup> This determination affects only ECPs because all persons that are not ECPs are required to execute their swaps on a DCM, and all contracts executed on a DCM must be cleared by a DCO, as required by statute and regulation, not the operation of any clearing requirement determination. Therefore, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

#### B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)<sup>225</sup> imposes certain requirements on Federal agencies, including the Commission, in connection with conducting or sponsoring any collection of information as defined by the PRA. This rulemaking will not require a new collection of information from any persons or entities, and there are no existing information collections related to this final rule.

#### C. Antitrust Laws

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anti-competitive means of achieving the objectives of the CEA, as well as the policies and purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.<sup>226</sup> The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission did not identify any anti-competitive effects in the NPRM.<sup>227</sup> The Commission requested comment regarding its analysis about the possible anti-competitive effects of the proposal and whether there are any other specific public interests to be protected by the antitrust laws in this context.<sup>228</sup> The

<sup>224</sup> Opting Out of Segregation, 66 FR 20740 at 20743 (Apr. 25, 2001).

<sup>225</sup> 44 U.S.C. 3507(d).

<sup>226</sup> Section 15(b) of the CEA, 7 U.S.C. 15(b).

<sup>227</sup> As discussed above and in the NPRM, the Commission identified one potential anti-competitive effect; however, the Commission determined that the amendments would not have an anti-competitive effect and in fact, may result in positive market effects. See section V.C.4 and 87 FR 32924.

<sup>228</sup> NPRM, 87 FR 32933.





\* \* \* \* \*

■ 4. Effective September 23, 2022, revise § 50.26 to read as follows:

**§ 50.26 Swap clearing requirement compliance dates.**

(a) *Compliance dates for interest rate swap classes.* The compliance dates for

swaps that are required to be cleared under § 50.4(a) are specified in the following table.

TABLE 1 TO PARAGRAPH (a)

Swap asset class	Swap class subtype	Currency and floating rate index	Stated termination date range	Clearing requirement compliance date
Interest Rate Swap	Fixed-to-Floating	Euro (EUR) EURIBOR	28 days to 50 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Fixed-to-Floating	U.S. Dollar (USD) LIBOR.	28 days to 50 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Fixed-to-Floating	Australian Dollar (AUD) BBSW.	28 days to 30 years	All entities December 13, 2016.
Interest Rate Swap	Fixed-to-Floating	Canadian Dollar (CAD) CDOR.	28 days to 30 years	All entities July 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Hong Kong Dollar (HKD) HIBOR.	28 days to 10 years	All entities August 30, 2017.
Interest Rate Swap	Fixed-to-Floating	Mexican Peso (MXN) TIIE-BANXICO.	28 days to 21 years	All entities December 13, 2016.
Interest Rate Swap	Fixed-to-Floating	Norwegian Krone (NOK) NIBOR.	28 days to 10 years	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Polish Zloty (PLN) WIBOR.	28 days to 10 years	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Singapore Dollar (SGD) SOR-VWAP.	28 days to 10 years	All entities October 15, 2018.
Interest Rate Swap	Fixed-to-Floating	Swedish Krona (SEK) STIBOR.	28 days to 15 years	All entities April 10, 2017.
Interest Rate Swap	Basis	Euro (EUR) EURIBOR	28 days to 50 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Basis	U.S. Dollar (USD) LIBOR.	28 days to 50 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Basis	Australian Dollar (AUD) BBSW.	28 days to 30 years	All entities December 13, 2016.
Interest Rate Swap	Forward Rate Agreement.	Euro (EUR) EURIBOR	3 days to 3 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Forward Rate Agreement.	U.S. Dollar (USD) LIBOR.	3 days to 3 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Forward Rate Agreement.	Polish Zloty (PLN) WIBOR.	3 days to 2 years	All entities April 10, 2017.
Interest Rate Swap	Forward Rate Agreement.	Norwegian Krone (NOK) NIBOR.	3 days to 2 years	All entities April 10, 2017.
Interest Rate Swap	Forward Rate Agreement.	Swedish Krona (SEK) STIBOR.	3 days to 3 years	All entities April 10, 2017.
Interest Rate Swap	Overnight Index Swap	Euro (EUR) €STR	7 days to 3 years	All entities September 23, 2022.
Interest Rate Swap	Overnight Index Swap	Singapore Dollar (SGD) SORA.	7 days to 10 years	All entities October 31, 2022.
Interest Rate Swap	Overnight Index Swap	Sterling (GBP) SONIA	7 days to 2 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
			2 years + 1 day to 3 years.	All entities December 13, 2016.
			3 years + 1 day to 50 years.	All entities September 23, 2022.
Interest Rate Swap	Overnight Index Swap	Swiss Franc (CHF) SARON.	7 days to 30 years	All entities September 23, 2022.
Interest Rate Swap	Overnight Index Swap	U.S. Dollar (USD) FedFunds.	7 days to 2 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
			2 years + 1 day to 3 years.	All entities December 13, 2016.
Interest Rate Swap	Overnight Index Swap	U.S. Dollar (USD) SOFR.	7 days to 50 years	All entities October 31, 2022.
Interest Rate Swap	Overnight Index Swap	Australian Dollar (AUD) AONIA-OIS.	7 days to 2 years	All entities December 13, 2016.
Interest Rate Swap	Overnight Index Swap	Canadian Dollar (CAD) CORRA-OIS.	7 days to 2 years	All entities July 10, 2017.

TABLE 1 TO PARAGRAPH (a)—Continued

Swap asset class	Swap class subtype	Currency and floating rate index	Stated termination date range	Clearing requirement compliance date
Interest Rate Swap ....	Overnight Index Swap	Yen (JPY) TONA .....	7 days to 30 years .....	All entities September 23, 2022.

(b) *Compliance dates for credit default swap classes.* The compliance dates for swaps that are required to be

cleared under § 50.4(b) are specified in the following table.

TABLE 2 TO PARAGRAPH (b)

Swap asset class	Swap class subtype	Indices	Tenor	Clearing requirement compliance date
Credit Default Swap ...	North American untranch CDS indices.	CDX.NA.IG .....	3Y, 5Y, 7Y, 10Y .....	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Credit Default Swap ...	North American untranch CDS indices.	CDX.NA.HY .....	5Y .....	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Credit Default Swap ...	European untranch CSD indices.	iTraxx Europe .....	5Y, 10Y .....	Category 1 entities April 26, 2013. Category 2 entities July 25, 2013. All non-Category 2 entities October 23, 2013.
Credit Default Swap ...	European untranch CSD indices.	iTraxx Europe Cross-over.	5Y .....	Category 1 entities April 26, 2013. Category 2 entities July 25, 2013. All non-Category 2 entities October 23, 2013.
Credit Default Swap ...	European untranch CSD indices.	iTraxx Europe HiVol ...	5Y .....	Category 1 entities April 26, 2013. Category 2 entities July 25, 2013. All non-Category 2 entities October 23, 2013.

■ 5. Effective July 1, 2023, § 50.26 is further amended by revising paragraph (a) to read as follows:

**§ 50.26 Swap clearing requirement compliance dates.**

(a) *Compliance dates for interest rate swap classes.* The compliance dates for

swaps that are required to be cleared under § 50.4(a) are specified in the following table.

TABLE 1 TO PARAGRAPH (a)

Swap asset class	Swap class subtype	Currency and floating rate index	Stated termination date range	Clearing requirement compliance date
Interest Rate Swap ....	Fixed-to-Floating .....	Euro (EUR) EURIBOR	28 days to 50 years ...	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap ....	Fixed-to-Floating .....	Australian Dollar (AUD) BBSW.	28 days to 30 years ...	All entities December 13, 2016.
Interest Rate Swap ....	Fixed-to-Floating .....	Canadian Dollar (CAD) CDOR.	28 days to 30 years ...	All entities July 10, 2017.
Interest Rate Swap ....	Fixed-to-Floating .....	Hong Kong Dollar (HKD) HIBOR.	28 days to 10 years ...	All entities August 30, 2017.
Interest Rate Swap ....	Fixed-to-Floating .....	Mexican Peso (MXN) TIIE-BANXICO.	28 days to 21 years ...	All entities December 13, 2016.
Interest Rate Swap ....	Fixed-to-Floating .....	Norwegian Krone (NOK) NIBOR.	28 days to 10 years ...	All entities April 10, 2017.
Interest Rate Swap ....	Fixed-to-Floating .....	Polish Zloty (PLN) WIBOR.	28 days to 10 years ...	All entities April 10, 2017.
Interest Rate Swap ....	Fixed-to-Floating .....	Swedish Krona (SEK) STIBOR.	28 days to 15 years ...	All entities April 10, 2017.
Interest Rate Swap ....	Basis .....	Euro (EUR) EURIBOR	28 days to 50 years ...	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap ....	Basis .....	Australian Dollar (AUD) BBSW.	28 days to 30 years ...	All entities December 13, 2016.
Interest Rate Swap ....	Forward Rate Agreement.	Euro (EUR) EURIBOR	3 days to 3 years .....	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap ....	Forward Rate Agreement.	Polish Zloty (PLN) WIBOR.	3 days to 2 years .....	All entities April 10, 2017.
Interest Rate Swap ....	Forward Rate Agreement.	Norwegian Krone (NOK) NIBOR.	3 days to 2 years .....	All entities April 10, 2017.
Interest Rate Swap ....	Forward Rate Agreement.	Swedish Krona (SEK) STIBOR.	3 days to 3 years .....	All entities April 10, 2017.

TABLE 1 TO PARAGRAPH (a)—Continued

Swap asset class	Swap class subtype	Currency and floating rate index	Stated termination date range	Clearing requirement compliance date
Interest Rate Swap ....	Overnight Index Swap	Euro (EUR) €STR .....	7 days to 3 years .....	All entities September 23, 2022.
Interest Rate Swap ....	Overnight Index Swap	Singapore Dollar (SGD) SORA.	7 days to 10 years .....	All entities October 31, 2022.
Interest Rate Swap ....	Overnight Index Swap	Sterling (GBP) SONIA	7 days to 2 years .....	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013. All entities December 13, 2016.
			2 years + 1 day to 3 years.	
			3 years + 1 day to 50 years.	All entities September 23, 2022.
Interest Rate Swap ....	Overnight Index Swap	Swiss Franc (CHF) SARON.	7 days to 30 years .....	All entities September 23, 2022.
Interest Rate Swap ....	Overnight Index Swap	U.S. Dollar (USD) FedFunds.	7 days to 2 years .....	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013. All entities December 13, 2016.
			2 years + 1 day to 3 years.	
Interest Rate Swap ....	Overnight Index Swap	U.S. Dollar (USD) SOFR.	7 days to 50 years .....	All entities October 31, 2022.
Interest Rate Swap ....	Overnight Index Swap	Australian Dollar (AUD) AONIA–OIS.	7 days to 2 years .....	All entities December 13, 2016.
Interest Rate Swap ....	Overnight Index Swap	Canadian Dollar (CAD) CORRA–OIS.	7 days to 2 years .....	All entities July 10, 2017.
Interest Rate Swap ....	Overnight Index Swap	Yen (JPY) TONA .....	7 days to 30 years .....	All entities September 23, 2022.

\* \* \* \* \*

Issued in Washington, DC, on August 12, 2022, by the Commission.

**Christopher Kirkpatrick,**  
*Secretary of the Commission.*

**Note:** The following appendices will not appear in the Code of Federal Regulations.

**Appendices to 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—Commission Voting Summary and Commissioners' Statements**

**Appendix 1—Commission Voting Summary**

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, and Mersinger voted in the affirmative. Commissioner Pham concurred. No Commissioner voted in the negative.

**Appendix 2—Statement of Commissioner Kristin N. Johnson**

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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> U.S. Dollar

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

<sup>2</sup> 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).

<sup>3</sup> 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

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.<sup>4</sup> Significant notional amounts of swaps and loans also referenced U.S. Dollar LIBOR.<sup>5</sup>

**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

and Other IBORs to Alternative Reference Rates, 87 FR 32898 at 32899–32900 (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>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

demonstrated marked manipulation of the submitted rates.<sup>6</sup> 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).<sup>7</sup> 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.<sup>8</sup> 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 replacement 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.

#### **Appendix 3—Statement of Commissioner Christy Goldsmith Romero**

I support the Commission's amended clearing requirement for swaps referencing rates less susceptible to manipulation than the London Interbank Offered Rate ("LIBOR") because it promotes market integrity and supports the risk-mitigating benefits of central clearing. I thank the CFTC staff for their work on this and other efforts to support the transition away from LIBOR.

#### **Clearing Requirement**

The 2008 financial crisis revealed how over-the-counter derivatives could render market participants vulnerable to the weaknesses of their counterparties and leave the markets and regulators in the dark about risks. Pre-crisis, risks were hidden, and firms were vulnerable to interconnected and complex, bilateral transactions. This contributed to the failure of many banks and financial institutions. American households paid the price, left with the catastrophic consequences of a near meltdown of the U.S. financial system, a housing crisis, the inability to access credit, and an unprecedented government bailout.

One of the most critical reforms in the Dodd-Frank Act was a framework to channel swaps through central clearing, thereby reducing risk and increasing transparency across U.S. financial markets. The CFTC has been a global leader in driving swaps trading into centralized clearing, and coordinating with international regulators in a globally harmonized approach.

Central clearing has lived up to its promise. The markets, investors, end users, and regulators have benefited from increased visibility into swap exposures and from reduced interconnectedness and complexity.

#### **LIBOR Transition**

Reliable and sound benchmark rates promote market integrity and protect the American public. A decade ago, allegations of LIBOR manipulation led to investigations by government authorities, including the CFTC, that resulted in billions of dollars of penalties and other sanctions. These investigations revealed that a handful of dominant players profited from manipulating LIBOR and markets, including U.S. mortgage markets. Here again, American households paid the price.

Through significant coordinated efforts across the public and private sectors, great progress has been made to transition towards sounder, alternative reference rates—namely, overnight, so-called "nearly risk-free" reference rates. Today's final rule amends the CFTC's swap clearing requirement to account for the continuing shift in liquidity to these more reliable rates. Market reliance on USD LIBOR has already considerably decreased, and we have experienced significant liquidity in, and voluntary clearing of, swaps referencing the Secured Overnight Financing Rate ("SOFR"). We aim to bolster and accelerate this shift and ensure the risk-mitigating benefits of clearing continue

to be realized in the evolving interest-rate swaps markets.

The final rule also reflects the CFTC's longstanding priority of harmonizing with international regulators. The certainty of the CFTC's timeline for adding interest rate swaps referencing USD SOFR to its clearing requirement, and for removing interest rate swaps referencing USD LIBOR, should assist international regulators who are also revising clearing requirements for these swaps.

Given the global nature of financial markets, international coordination is necessary in order for the LIBOR transition to be successful. International coordination will also help to ensure that central clearing remains a cornerstone of post-crisis financial reforms.

#### **Appendix 4—Concurring Statement of Commissioner Caroline D. Pham**

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.<sup>1</sup> 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

<sup>1</sup> Section 2(h)(1)(A) of the CEA, 7 U.S.C. 2(h)(1)(A).

<sup>6</sup> 87 FR 32899–32900.

<sup>7</sup> *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>.

<sup>8</sup> 87 FR 32899–32901.

authorities or Singaporean authorities, respectively, adopt their own swap clearing requirements for those swaps.<sup>2</sup>

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.<sup>3</sup> This

<sup>2</sup> Cf. Comment No. 69489, Ulrich Karl, International Swaps and Derivatives Association, Inc. (June 30, 2022).

<sup>3</sup> 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->

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

*clearing-obligation-modifications-reflect-usd-interest-rate-benchmark-reform-amendment.*

exist.”<sup>4</sup> 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.<sup>5</sup> We should consider these issues further as appropriate.

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<sup>4</sup> Comment No. 69489, Ulrich Karl, International Swaps and Derivatives Association, Inc. (June 30, 2022).

<sup>5</sup> See Notice of Final Rulemaking, Section III.C.