EC135T2, EC135T2+, and EC135T3 helicopters, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2021–0149, dated July 5, 2021 (EASA 2021–0149).

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2510, Flight Compartment Equipment.

(e) Unsafe Condition

This AD was prompted by a report of restricted collective lever movement. Subsequent inspection determined that the emergency flashlight was stuck under that lever caused by entanglement of the emergency flashlight strap with the cargo hook emergency release lever, causing the emergency flashlight to leave its seat. The FAA is issuing this AD to address entanglement of the emergency flashlight strap with the cargo hook emergency release lever. The unsafe condition, if not addressed, could result in reduced control of the helicopter, resulting in damage to the helicopter and injury to occupants.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0149.

(h) Exceptions to EASA AD 2021–0149

(1) Where EASA AD 2021–0149 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0149.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For EASA AD 2021–0149, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1012.

(2) For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L'Enfant Plaza SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

Issued on November 16, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–25396 Filed 11–22–21; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 50

RIN 3038–AF18

Swap Clearing Requirement To Account for the Transition From LIBOR and Other IBORs to Alternative Reference Rates

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for information and comment.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is seeking information and public comment on how the Commission could amend its swap clearing requirement to address the cessation of certain interbank offered rates (IBORs) (*e.g.,* the London Interbank Offered Rate (LIBOR)) used as benchmark reference rates and the market adoption of alternative reference rates; namely, overnight, nearly risk-free reference rates (RFRs). The Commission is requesting input from market participants and all interested members of the public on aspects of the Commission's swap clearing requirement that may be affected by the transition from certain IBORs to alternative reference rates.

DATES: Comments must be received on or before January 24, 2022.

ADDRESSES: You may submit comments, identified by RIN 3038–AF18, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations. The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language.

FOR FURTHER INFORMATION CONTACT: Sarah E. Josephson, Deputy Director, at 202–418–5684 or *sjosephson@cftc.gov;* Melissa D'Arcy, Special Counsel, at 202–418–5086 or *mdarcy@cftc.gov;* or Daniel O'Connell, Special Counsel, at 202–418–5583 or *doconnell@cftc.gov;* each in the Division of Clearing and Risk at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

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I. Background

A. The Commission's Swap Clearing Requirement

Over a decade has passed since the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] established a comprehensive new regulatory framework for swaps. Title VII of the Dodd-Frank Act (Title VII) amended the Commodity Exchange Act (CEA) to require, among other things, that a swap be cleared through a derivatives clearing organization (DCO) that is registered under the CEA or a DCO that is exempt from registration under the CEA if the Commission has determined that the swap, or group, category, type, or class of swap, is required to be cleared, unless an exception to the clearing requirement applies.[2]

The CEA, as amended by Title VII, provides two avenues for the Commission to issue a clearing requirement determination. First, under Section 2(h)(2)(A) of the CEA, the Commission may issue a clearing requirement determination based on a Commission-initiated review of a swap.[3] Second, under Section 2(h)(2)(B) of the CEA, the Commission may issue a clearing requirement determination based on a swap submission from a DCO.[4]

The Commission has issued two clearing requirement determinations. The first clearing requirement determination (First Determination) was adopted in 2012 and covered certain credit default swap indexes, and interest rate swaps in four currencies and in four classes: (1) Fixed-to-floating swaps; (2) basis swaps; (3) forward rate agreements (FRAs); and (4) overnight index swaps (OIS).[5] The four classes of interest rate swaps required to be cleared, along with their specifications, discussed below, are set forth in Commission regulation 50.4 (Clearing Requirement).[6] The second clearing requirement determination (Second Determination) was adopted in 2016 and covered interest rate swaps in nine additional currencies.[7]

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 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.[8] The Commission considered each factor in making both clearing requirement determinations.

The Commission has explained in prior clearing requirement determinations that while there exists a wide degree of variability in contract specifications for interest rate swaps,[9] there also exist certain conventions and specifications that DCOs and market participants commonly use, and which allow classes of swaps, and primary specifications within each class, to be identified.[10] The Commission has adopted clearing requirement determinations for four classes of swaps based on these common conventions and specifications, and submissions from DCOs of swaps accepted for clearing. In the notice of proposed rulemaking preceding the First Determination, consistent with the factors set forth in CEA section 2(h)(2)(D)(ii), the Commission proposed to adopt a clearing requirement after concluding that each of the four swap classes being cleared had significant outstanding notional amounts and trading liquidity, and that a large percentage of each class was already being cleared.[11] The Commission reaffirmed those conclusions in the final rule.[12] The Commission also identified six specifications for the interest rate swaps that are subject to the clearing requirement: (1) The currency in which the notional and payment amounts are specified; (2) the rates referenced for each leg of the swap; (3) the stated termination date of the swap; (4) whether the swap contains optionality, as specified by the DCOs; (5) whether the swap contains dual currencies; and (6) whether the swap contains conditional notional amounts.[13] Now, as the international regulatory community and financial markets transition from IBORs to alternative reference rates, the Commission is requesting information and comment on each of the swaps currently subject to the clearing requirement, and whether the Commission should update any of its prior determinations due to the

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

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

[3] 7 U.S.C. 2(h)(2)(A). Commission regulation 39.5(c) sets forth the procedures for Commission-initiated reviews of swaps that have not been accepted for clearing by a DCO to determine whether they should be required to be cleared. 17 CFR 39.5(c).

[4] Section 2(h)(2)(B) of the CEA, 7 U.S.C. 2(h)(2)(B), and the implementing regulations in Commission regulation 39.5(b), require a DCO to submit to the Commission each swap, or any group, category, type, or class of swaps, that it plans to accept for clearing. Section 2(h)(2)(B)–(C) of the CEA describes the process by which the Commission is required to review swap submissions from DCOs to determine whether the swaps should be subject to the clearing requirement. Commission regulation 39.5(b) establishes the procedures for the submission of swaps by a DCO to the Commission for a clearing requirement determination.

[5] Clearing Requirement Determination Under Section 2(h) of the CEA; Final Rule, 77 FR 74284 (Dec. 13, 2012).

[6] 17 CFR 50.4.

[7] Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps; Final Rule, 81 FR 71202 (Oct. 14, 2016). The Commission adopted the Second Determination largely in order to further harmonize its Clearing Requirement with those of other jurisdictions, specifically: Australia, Canada, the European Union, Hong Kong, Mexico, Singapore, and Switzerland. *Id.* at 71203–05. Harmonizing the Commission's Clearing Requirement with other jurisdictions' clearing requirements serves an important anti-evasion goal. As the Commission explained, if a non-U.S. jurisdiction issued a clearing requirement and a swap dealer located in the U.S. were not subject to that non-U.S. clearing requirement, then a swap market participant in the non-U.S. jurisdiction could potentially avoid the non-U.S. clearing requirement by entering into a swap with the swap dealer located in the U.S. *Id.* at 71203.

[8] 7 U.S.C. 2(h)(2)(D)(ii).

[9] Clearing Requirement Determination Under Section 2(h) of the CEA; Notice of Proposed Rulemaking, 77 FR 47170, 47186 & n.77 (Aug. 7, 2012) (citing a Federal Reserve Bank of New York staff report that over 10,500 different combinations of significant interest rate swaps terms had been identified in a single three-month period in 2010).

[10] First Determination, 77 FR 74301.

[11] 77 FR 47194–96 (discussing data from the Bank of International Settlements, TriOptima, the G14 Dealers to the OTC Derivatives Supervisors Group, and LCH).

[12] First Determination, 77 FR 74307–08.

[13] *Id.* at 74302–03, 74332. The term ''conditional notional amount'' refers to a notional amount that is subject to change over the term of a swap based on a condition that the swap counterparties establish upon the execution of the swap, such that the notional amount of the swap is unknown and may change based on the occurrence of a future event. *Id.* at 74302 n.108. Additionally, the Commission believed that swaps with optionality, multiple currency swaps, and swaps with notional amounts not specified at the time of execution give rise to concerns regarding accurate pricing and consistency across contracts, and should therefore be excluded from the clearing requirement. *Id.* at 74332. The Commission also stated that, as of the time of the final rulemaking for the First Determination, no DCO was offering swaps meeting these negative specifications for clearing. *Id.*

ongoing and anticipated market-wide shift in reference rates.

The Commission's Clearing Requirement covers a number of swaps that reference IBORs: Swaps in multiple currencies in each of the fixed-to-floating swap, basis swap, and FRA class that refer to LIBOR are required to be cleared. The First Determination covered certain interest rate swaps in each of these classes referencing LIBOR in three currencies: U.S. dollars (USD), British pounds (GBP), and Japanese yen (JPY).[14] The Second Determination covered certain fixed-to-floating interest rate swaps referencing LIBOR in Swiss francs (CHF).[15]

The Commission is monitoring changes to benchmark reference rates around the world and how those changes may affect trading liquidity and clearing availability, as well as the other factors discussed above, in different interest rate swap products. Although benchmark reforms are ongoing, there have been recent updates with respect to LIBOR rates for the major currencies, including USD, GBP, JPY, and CHF, that may warrant changes to the Clearing Requirement in the near future.

B. The End of LIBOR

LIBOR is an interest rate benchmark that is 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 is among the world's most frequently referenced interest rate benchmarks and serves as a reference rate for a wide variety of derivatives and cash market products. LIBOR is calculated based on submissions from a panel of 11 to 16 contributor banks, depending on the currency, and is published on every London business day for five currencies (USD, GBP, Euro (EUR), CHF, and JPY) and seven tenors (overnight or spot next,[16] 1-week, 1-month, 2-month, 3-month, 6-month, and 12-month), resulting in 35 individual LIBOR rates. Each contributor bank submits data for all seven tenors in each currency for which it is on a panel.[17]

The announcement in 2012 of government investigations concerning alleged manipulation of LIBOR, and a decline in the volume of interbank lending transactions that LIBOR is intended to measure, have given rise to concerns regarding the integrity and reliability of LIBOR and other IBORs.[18] Notably, the Commission's enforcement actions against LIBOR manipulators helped to raise awareness about potential shortcomings in the reliability of LIBOR reports and calculations.[19]

In response to calls for reform, LIBOR was brought within the U.K. Financial Conduct Authority (FCA)'s regulatory scope and placed under IBA's administration.[20] IBA has reformed LIBOR in a number of ways, including enhancing the benchmark's oversight procedures and establishing a new calculation methodology.[21] However, regulators and global standard-setting bodies do not view these reforms as a long-term solution.

Following a public consultation by IBA launched in December 2020, on March 5, 2021,[22] the FCA announced that publication of LIBOR would not be provided by any administrator or be compelled after the final publication on Friday, December 31, 2021, for the following:[23]

(i) EUR LIBOR in all tenors;

(ii) CHF LIBOR in all tenors;

(iii) JPY LIBOR in the spot next, 1-week, 2-month, and 12-month tenors;

(iv) GBP LIBOR in the overnight, 1-week, 2-month, and 12-month tenors; and

(v) USD LIBOR in the 1-week and 2-month tenors.

The FCA further determined that GBP and JPY LIBOR in 1-month, 3-month, and 6-month tenors would no longer be representative of the underlying market and economic reality they are intended to measure after December 31, 2021, and that representativeness would not be restored. 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 1-month, 3-month, and 6-month tenors would not be representative after that date. The future of USD LIBOR in the 1-month, 3-month, and 6-month tenors is uncertain because the FCA may decide to continue to publish those tenors based on a new methodology (*i.e.,* on a synthetic basis). Following a public consultation, on September 29, 2021, the FCA confirmed that it would require LIBOR's administrator to continue publishing GBP and JPY LIBOR in the 1-, 3-, and 6-month tenors, using a synthetic methodology based on term RFRs, through 2022.[24] The Commission is monitoring these developments and will consider LIBOR's cessation in certain currencies and tenors as it evaluates potential changes to the Clearing

[14] First Determination, 77 FR 74310–11.

[15] Second Determination, 81 FR 71202.

[16] The shortest tenor for USD, GBP, and EUR LIBOR is overnight; the shortest tenor for CHF and JPY LIBOR is spot next.

[17] *See generally* ICE Benchmark Administration (IBA), LIBOR, available at *https://www.theice.com/iba/libor.* The current contributor bank panel members are expected to fulfill their roles through the end of 2021, and all but one of the current USD LIBOR bank panel members are expected to continue submissions until June 30, 2023 for the overnight, 1-month, 3-month, 6-month, and 12-month tenors. IBA, ICE LIBOR Feedback Statement on Consultation on Potential Cessation, March 5, 2021, at 4 n.2 [hereinafter ''ICE LIBOR Feedback Statement on Consultation on Potential Cessation''], available at *https://www.theice.com/publicdocs/ICE_LIBOR_feedback_statement_on_consultation_on_potential_cessation.pdf.*

[18] *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*; 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;* Alternative Reference Rates Committee, *Second Report,* Mar. 2018, at 1–3 [hereinafter ''ARRC Second Report''], available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-Second-report.*

[19] *See, e.g., In re Société Générale S.A.,* No. 18–14 (CFTC June 4, 2018) ($475 million penalty); *In re Deutsche Bank AG,* No. 15–20 (CFTC Apr. 23, 2015) ($800 million penalty); *In re The Royal Bank of Scotland plc,* No. 13–14 (CFTC Feb. 6, 2013) ($325 million penalty); *In re UBS AG,* No. 13–09 (CFTC Dec. 19, 2012) ($700 million penalty); *In re Barclays PLC,* No. 12–25 (CFTC June 27, 2012) ($200 million penalty).

[20] Previously, LIBOR was administered by the British Bankers Association.

[21] *See generally* IBA, Methodology, available at *https://www.theice.com/publicdocs/ICE_LIBOR_Methodology.pdf* (describing IBA's current LIBOR calculation methodology); 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* (recommending reforms to LIBOR). See also 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* (describing IBA's reforms to LIBOR since 2014). Among other revisions, IBA implemented changes to the way that panel banks form their LIBOR submissions by relying on a data-driven waterfall methodology.

[22] *See generally* ICE LIBOR Feedback Statement on Consultation on Potential Cessation; IBA, ICE LIBOR Consultation on Potential Cessation, Dec. 2020, available at *https://www.theice.com/publicdocs/ICE_LIBOR_Consultation_on_Potential_Cessation.pdf.*

[23] FCA, FCA Announcement on Future Cessation and Loss of Representativeness of the LIBOR Benchmarks, Mar. 5, 2021, available at *https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf.*

[24] FCA, ''Further arrangements for the orderly wind-down of LIBOR at end-2021,'' Sept. 29, 2021, available at *https://www.fca.org.uk/news/press-releases/further-arrangements-orderly-wind-down-libor-end-2021.* The FCA also proposed to permit legacy use of synthetic GBP and JPY LIBOR in all contracts except cleared derivatives, citing clearinghouses' plans to transition cleared GBP, JPY, CHF, and EUR LIBOR rates to RFR contracts at the end of 2021. Accordingly, the FCA published an additional public consultation regarding the scope of legacy contracts that will be permitted to rely on the synthetic rates. FCA, ''CP21/29: Proposed decisions on the use of LIBOR (Articles 23C and 21A BMR),'' Sept. 29, 2021, available at *https://www.fca.org.uk/publications/consultation-papers/cp21-29-proposed-decisions-libor-articles-23c-21a-bmr.* The consultation closed on October 20, 2021. *Id.*

Requirement, particularly because the LIBOR rates in four of the five LIBOR currencies serve as the floating rate in swap transactions that are currently subject to the Clearing Requirement.

Although LIBOR in particular has been a major focus for regulators, there are other interest rates that have been, or may in the future be, replaced by alternative reference rates. Additional IBORs and alternative reference rates are discussed in more detail below.

C. Identification of Alternative Reference Rates

The Commission has supported efforts in the U.S. and around the world to identify alternative reference rates to replace LIBOR and other IBORs in the event that they become non-representative.

In 2014, the Federal Reserve Board (FRB) and the Federal Reserve Bank of New York (FRBNY) convened the Alternative Reference Rates Committee (ARRC) as a body for private-market participants, alongside ex-officio banking and financial sector regulators, to identify alternatives to USD LIBOR and help ensure an orderly transition to alternative reference rates.[25] The composition of the ARRC has changed over time, and currently includes a number of financial institutions, financial industry groups, and regulators, including the CFTC, the U.S. Department of the Treasury, and the U.S. Securities and Exchange Commission.[26] On June 22, 2017, after studying several alternative reference rates and considering the input of market participants, the ARRC selected the Secured Overnight Financing Rate (SOFR) as its preferred alternative to USD LIBOR.[27] SOFR measures the cost of overnight repurchase agreement transactions collateralized by U.S. Treasury securities.[28] The FRBNY, in cooperation with the U.S. Office of Financial Research, first published SOFR on April 3, 2018,[29] and publishes the rate each New York business day at 8:00 a.m. ET.[30]

SOFR is comprised of data from several sources: (1) Tri-party repo data; (2) the Fixed Income Clearing Corporation's (FICC) General Collateral Finance Repo data; and (3) bilateral Treasury repo transactions cleared through FICC.[31] The ARRC selected SOFR as its preferred USD LIBOR alternative based on an assessment of a number of factors, including the depth of the underlying market, the robustness of the rate over time, the rate's usefulness to market participants, and consistency with IOSCO's Principles for Financial Benchmarks.[32] SOFR is based on a far deeper pool of underlying transactions than USD LIBOR. According to the ARRC, since SOFR was first published, the volume of underlying transactions has averaged over $980 billion daily, and reflects trading by a diverse group of market participants.[33] In comparison, the median daily volume of 3-month funding transactions between October 2016 and June 2017, underlying the most heavily-referenced USD LIBOR tenor, amounted to less than $1 billion.[34] The ARRC has developed a Paced Transition Plan, discussed below, to facilitate an orderly and incremental transition from USD LIBOR to SOFR.[35]

Regulators and working groups in other jurisdictions are also endeavoring to identify, develop, and implement alternative reference rates.[36] The FSB's November 2020 report *Reforming Major Interest Rate Benchmarks* highlights plans to develop alternatives for numerous other IBORs.[37] A table of

[25] *See generally* ARRC, About [hereinafter ''About the ARRC''], available at *https://www.newyorkfed.org/arrc/about. See also* ARRC, ARRC Minutes for the December 12, 2014 Organizational Meeting, available at *https://www.newyorkfed.org/medialibrary/microsites/arrc/files/2014/Dec-12-2014-ARRC-Minutes.pdf.*

[26] About the ARRC.

[27] 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. See also* ARRC, Interim Report and Consultation, May 2016, at 13, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2016/arrc-interim-report-and-consultation.pdf?la=en* (discussing other alternative reference rates that the ARRC considered).

[28] FRBNY, Statement Introducing the Treasury Repo Reference Rates, Apr. 3, 2018 [hereinafter ''Statement Introducing the Treasury Repo Reference Rates''], available at *https://www.newyorkfed.org/markets/opolicy/operating_policy_180403. See also* FRBNY, Secured Overnight Financing Rate Data [hereinafter ''SOFR Data''], available at *https://apps.newyorkfed.org/markets/autorates/SOFR#:~:text=The%20SOFR%20is%20calculated%20as,LLC%2C%20an%20affiliate%20of%20the*; FRBNY, Additional Information about the Treasury Repo Reference Rates, available at *https://www.newyorkfed.org/markets/treasury-repo-reference-rates-information.*

[29] Statement Introducing the Treasury Repo Reference Rates.

[30] SOFR Data.

[31] *Id.*

[32] ARRC Second Report at 6.

[33] ARRC, Frequently Asked Questions, Dec. 18, 2020, at 4–5, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/ARRC-faq.pdf.*

[34] ARRC Second Report at 1–3.

[35] Although SOFR is widely viewed as the primary replacement for USD LIBOR, and is preferred by the ARRC, other alternatives are available to market participants, including those who desire a benchmark with a credit risk component. One such alternative is AMERIBOR, which is administered by the American Financial Exchange (AFX) and is calculated based on actual borrowing costs between small and midsize banks that are AFX members. William Shaw, ''Libor Replacement Race Picks Up with Ameribor Swap Debut,'' Bloomberg, Dec. 3, 2020, available at *https://www.bloomberg.com/news/articles/2020-12-03/libor-replacement-race-picks-up-with-ameribor-swap-deal-debut#:~:text=The%20push%20to%20replace%20Libor,notional%20%2424%20million%20on%20Tuesday.* Another potential alternative is the ICE Bank Yield Index (IBYI), which ICE has proposed as a replacement for USD LIBOR. If implemented, IBYI would measure the average yields at which investors are willing to invest USD funds on a wholesale, senior, and unsecured basis in large, international banks over 1-month, 3-month, and 6-month periods. IBA, U.S. Dollar ICE Bank Yield Index Update, May 2020, at 3, available at *https://www.theice.com/publicdocs/Update_US_Dollar_ICE_Bank_Yield_Index_May_2020.pdf.* Unlike USD LIBOR, IBYI would be fully transaction-based. *See id.* at 3, 5–6. An additional potential alternative, Bloomberg's Short-Term Bank Yield Index (BSBY), is a credit-sensitive index which can be added to SOFR or used as a standalone benchmark. Bloomberg, ''Bloomberg Confirms Its BSBY Short-Term Credit Sensitive Index Adheres to IOSCO Principles,'' Apr. 6, 2021, available at *https://www.bloomberg.com/company/press/bloomberg-confirms-its-bsby-short-term-credit-sensitive-index-adheres-to-iosco-principles/. See also* Bloomberg, Bloomberg Short-Term Bank Yield Index, available at *https://www.bloomberg.com/professional/product/indices/bsby/#:~:text=The%20Bloomberg%20Short%2DTerm%20Bank,defines%20a%20forward%20term%20structure*; Bloomberg, Bloomberg Short-Term Bank Yield (BSBY) Index Methodology, Mar. 2021, available at *https://assets.bbhub.io/professional/sites/10/BSBY-Methodology-Document-March-30-2021.pdf.*

[36] For further discussion of the ARRC and working groups in other LIBOR currency jurisdictions and key milestones, *see generally* International Swaps and Derivatives Association, Inc. et al. (ISDA), IBOR Global Benchmark Transition Report, June 2018, at 38–47 [hereinafter ''IBOR Global Benchmark Transition Report''], available at *https://www.isda.org/2018/06/25/ibor-global-benchmark-transition-report/ibor-transition-report/. See also* Working Group on Sterling Risk-Free Reference Rates (RFRWG) Top Level Priorities—2021, Bank of England, Jan. 2021, available at *https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/rfr-working-group-roadmap.pdf*; European Central Bank, ''Working group on euro risk-free rates,'' available at *https://www.ecb.europa.eu/paym/interest_rate_benchmarks/WG_euro_risk-free_rates/html/index.en.html*; The National Working Group on CHF Reference Rates, NWG Milestones, available at *https://www.snb.ch/en/ifor/finmkt/fnmkt_benchm/id/finmkt_NWG_milestones*; Study Group on Risk-Free Reference Rates, Bank of Japan, available at *https://www.boj.or.jp/en/paym/market/sg/index.htm/*; Financial Stability Board (FSB), Reforming Major Interest Rate Benchmarks, Nov. 20, 2020, at 14–29 [hereinafter ''Reforming Major Interest Rate Benchmarks''], available at *https://www.fsb.org/2020/11/reforming-major-interest-rate-benchmarks-2020-progress-report/.*

[37] *See generally* Reforming Major Interest Rate Benchmarks at 29–43, 54–55. *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*; 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-*

Continued

those identified alternatives is included below.

ALTERNATIVE REFERENCE RATES IDENTIFIED FOR IBORS

Currency	Index	Identified alternative rate	Alternative rate administrator	Secured	Published
Australian dollar (AUD)	Bank Bill Swap Rate (BBSW).	Reserve Bank of Australia Interbank Overnight Cash Rate (AONIA).	Reserve Bank of Australia.	No	Yes.
Canadian dollar (CAD)	Canadian Dollar Offered Rate (CDOR).	Canadian Overnight Repo Rate Average (CORRA).	Bank of Canada	Yes	Yes.
CHF	LIBOR	Swiss Average Rate Overnight (SARON).	SIX Swiss Exchange	Yes	Yes.
EUR	LIBOR	Euro Short-Term Rate (€STR).	European Central Bank	No	Yes.
	Euro Overnight Index Average (EONIA)[38].	€STR	European Central Bank	No	Yes.
	Euro Interbank Offered Rate (EURIBOR).	€STR	European Central Bank	No	Yes.
GBP	LIBOR	Sterling Overnight Index Average (SONIA).	Bank of England	No	Yes.
Hong Kong dollar (HKD)	Hong Kong Interbank Offered Rate (HIBOR).	Hong Kong Dollar Overnight Index Average (HONIA).	Treasury Market Association.	No	Yes.
JPY[39]	LIBOR	Tokyo Overnight Average (TONA) Tokyo Interbank Offered Rate (TIBOR) Euroyen TIBOR.	Bank of Japan	No	Yes.
Mexican peso (MXN)	Term Interbank Equilibrium Interest Rate (TIIE).	Overnight TIIE	Banco de Mexico	Yes	Yes.
Singapore dollar (SGD)	Singapore Dollar Swap Offer Rate (SOR).	Singapore Overnight Rate Average (SORA).	Association of Banks in Singapore.	No	Yes.
	Singapore Interbank Offered Rate (SIBOR).	SORA	Association of Banks in Singapore.	No	Yes.

On July 6, 2021, the FSB published a progress report discussing the state of transition efforts and highlighting specific issues and challenges.[40] In particular, the report highlighted the need for supervisory authorities to engage in a greater degree of coordination and communication to promote awareness of the urgency and scope of the transition away from LIBOR, and called on market participants to accelerate their adoption of alternatives. The report noted that, while significant progress had been made on some fronts, such as decreasing reliance on GBP LIBOR in favor of SONIA, transition efforts had lagged in other markets. For instance, the report observed that while use of SOFR derivatives had increased, activity in USD LIBOR-based derivatives had grown over the past three years, and the share of outstanding SOFR derivatives remained small compared with USD LIBOR derivatives.[41]

As regulators and market participants in different jurisdictions work to identify alternative reference rates, the Commission anticipates that the interest rate swaps markets will evolve to incorporate those rates, with the goal of shifting all activity to the alternative reference rates before the relevant IBOR is discontinued. The Commission believes this process can occur organically, driven by market demand and DCO offerings.

D. Transition to Alternative Reference Rates

The transition to alternative reference rates in substitution for LIBOR, in particular, has been a priority for regulators and market participants following an announcement by Andrew Bailey, then-Chief Executive of the FCA, on July 27, 2017, that the FCA would not use its authority to compel or persuade LIBOR panel banks to contribute to the benchmark after 2021.[42] Bailey urged market participants to begin planning for the cessation of LIBOR and to start transitioning to the use of alternative reference rates, highlighting the work already done to identify alternative reference rates in the U.S., U.K., and other LIBOR currency

Global-Transition-Roadmap-2018.pdf; Euro Short-Term Rate (€STR), European Central Bank, 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%2Dterm%20rate,activity%20on%201%20October%202019*; Steering Committee for SOR & SIBOR Transition to SORA, Timelines to Cease Issuance of SOR and SIBOR-Linked Financial Products, Mar. 31, 2021, available at *https://abs.org.sg/docs/library/timelines-to-cease-issuance-of-sor-derivatives-and-sibor-linked-financial-products.pdf.*

[38] Under a revised calculation methodology, EONIA is calculated as a spread of 8.5 basis points over the €STR rate. EONIA is expected to be discontinued on January 3, 2022. Reforming Major Interest Rate Benchmarks at 18.

[39] Multiple alternative reference rates are being offered to succeed JPY LIBOR. *See* generally note 66, *infra*.

[40] FSB, Progress Report to the G20 on LIBOR Transition Issues, July 6, 2021, available at *https://www.fsb.org/wp-content/uploads/P060721.pdf.*

[41] *Id.* at 8–10.

[42] Andrew Bailey, "The future of Libor," July 27, 2017, available at *https://www.fca.org.uk/news/speeches/the-future-of-libor.*

jurisdictions.[43] Following Bailey's remarks, other regulatory officials, including previous Chairmen of the Commission and Commissioners, voiced support for an orderly transition from LIBOR to alternative reference rates.[44]

The transition from USD LIBOR to SOFR has been guided by the ARRC's Paced Transition Plan, which was first published in 2017 and has been adjusted over time.[45] As currently formulated, the plan calls for five steps to facilitate market-wide adoption of SOFR: (i) The establishment of infrastructure for futures and/or OIS trading in SOFR by the second half of 2018; (ii) the start of trading in futures and/or bilateral, uncleared OIS that reference SOFR by the end of 2018; (iii) the start of trading in cleared OIS that reference 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) the Chicago Mercantile Exchange, Inc. (CME)'s and LCH.Clearnet Limited (LCH)'s conversion of discounting, and PAI and price alignment amount (PAA), from EFFR to 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 SOFR derivatives markets by the end of the first half of 2021.

Although the first four steps of the ARRC's Paced Transition Plan were met on schedule,[46] in March 2021, the ARRC announced that it would not be prepared to select an administrator to publish a forward-looking term SOFR rate by the end of the first half of the year.[47] The ARRC noted that this fifth step would be contingent on the continued development of sufficient liquidity in SOFR derivatives markets and a limited scope of use for the term rate.[48] CME Group began publishing 1-, 3-, and 6-month forward-looking term SOFR benchmark rates in April 2021,[49] and in May 2021, the ARRC announced that it planned to recommend CME Group as the administrator for a forward-looking term rate, once certain market indicators were met.[50] On July 29, 2021, shortly after the introduction of the first phase of the Commission's Market Risk Advisory Committee's (MRAC) SOFR First initiative,[51] discussed below, the ARRC formally endorsed CME Group's forward-looking term SOFR rates.[52]

Since its inception, the ARRC has sought to support market-wide adoption of SOFR through the publication of guidance and recommendations for market participants, including periodic publication of transition objectives,[53] recommendations related to the use of SOFR and best practices for SOFR adoption,[54] and the identification of systems and processes likely to be affected by a transition from USD LIBOR to SOFR.[55] The ARRC has also sought regulatory guidance and relief in order to facilitate an orderly transition away from IBORs.[56]

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43 *Id.*

44 *E.g.,* Jerome Powell and J. Christopher Giancarlo, ''How to Fix Libor Pains,'' The Wall Street Journal, Aug. 3, 2017, available at *https://www.wsj.com/articles/how-to-fix-libor-pains-1501801028;* CFTC, Opening Statement of Commissioner Brian D. Quintenz before the CFTC Market Risk Advisory Committee Meeting, July 12, 2018, available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement071218;* CFTC, Remarks of Commissioner Rostin Behnam at the ISDA/SIFMA AMG Benchmark Strategies Forum 2020, New York, New York, Feb. 12, 2020, available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam14;* CFTC, Statement of Chairman Heath P. Tarbert Regarding the Transition Away from IBORs, Nov. 24, 2020 [hereinafter ''Statement of Chairman Tarbert''], *https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement112420.*

45 *See generally* ARRC, Paced Transition Plan, available at *https://www.newyorkfed.org/arrc/sofr-transition#pacedtransition.*

46 As stated above, the FRBNY began publishing SOFR on April 3, 2018. Shortly thereafter, on May 7, 2018, CME Group Inc. (CME Group) launched SOFR futures contracts in the 1- and 3-month tenors. On May 16, 2018, ISDA added a definition of SOFR for use in contracts governed by ISDA Master Agreements. On October 1, 2018, ICE Futures Europe launched 1- and 3-month SOFR futures contracts. On July 18, 2018, LCH began clearing interest rate swaps referencing SOFR, with PAI and discounting linked to EFFR. On October 9, 2018, CME began clearing interest rate swaps referencing SOFR, with PAI and discounting linked to SOFR. Most recently, on October 16, 2020, CME and LCH converted discounting and PAI/PAA from EFFR to SOFR for all outstanding cleared USD-denominated swaps. *Id.*

47 ARRC, ARRC Provides Update on Forward-Looking SOFR Term Rate, Mar. 23, 2020 [hereinafter ''ARRC Provides Update on Forward-Looking SOFR Term Rate''], available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/arrc-press-release-term-rate-for-publication.* At the time, the ARRC recommended that market participants use existing tools, such as SOFR averages and index data, instead of waiting for a term SOFR. *Id.* In May 2021, the ARRC released a set of market indicators that it would consider before recommending a forward-looking term SOFR rate. ARRC, ''ARRC Identifies Market Indicators to Support a Recommendation of a Forward-Looking SOFR Term Rate,'' May 6, 2021, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/20210506-term-rate-indicators-press-release.*

48 ARRC Provides Update on Forward-Looking SOFR Term Rate.

49 CME Group, CME Group Announces Launch of CME Term SOFR Reference Rates, Apr. 21, 2021, available at *https://www.cmegroup.com/media-room/press-releases/2021/4/21/cme_group_announceslaunchofcmetermsofrreferencerates.html.*

50 ARRC, ''ARRC Releases Update on its RFP Process for Selecting a Forward-Looking SOFR Term Rate Administrator,'' May 21, 2021, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/20210521-ARRC-Press-Release-Term-Rate-RFP.pdf.*

51 The MRAC's SOFR First initiative is not Commission action and should be viewed as a best practice.

52 ARRC, ''ARRC Formally Recommends Term SOFR,'' July 29, 2021, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Press_Release_Term_SOFR.pdf.* Prior to its endorsement of CME Group's forward-looking term SOFR rates, the ARRC released a statement of best practices supporting the use of SOFR term rates in connection with business loan activities, but not in connection with the vast majority of derivatives markets activities, with the exception of end-user facing derivatives intended to hedge cash products that reference the SOFR term rate. ARRC, ARRC Best Practice Recommendations Related to Scope of Use of the Term Rate, July 21, 2021, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Scope_of_Use.pdf.*

53 *E.g.,* ARRC, 2020 Objectives, Apr. 17, 2020, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_2020_Objectives.pdf;* ARRC, 2019 Incremental Objectives, June 6, 2019, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/ARRC_2019_Incremental_Objectives.pdf.*

54 *E.g.,* ARRC, Addendum to Recommendations for Voluntary Compensation for Swaptions Impacted by Central Counterparty Clearing Houses' Discounting Transition to SOFR, Sept. 11, 2020 available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC-swaptions-recommendations.pdf;* ARRC, Recommended Best Practices, Sept. 3, 2020, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC-Best-Practices.pdf;* ARRC, Vendor Best Practices, May 7, 2020, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC-Vendor-Recommended-Best-Practices.pdf;* ARRC, Recommendations for Interdealer Cross-Currency Swap Market Conventions, Jan. 24, 2020, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/Recommendations_for_Interdealer_Cross-Currency_Swap_Market_Conventions.pdf;* ARRC, Buy-Side Checklist for SOFR Adoption, Jan. 31, 2020, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Buy_Side_Checklist.pdf;* ARRC, Practical Implementation Checklist for SOFR Adoption, Sept. 19, 2019, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/ARRC-SOFR-Checklist-20190919.pdf.* The ARRC's resources include proposed guidance and recommended fallback language for cash market products. While many of the ARRC's recommended best practices for SOFR adoption are intended to apply to users of cash market products, some are specific to derivatives market participants. They include adherence to ISDA's Fallbacks Protocol, specific steps that dealers can take to promote liquidity in, and client access to, SOFR derivatives, and cessation of new trades in LIBOR derivatives maturing after 2021, except in limited circumstances.

55 ARRC, Internal Systems & Processes: Transition Aid for SOFR Adoption, July 8, 2020, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC-Internal-Systems-Processes-Transition-Aid.pdf.*

56 CFTC staff have addressed concerns raised by ARRC associated with the transition away from LIBOR in two separate sets of no-action letters issued in December 2019 and August 2020, including by issuing no action relief from the Clearing Requirement with respect to amendments to certain uncleared swaps. CFTC Staff Letter No. 19–28, Dec. 17, 2019, available at *https://www.cftc.gov/csl/19-28/download* as superseded by CFTC Staff Letter No. 20–25, Aug. 31, 2020, available at *https://www.cftc.gov/csl/20-25/download.*

As the end of 2021 approaches, regulators, global standard-setting bodies, and alternative reference rate working groups have increased calls for market participants to accelerate their adoption of alternative reference rates. On November 30, 2020, the FRB, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation released a joint statement encouraging banks to cease entering new contracts referencing USD LIBOR ''as soon as practicable'' and no later than December 31, 2021, in light of ''safety and soundness risks'' posed by continued use of the benchmark.[57] The statement advised market participants that new contracts entered into before December 31, 2021, should utilize a non-LIBOR reference rate, or otherwise contain ''robust fallback language that includes a clearly defined alternative reference rate after LIBOR's discontinuation.''[58] On June 2, 2021, IOSCO echoed the joint statement in its Statement on Benchmarks Transition,[59] and the FSB announced the publication of a set of documents designed to assist market participants and regulators in the transition, including a roadmap of steps for firms to take as they transition their portfolios to alternative reference rates, a white paper reviewing RFRs and term rates, and a statement encouraging regulators to set consistent expectations for the cessation of new USD LIBOR activity.[60] Additionally, on July 13, 2021, the Commission's MRAC adopted SOFR First, a phased initiative to switch interdealer trading conventions from LIBOR to SOFR in a variety of products.[61]

E. International Regulatory Developments

Under Section 752(a) of the Dodd-Frank Act, the Commission, along with the Securities and Exchange Commission and other prudential regulators, was directed to consult and coordinate with non-U.S. regulatory authorities in order to establish consistent international standards for regulating swaps.[62] The Commission complied with this directive in 2016 when it considered regulatory developments in swap clearing around the world for the Second Determination and noted that it was important to harmonize the Clearing Requirement with clearing mandates in other jurisdictions.[63] Now, as in the past, the Commission is reviewing proposals and plans by other regulators to modify clearing mandates for interest rate swaps. The Commission has long recognized the interconnectedness of the interest rate swaps market, and is working cooperatively with other jurisdictions as they consider and adopt new clearing mandates.[64]

On May 20, 2021, the Bank of England launched a public consultation regarding a proposal to modify its clearing obligation in light of the cessation of LIBOR and adoption of alternative reference rates.[65] The Bank of England proposed three key changes to its clearing obligation. First, on October 18, 2021, the requirement to clear EONIA OIS with a maturity of 7 days to 3 years would be replaced with a requirement to clear €STR OIS for the same maturity range. Second, on December 6, 2021, the requirement to clear JPY LIBOR basis and fixed-to-floating swaps would be removed.[66] Third, on December 20, 2021, the requirement to clear GBP LIBOR basis and fixed-to-floating swaps, and FRAs, would be replaced with a requirement to clear SONIA OIS with an amended maturity range of 7 days to 50 years. According to the proposal, any changes to the clearing obligation would enter into force shortly after a number of DCOs complete a contractual conversion process, discussed below. On September 29, 2021, in a final policy statement, the Bank of England announced that it would adopt these changes as

[57] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, Statement on LIBOR Transition, Nov. 30, 2020, available at *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf.*

[58] *Id.* The agencies stated that such circumstances may include ''(i) transactions executed for purposes of required participation in a central counterparty auction procedure in the case of a member default, including transactions to hedge the resulting USD LIBOR exposure; (ii) market making in support of client activity related to USD LIBOR transactions executed before January 1, 2022, (iii) transactions that reduce or hedge the bank's or any client of the bank's USD LIBOR exposure on contracts entered into before January 1, 2022; and (iv) novations of USD LIBOR transactions executed before January 1, 2022.'' *Id.* A fallback rate refers to the rate provided for use in a contract if the benchmark that the contract uses becomes unavailable or unrepresentative. ISDA, Understanding IBOR Benchmark Fallbacks, June 2, 2020, available at *https://www.isda.org/a/YZQTE/Understanding-Benchmarks-Factsheet.pdf.* Prior to ISDA's IBOR Fallbacks Supplement, discussed below, ISDA's 2006 Definitions called for the counterparty serving as the calculation agent for a swap to calculate a fallback rate based on quotations obtained by polling banks, an approach which was viewed as unsustainable in the event of a permanent cessation to a benchmark rate. *See* IBOR Global Benchmark Transition Report at 15.

[59] *See generally* IOSCO, Statement on Benchmarks Transition, June 2, 2021, available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD676.pdf. See also* ARRC, ARRC Recommends Acting Now to Slow USD LIBOR Use over the Next Six Weeks to be Well-Positioned to Meet Supervisory Guidance by Year-End, Oct. 14, 2021, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/20211013-arrc-press-release-supporting-a-smooth-exit-post-arrc* (recommending market participants take steps to curtail new use of USD LIBOR consistent with federal supervisory guidance).

[60] FSB, ''FSB issues statements to support a smooth transition away from LIBOR by end 2021,'' June 2, 2021, available at *https://www.fsb.org/2021/06/fsb-issues-statements-to-support-a-smooth-transition-away-from-libor-by-end-2021/.*

[61] 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.* The first phase of the initiative, covering USD-denominated linear swaps, began on July 26, 2021. The MRAC's SOFR First initiative mirrors a SONIA-First best practice adopted by the FCA and the Bank of England. *See* 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.* The second phase of MRAC's SOFR First initiative, covering cross-currency swaps with CHF, GBP, JPY, and USD LIBOR legs, began on September 21, 2021. *See* CFTC, SOFR First: MRAC Subcommittee Recommendation, July 13, 2021 [hereinafter ''SOFR First: MRAC Subcommittee Recommendation''], available at *https://www.cftc.gov/media/6176/MRAC_SOFRFirstSubcommitteeRecommendation071321/download.* The third phase of SOFR First, covering non-linear derivatives, launched on November 8, 2021. *See* CFTC, CFTC's Interest Rate Benchmark Reform Subcommittee Selects November 8 for SOFR First for Non-Linear Derivatives, Oct. 15, 2021, available at *https://www.cftc.gov/PressRoom/PressReleases/8449-21.* The fourth and final phase of SOFR First will cover exchange-traded derivatives. Timing for implementation of this phase remains to be determined by is expected to occur no later than December 31, 2021. *Id.*; SOFR First: MRAC Subcommittee Recommendation.

[62] Section 752 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[63] Second Determination, 81 FR 71203.

[64] *See* 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.'').

[65] 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.* The consultation closed on July 14, 2021. *Id.*

[66] The Bank of England initially proposed that the JPY LIBOR clearing obligation be removed, rather than replaced, due to uncertainty with respect to which alternative reference rate would become the market standard alternative for JPY LIBOR. While the Japanese Study Group on Risk-Free Reference Rates has identified TONA as its preferred JPY LIBOR alternative, the Japanese Bankers Association, which publishes TIBOR and Euroyen TIBOR, is considering retaining JPY TIBOR while discontinuing Euroyen TIBOR at the end of 2024. *See generally* JBA TIBOR Administration, ''Current status and outlook of JBA TIBOR (March 2021),'' Mar. 2021, available at *https://www.jbatibor./or.jp/english/about/a05337c8b9e2b22ccd2c0464bc4b2e86b76098d3.pdf.*

proposed.[67] However, citing recent announcements by Japanese authorities [68] and anticipated changes in market activity,[69] the Bank of England proposed to add TONA OIS to the scope of contracts subject to its clearing obligation. The proposal contemplates that the clearing obligation for TONA OIS would come into force on December 6, 2021, and would cover a maturity range of 7 days to 30 years.[70]

On July 9, 2021, the European Securities and Markets Authority (ESMA) published a public consultation on draft regulatory technical standards (RTS) amending ESMA's clearing and derivatives trading obligations.[71] The draft RTS proposes to eliminate the clearing obligation for (i) GBP and JPY LIBOR swaps in the basis and fixed-to-floating swap classes; (ii) GBP LIBOR swaps in the FRA class; and (iii) EONIA swaps in the OIS class.[72] It also proposes to add a clearing obligation to the OIS class for €STR and SOFR swaps (in each case, for a maturity range of 7 days to 3 years) and extend the maximum maturity range for SONIA OIS from 3 years to 50 years.[73] Once ESMA finalizes the RTS, it will be submitted to the European Commission for endorsement.[74]

II. Market Adoption of Alternative Reference Rates

A. Industry Initiatives

Consistent with calls for a broadly coordinated benchmark reform effort by the FSB Official Sector Steering Group, Financial Stability Oversight Council, and others, market participants have played a critical role in the identification, development, and adoption of alternative reference rates through leadership in and engagement with alternative reference rate working groups such as the ARRC, as well as through influencing numerous aspects of the adoption of alternative reference rates via the provision of feedback in public consultations by the ARRC, ISDA, ICE, and others.[75] Market participants also have provided much of the infrastructure needed for increased market adoption of, and trading liquidity in, derivatives referencing alternative reference rates, including providing for the offering of alternative reference rate-linked futures contracts, clearing of alternative reference rate-linked swaps, and adjusting PAI and discounting methodology to rely on alternative reference rates.

One of the most significant industry initiatives to facilitate the transition from IBORs to alternative reference rates in interest rate swaps markets has been ISDA's efforts to update its standard contract documentation to reflect ongoing benchmark reform efforts, including (i) ISDA's 2020 IBOR Fallbacks Protocol, published on October 23, 2020, and (ii) ISDA's Supplement number 70 to the 2006 ISDA Definitions, finalized on October 23, 2020 and published and effective on January 25, 2021 (IBOR Fallbacks Supplement).[76] The IBOR Fallbacks Supplement, which applies to new cleared and uncleared derivatives contracts entered into on or after January 25, 2021 that incorporate the 2006 ISDA Definitions and reference any of the IBORs to which the supplement applies, provides that contracts referencing those IBORs will fall back to adjusted versions of the RFR identified for the relevant IBOR in the event that an IBOR ceases or, in the case of LIBOR, either ceases or is deemed non-representative.[77] Concurrent with its publication of the IBOR Fallbacks Supplement, ISDA also launched an IBOR Fallbacks Protocol, which allows counterparties to uncleared derivatives transactions to bilaterally amend existing uncleared transactions to incorporate the fallbacks detailed in the Supplement, effectively allowing counterparties to apply the IBOR Fallbacks Supplement's amendments to legacy uncleared swaps entered into prior to the effective date of the IBOR Fallbacks Supplement.[78] On March 5, 2021, following the FCA's statement that all 35 LIBOR settings will either permanently cease to be published or become non-representative, ISDA released guidance explaining that its fallbacks will become effective on the date that each of the relevant settings will cease publication or become non-representative.[79] The ARRC and regulators have called for widespread adherence to ISDA's IBOR Fallbacks Protocol as an important means of minimizing potential market disruption

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[67] 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.bankof/england.co./uk/paper/2021/derivatives-clearing-obligation-modifications-to-reflect-interest-rate-benchmark-reform.*

[68] Japan's Financial Services Agency published a draft regulatory notice on September 8, 2021 requesting public comment on rules related to, among other things, the obligation to centrally clear over-the-counter derivatives transactions. Financial Services Agency Weekly Review No. 456, Sept. 16, 2021, available at: *https://www.fsa./go.jp/en/newsletter/weekly/2021/456.html.*

[69] Specifically, the Bank of England cited (i) a report from the Bank of Japan's Sub-Group for the Development of Term Reference Rates urging market participants to cease new JPY LIBOR swaps activity by the end of September 2021 and recommending that TONA become the primary replacement rate for JPY LIBOR; (ii) recommendations by liquidity providers to change quoting conventions from JPY LIBOR to TONA; and (iii) a September 8, 2021 consultation by Japan's Financial Services Agency regarding changes to its clearing obligation.

[70] Bank of England, ''Derivatives clearing obligation—introduction of contracts referencing TONA: Amendment to BTS 2015/2205,'' Sept. 29, 2021 [hereinafter ''Derivatives clearing obligation—introduction of contracts referencing TONA: Amendment to BTS 2015/2205''], available at *https://www.bankof/england.co./uk/paper/2021/derivatives-clearing-obligation-introduction-of-contracts-referencing-tona;* Bank of England, Public Register for the Clearing Obligation, available at *https://www.bankofengland./co.uk/-/media/boe/files/eu-withdrawal/clearing-obligation-public-register.pdf.* The consultation closed on October 27, 2021. Derivatives clearing obligation—introduction of contracts referencing TONA: Amendment to BTS 2015/2205.

[71] ESMA, ''Consultation Paper: On the clearing and derivative trading obligations in view of the benchmark transition,'' July 9, 2021, available at *https://www.esma./europa.eu/sites/default/files/library/consultation_paper_on_the_co_and_dto_for_swaps_referencing_rfrs.pdf.* The consultation closed on September 2, 2021. *Id.* at 8.

[72] *Id.* at 37–39.

[73] *Id.*

[74] *Id.* at 8. The RTS will become effective on the later of January 3, 2022 or 20 days after publication in the *Official Journal of the European Union. Id.* at 58–59.

[75] *See generally* ISDA, Summary of Responses to the ISDA 2020 Consultation on How to Implement Pre-Cessation Fallbacks in Derivatives, May 14, 2020, available at *https://www.isda./org/a/cuQTE/2020./05.14-Pre-cessation-Re-Consultation-Report-FINAL.pdf;* ISDA, Summary of Responses to the ISDA Consultation on Final Parameters for the Spread and Term Adjustment Methodology, Nov. 15, 2019, available at *http://assets./isda.org/media/3e16cdd2/d1b3283f.pdf;* ISDA, Anonymized Narrative Summary of Responses to the ISDA Consultation on Term Fixings and Spread Adjustment Methodology, Dec. 20, 2018, available at *http://assets./isda.org/media/04d213b6/db0b0fd7.pdf;* ARRC, ARRC Consultation on Swaptions Impacted by the CCP Discounting Transition to SOFR, Feb. 7, 2020, available at *https://www.newyorkfed.org/media/library/Microsites/arrc/files/2020/ARRC_Swaption_Consultation./pdf.*

[76] 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 [hereinafter ''IBOR Fallbacks Protocol''], available at *http://assets.isda.org/media/3062e7b4/08268161-pdf/.*

[77] The following IBORs are within the scope of the IBOR Fallbacks Supplement: GBP LIBOR, CHF LIBOR, USD LIBOR, EUR LIBOR, EURIBOR, JPY LIBOR, TIBOR, Euroyen TIBOR, BBSW, CDOR, HIBOR, SOR, and THBFIX. The IBOR Fallbacks Supplement also provides that if a specific LIBOR tenor is discontinued or declared non-representative, it is to be determined based on linear interpolation if the next longest and shortest tenor remain available. *See generally* IBOR Fallbacks Supplement. For instance, under ISDA's fallback methodology, between December 31, 2021 and June 30, 2023, the 1-week and 2-month USD LIBOR settings are to be calculated using linear interpolation.

[78] *See generally* IBOR Fallbacks Protocol.

[79] ISDA, Future Cessation and Non-Representative Guidance, Mar. 5, 2021, available at *https://www.isda.org/a/dIFTE/ISDA-Guidance-on-FCA-announcement_LIBOR-Future-Cessation-and-Non-Representativeness-April-Update.pdf.*

as a result of a LIBOR cessation.[80] As of November 2021, over 14,700 parties had adhered to ISDA's Protocol.[81]

ISDA's IBOR Fallbacks Supplement also has provided DCOs with a template to adopt, with adjustments, changes that are required to transition cleared swaps referencing IBORs to alternative reference rates, in order to ensure that the swaps can continue to be risk-managed. The FSB specifically urged providers of cleared products that reference IBORs to ensure that those products incorporate fallback provisions aligned with those in the IBOR Fallbacks Supplement.[82] Several DCOs have adopted rule amendments to facilitate the use of the alternative reference rates provided for in the IBOR Fallbacks Supplement in cleared swap contracts.[83]

B. Availability of Clearing

As the market for interest rate swaps moves away from IBORs to alternative reference rates, DCOs have started to transition their product offerings and are working to assist clearing members with the process of transferring positions. A number of DCOs have started clearing OIS in SOFR and other alternative reference rates.[84] A table with clearing availability at DCOs registered under the CEA is included below. This table does not include DCOs exempt from registration under the CEA or any other central counterparty that is not a registered DCO where additional liquidity in alternative reference rate products may exist.

ALTERNATIVE REFERENCE RATE CLEARING AVAILABILITY

Swap class	Currency	Floating rate	DCOs clearing the swaps (termination date range offered)
Basis Swaps	AUD	BBSW–AONIA	LCH (up to 31 yrs).
	CAD	CDOR–CORRA	LCH (up to 31 yrs).
	EUR	EURIBOR-€ESTR	CME (up to 51 yrs), Eurex (up to 51 yrs), LCH (up to 51 yrs).
	GBP	LIBOR–SONIA	Eurex (up to 51 yrs), LCH (up to 51 yrs).
	JPY	LIBOR–TONA	Eurex (up to 31 yrs), LCH (up to 41 yrs).
	SGD	SOR–SORA	LCH (up to 21 yrs).
	USD	LIBOR–SOFR	CME (up to 51 yrs), Eurex (up to 51 yrs), LCH (up to 51 yrs).
		Fed Funds-SOFR	CME (up to 51 yrs), Eurex (up to 51 yrs), LCH (up to 51 yrs).
Overnight Index Swaps	AUD	AONIA	CME (up to 31 yrs), LCH (up to 31 yrs).
	CAD	CORRA	CME (up to 31 yrs), LCH (up to 31 yrs).
	CHF	SARON	CME (up to 31 yrs), Eurex (up to 31 yrs), LCH (up to 31 yrs).
	EUR	€ESTR	CME (up to 51 yrs), Eurex (up to 51 yrs), LCH (up to 51 yrs).
	GBP	SONIA	CME (up to 51 yrs), Eurex (up to 51 yrs), LCH (up to 51 yrs).
	JPY	TONA	CME (up to 31 yrs), Eurex (up to 31 yrs), LCH (up to 41 yrs).
	SGD	SORA	LCH (up to 21 yrs).
	USD	SOFR	CME (up to 51 yrs), Eurex (up to 51 yrs), LCH (up to 51 yrs).

Certain DCOs have observed that market participants identified some challenges with respect to implementing ISDA's fallbacks for both cleared and uncleared contracts: (1) The bifurcation of liquidity between trading in legacy IBOR contracts that reference alternative reference rates (a pool of contracts that would become less liquid over time with increasing adoption of alternative reference rates), and "'new' OIS contracts"; and (2) significant costs related to the operational upgrades required to calculate floating rate coupons and update valuation methodologies.[85] DCOs continue to consider how to address these concerns through discussions with their clearing members and other market participants. One way that certain DCOs are attempting to mitigate these problems is to transition outstanding cleared IBOR-linked products to market standard RFR OIS through conversion events prior to the cessation of certain IBORs.

[80] *E.g.,* Statement of Chairman Tarbert; ARRC, "ARRC Urges Timely and Widespread Adherence to the Protocol," Oct. 22, 2020, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Press_Release_ISDA_Protocol.pdf;* FSB, Global Transition Roadmap for LIBOR [hereinafter "Global Transition Roadmap for LIBOR"], Oct. 16, 2020, at 2, available at *https://www.fsb.org/wp-content/uploads/P161020-1.pdf.*

[81] ISDA, List of Adhering Parties, *https://www.isda.org/protocol/isda-2020-ibor-fallbacks-protocol/adhering-parties.*

[82] Global Transition Roadmap for LIBOR at 2.

[83] ISDA's Fallbacks Supplement and changes to reference rates have prompted ISDA to undertake a comprehensive review of their interest rate swap definitions. As a result, ISDA has produced a new set of interest rate derivatives definitions that DCOs are incorporating into their rulebooks. *E.g.,* LCH, LCH Limited Self-Certification: 2021 ISDA Interest Rate Derivatives Definitions, Sept. 17, 2021, available at *https://www.lch.com/system/files/media_root/FINAL%20-%20LCH%20self%20cert_2021%20ISDA%20Defs%202021%2009%2017%20v1.pdf;* CME, CME Submission No. 21–431, CFTC Regulation 40.6(a) Certification, Amendments to CME Chapters 900 ("Interest Rate Products") and 901 ("Interest Rate Swaps Contract Terms") in Connection with the Implementation of 2021 ISDA Definitions for Over-the-Counter Interest Rate Swap Products, Sept. 17, 2021, available at *https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2021/9/21-431.pdf;* Eurex, ECAG Rule Certification 074–21, Aug. 23, 2021, available at *https://www.eurex.com/resource/blob/2754378/c6faf642c399f93edfb030274a0c79b4/data/ecag_cftc_filing_for_circular_074-21.pdf.*

[84] Eurex, EurexOTC Clear Product List, available at *https://www.eurex.com/resource/blob/227404/03073af977450b1834d84eae808c7a7e/data/ec15075e_Attach.pdf;* CME, Cleared OTC Interest Rate Swaps, available at *https://www.cmegroup.com/trading/interest-rates/cleared-otc.html#;* CME, CME OTC IRS Supported Product List, available at *https://www.cmegroup.com/trading/interest-rates/cleared-otc/files/cme-otc-irs-supported-product-list.xlsx;* LCH, What We Clear, available at *https://www.lch.com/services/swapclear/what-we-clear;* LCH, Product Specific Contract Terms and Eligibility Criteria Manual, Oct. 15, 2021, available at *https://www.lch.com/system/files/media_root/211015%20-%20Product%20Specific%20Contract%20Terms%20%28EMTA%20Template%20and%20JS%20deletions%29.pdf.*

[85] CME, Cleared Swaps Considerations for IBOR Fallback and Conversion Proposal, Jan. 14, 2021, available at *https://www.cmegroup.com/trading/interest-rates/files/cleared-swaps-considerations-for-ibor-fallbacks-and-conversion-proposal.pdf.*

For example, CME, Eurex, and LCH launched processes to replace cleared swaps contracts referencing EONIA outstanding after October 15, 2021 with a conversion to €STR.[86] EONIA will be discontinued on January 3, 2022. The European Money Markets Institute publishes EONIA and has committed to publishing the benchmark rate until January 3, 2022.[87] Nonetheless, these DCOs have conducted an early transition from cleared positions in EONIA to €STR. LCH plans to convert cleared CHF, EUR, and JPY LIBOR contracts outstanding at close of business on December 3, 2021, and cleared GBP LIBOR contracts outstanding at close of business on December 17, 2021, to standardized alternative reference rate contracts.[88] CME and Eurex plan to convert cleared CHF LIBOR, JPY LIBOR, and GBP LIBOR contracts to standardized alternative reference rate contracts on the same timeline.[89] DCOs may change these plans or decide to stop clearing other products in the lead up to the IBOR transition as well. The Commission encourages market participants to consider these changes to product offerings as they plan to transition their IBOR-linked swaps.

The Commission anticipates that DCO product offering changes (*i.e.,* discontinuing clearing for certain LIBOR products after the contract conversion date) may make the current Clearing Requirement impossible to satisfy. The Commission is monitoring the evolution of conversion plans, and potential conversion-related challenges, and seeks input from the public about this and other topics in the sections below.

C. Current Trends in Alternative Reference Rates

The effort to shift trading liquidity and outstanding notional derivatives positions from IBORs to alternative reference rates by the industry has begun, but certain currency and rate pairs have seen more activity in alternative reference rates than others. Clarus Financial Technology (CFT) submitted a response to IBA's December 2020 consultation that outlined their conclusions regarding data on global trading activity in cleared OTC derivatives and exchange-traded interest rate derivatives that reference LIBOR in each of the five LIBOR currencies.[90] CFT commented that based on its review of derivatives data: (i) Market participants have shifted derivatives activity from GBP LIBOR to SONIA positions; (ii) markets have developed to facilitate the transfer of USD LIBOR positions to SOFR, but market participants have not made significant progress transferring those positions; and (iii) there has been some progress in transferring derivatives activity from CHF and JPY LIBOR to those benchmarks' respective alternative reference rates, but progress has been slow.[91]

CFT observed that there have been low volumes of EUR LIBOR-linked derivatives historically and did not comment on the cessation of EUR LIBOR.[92] Data reported by ISDA also indicates that there has been only limited activity in EUR LIBOR-based derivatives.[93]

With respect to the USD LIBOR market, CFT observed that trading activity in USD derivatives markets has not changed materially in response to the calls to transition away from USD LIBOR. CFT stated that the although SOFR products trading doubled from 2019 to 2020, it remains at low levels. In October 2020, as market participants managed the transition from the EFFR to SOFR discounting and PAI/PAA at LCH and CME, SOFR trading activity increased.[94] CFT believes this data demonstrates that market participants are able to use SOFR derivatives to manage risks when there is demand. The decline in SOFR trading after the October 2020 discounting event shows that market participants were able to use SOFR derivatives when needed, but have not continued to use SOFR and instead have reverted to USD LIBOR. As demonstrated by the data below, trading in SOFR swaps has not approached the levels of USD LIBOR trading, in notional value or trade count, but it has increased substantially in recent weeks.

The data on GBP LIBOR swaps activity presents evidence that market participants are transitioning to SONIA derivatives. CFT attributes some of the success of the transition to the statements made by UK regulators.[95] Overall, the swaps activity in SONIA provides evidence that market participants are shifting derivatives positions in GBP to SONIA.

Levels of trading and swaps activity in CHF SARON and JPY TONA had previously not been rising rapidly year over year, but data from more recent months in 2021 have shown substantial increases in the notional value traded and number of trades alongside a significant decrease in the trading of CHF LIBOR and JPY LIBOR. Recently, CFT highlighted rapid shifts from the low levels of trading in CHF SARON and JPY TONA in March 2021, to almost 50 percent of the market risk in those currencies.[96] More detailed data related to notional value traded and trade count for certain interest rate swaps in recent weeks.

[86] *See* CME, CME Submission No. 21–413, CFTC Regulation 40.6(a) Certification, Notification Regarding Modification of Cleared Euro Overnight Index Average (''EONIA'') Overnight Index Swaps to Reference Euro Short Term Rate (''€STR'') Ahead of Scheduled Discontinuation of EONIA, Sept. 29, 2021, available at *https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2021/9/21-413.pdf;* Eurex Clearing, ECAG Rule Certification 081–21, Sept. 16, 2021 [hereinafter ''ECAG Rule Certification 081–21''], available at *https://www.eurex.com/resource/blob/2781070/61d1fccdd00bc1a06753877a5fa3f483/data/ecag_cftc_filing_for_circular_081-21.pdf;* Eurex, Eurex Clearing Circular 111/20 EurexOTC Clear: Summary of Consultation on the Transition Plan for Transactions Referencing the EONIA Benchmark, Dec. 14, 2020, available at *https://www.eurex.com/ec-en/find/circulars/clearing-circular-2373634;* LCH, LCH Limited Self-Certification: Benchmark Reform—Rates Conversion, Sept. 29, 2021, (hereinafter ''LCH Limited Self-Certification: Benchmark Reform—Rates Conversion'') available at *https://www.lch.com/system/files/media_root/FINAL%20-%20LCH%20self%20cert_Benchmark%20Reform%202021%2009%2029%20v3%20%28Clean%29.pdf.*

[87] European Money Markets Institute, About EONIA, available at *https://www.emmi-benchmarks.eu/euribor-eonia-org/about-eonia.html.*

[88] LCH Limited Self-Certification: Benchmark Reform—Rates Conversion; LCH, Supplementary Statement on LCH's Solution for Outstanding Cleared LIBOR Contracts, LCH Circular No. 4146, Mar. 18, 2021, available at *https://www.lch.com/membership/ltd-membership/ltd-member-updates/supplementary-statement-lchs-solution-outstanding.*

[89] ECAG Rule Certification 081–21; CME, CME IBOR Conversion Plan for Cleared Swaps, June 9, 2021, available at *https://www.cmegroup.com/trading/interest-rates/files/cleared-swaps-considerations-for-ibor-fallbacks-and-conversion-plan.pdf.* On September 24, 2021, CME converted LIBOR-linked basis swaps to pairs of offsetting fixed-to-floating swaps.

[90] IBA, List of Non-Confidential Responses, at 3, available at *https://www.theice.com/publicdocs/List_of_non-confidential_responses.pdf.*

[91] *Id.*

[92] *Id.* at 4.

[93] ISDA SwapsInfo, updated weekly, available at *http://isda.informz.net/z/cjUucD9taT04MzA0NjUwJnA9MSZ1PTg0MzY2NjIxNyZsaT03MDQ4MTA0OA/index.html.* ISDA SwapsInfo collects data from the Depository Trust & Clearing Corporation (DTCC) swap data repository, and in the past had included data from the Bloomberg swap data repository (BSDR LLC).

[94] IBA, List of Non-Confidential Responses, at 11, available at *https://www.theice.com/publicdocs/List_of_non-confidential_responses.pdf. See also* ARRC, Progress Report: The Transition from U.S. Dollar LIBOR, at 6, Mar. 22, 2021, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/20210322-arrc-press-release-USD-LIBOR-Transition-Progress-Report.pdf.*

[95] IBA, List of Non-Confidential Responses, at 8, available at *https://www.theice.com/publicdocs/List_of_non-confidential_responses.pdf.*

[96] CFT, RFR Trading is Now at 50% in CHF and JPY!, Sept. 15, 2021, available at *https://www.clarusft.com/rfr-trading-is-now-at-50-in-chf-and-jpy/.*

NOTIONAL VALUE OF SWAPS TRADED [97]

[Measured in U.S. dollars, billions]

Currency and floating rate	Week ending on October 22, 2021	Week ending on October 29, 2021	Week ending on November 5, 2021
USD LIBOR	1,814.4	2,065.2	1,698.0
SOFR	294.4	291.0	282.3
GBP LIBOR	88.3	31.6	164.1
SONIA	1,218.8	668.8	931.3
CHF LIBOR	6.2	3.3	1.2
SARON	9.2	11.6	14.2
JPY LIBOR	5.7	6.4	6.8
TONA	36.9	33.5	47.0
EURIBOR	785.3	805.4	1,052.4
€STR	178.6	292.0	324.1

TRADE COUNT OF SWAPS REPORTED [98]

Currency and floating rate	Week Ending on October 22, 2021	Week Ending on October 29, 2021	Week Ending on November 5, 2021
USD LIBOR	12,443	13,742	12,397
SOFR	2,935	3,093	2,805
GBP LIBOR	1,768	552	1,224
SONIA	3,201	3,557	4,002
CHF LIBOR	124	154	34
SARON	199	277	291
JPY LIBOR	541	412	250
TONA	515	586	626
EURIBOR	7,559	7,798	9,152
€STR	666	733	1,009

As discussed above, clearing in the alternative reference rates is available at more than one DCO. According to data from LCH's SwapClear service, clearing in certain alternative reference rates has increased over the past few months. Most notably, the outstanding notional amount of cleared SOFR swaps has increased substantially.

LCH SWAPCLEAR STATISTICS [99] NOTIONAL AMOUNTS OUTSTANDING AS OF MONTH-END

[Measured in U.S. dollars, billions]

Currency and floating rate	Month ending August 2021	Month ending September 2021	Month ending October 2021
USD SOFR	7,292.45	8,595.71	11,068.33
GBP SONIA	23,041.30	25,089.41	29,795.27
CHF SARON	633.74	725.71	888.89
JPY TONA	593.83	776.84	1,073.85
EUR €STR	1,959.42	2,329.71	19,075.77

Finally, Commission staff has been monitoring data reported to DTCC's swap data repository and CME's swap data repository in order to track the rate of voluntary clearing in certain RFRs. Reviewing swap transaction data from January 2021 to October 2021, the Commission staff has estimated that over 90% of the volume of fixed-to-floating swaps referencing USD SOFR, GBP SONIA, CHF SARON, JPY TONA, and EUR €STR has been cleared on a voluntary basis.[100] The Commission will continue to monitor the level of cleared and uncleared swaps activity in the alternative reference rates as the transition away from IBORs proceeds.

III. Request for Information

The Commission recognizes that information related to the transition away from IBORs is changing daily, and that the information reflected in certain statements above may have changed as of the publication of this request for information. The Commission invites commenters to provide new or updated information related to any aspect of the transition away from IBORs that may offer additional background for the Commission to consider. In addition, the Commission encourages commenters to include the assigned number of the specific request for information below in their responses in

[97] ISDA SwapsInfo, updated weekly, available at *http://isda.informz.net/z/cjUucD9taT04MzA0NjUwJnA9MSZ1PTg0MzY2NjIxNyZsaT03MDQ4MTA0OA/index.html.* ISDA SwapsInfo collects data from DTCC, and in the past had included data from BSDR LLC.

[98] ISDA SwapsInfo, updated weekly, available at *http://isda.informz.net/z/cjUucD9taT04MzA0NjUwJnA9MSZ1PTg0MzY2NjIxNyZsaT03MDQ4MTA0OA/index.html.* ISDA SwapsInfo collects data from DTCC swap data repository, and in the past had included data from BSDR LLC.

[99] LCH SwapClear reports statistics on the monthly registration volume as well as the notional amounts outstanding at the month end of swaps referencing one of the listed RFRs, updated monthly, available at *https://www.lch.com/services/swapclear/volumes/rfr-volumes.*

[100] Commission staff believes that the volume of swap activity cleared is a better measure of overall clearing rates than the number of transactions submitted for clearing. Commission staff has prepared these conservative estimates by excluding certain transactions between affiliated entities. Such affiliated entities may or may not be subject to the Clearing Requirement.

order to facilitate staff's review of information provided.

A. Swaps Subject to the Clearing Requirement

The Commission requests information related to a DCO's ability to continue clearing or offering clearing services for swaps that reference GBP LIBOR, JPY LIBOR, CHF LIBOR, and 1-week and 2-month USD LIBOR after December 31, 2021, EONIA after January 3, 2022, or in the case of remaining USD LIBOR tenors and SGD SOR–VWAP, after June 30, 2023, including but not limited to the following:

1. The Commission requests that DCOs provide, for swaps currently subject to the Clearing Requirement referencing each of GBP LIBOR, JPY LIBOR, CHF LIBOR, USD LIBOR, and SGD SOR–VWAP, in each of the fixed-to-floating swap, basis swap, FRA, and OIS classes, data for the month ending November 30, 2021 concerning: (A) The amount of notional cleared, including as a percentage of total notional cleared of all swaps; (B) total notional outstanding, including as a percentage of total notional outstanding; and (C) total number of clearing members clearing such swaps, including as a percentage of the total population of clearing members.

2. The Commission requests that DCOs provide an assessment of the DCO's ability to conduct an auction of a defaulting clearing member's positions in swaps referencing LIBOR after December 31, 2021 (not including certain USD LIBOR tenors and SGD SOR–VWAP that will continue until June 30, 2023), if the DCO has not conducted, or is not planning on conducting, a conversion event.

3. The Commission requests that DCOs provide an assessment of the DCO's ability to transfer or port to other clearing members a defaulting clearing member's positions in swaps referencing LIBOR after December 31, 2021 (not including certain USD LIBOR tenors and SGD SOR–VWAP that will continue until June 30, 2023).

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

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

B. Swaps Not Currently Subject to the Clearing Requirement

6. The Commission requests that DCOs file submissions with the Commission under Commission regulation 39.5 for any swaps that have been or may be identified as swaps that reference an alternative reference rate that are not currently subject to the Clearing Requirement and for which a DCO has not previously filed a submission under Commission regulation 39.5(b).

7. The Commission requests that DCOs provide for swaps that reference one of the alternative reference rates including, GBP SONIA, JPY TONA, CHF SARON, €STR, and USD SOFR in each of the fixed-to-floating swap, basis swap, FRA, and OIS classes, data from the quarter ending September 30, 2021 concerning: (A) The amount of notional cleared, including as a percentage of total notional cleared of all swaps; (B) total notional outstanding, including as a percentage of total notional outstanding; and (C) total number of clearing members clearing such swaps, including as a percentage of the total population of clearing members.

IV. Request for Comment

A. General Request for Comment

The Commission requests comment on all aspects of the swap clearing requirement and any related regulations that may be affected by the transition away from LIBOR and the other IBORs to alternative reference rates. The Commission seeks comments on these matters generally and commenters are encouraged to address any relevant matters that are not specifically identified in the requests for comment below. Detailed instructions on how and when to submit comments in response to this request for comment are located at the beginning of this document in the **ADDRESSES** and **DATES** sections.

In responding to this general request for comment, and the specific requests for comment below, the Commission encourages commenters to provide empirical support for their arguments and analyses. Furthermore, comments that identify and provide specific information or data that would be relevant to the Commission's considerations discussed in this request for comment would be of the greatest assistance to the Commission.

As noted above in the Commission's request for information section, the Commission recognizes that the information related to the IBOR transition is changing daily and that some of the information reflected in the statements above may have changed as of the publication of this request for comment. The Commission invites commenters to assume certain facts or information that may have changed or been released after this document was published for comment, and would appreciate comments identifying any relevant information that the Commission may have missed in its review. The Commission welcomes comments based on new or updated information when responding to the questions below. In addition, the Commission encourages commenters to include the assigned number of the specific request for comment below in their responses in order to facilitate staff's review of information provided.

B. Specific Requests for Comment

i. Current Swap Clearing Requirement-Related Questions

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

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

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

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

ii. Swap Clearing Requirements for Alternative Reference Rates

5. Are market participants concerned about access to clearing for certain swaps that reference alternative reference rates and are not currently

subject to the Clearing Requirement? If so, please explain current or anticipated barriers to clearing swaps in alternative reference rates.

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

7. Would requiring the clearing of swaps referencing SOFR or other alternative reference rates that are not currently subject to the Clearing Requirement affect the ability of a DCO to comply with the CEA's core principles for DCOs?

8. Are there specific data the Commission should consider in determining whether significant notional amount and liquidity exists in swaps referencing SOFR or other alternative reference rates that are not currently subject to the Clearing Requirement?

9. Are there specific thresholds that the Commission should apply with respect to notional amount and liquidity in determining whether swaps referencing SOFR or other alternative reference rates that are not currently subject to the Clearing Requirement should be subject to the clearing requirement?

10. Have market participants observed sufficient outstanding notional exposures and trading liquidity in swaps referencing SOFR during both stressed and non-stressed market conditions to support a clearing requirement?

11. Is there adequate pricing data for DCO risk and default management of swaps referencing SOFR? Why or why not?

12. What are the challenges that DCOs may face or have faced in accepting new SOFR swaps or swaps referencing other alternative reference rates for clearing that are not currently subject to the Clearing Requirement from a governance, rule framework, operational, resourcing, or credit support infrastructure perspective?

13. Would requiring the clearing of swaps referencing SOFR mitigate systemic risk? Please explain why or why not and provide supporting data.

14. Would requiring the clearing of swaps referencing SOFR increase risk to DCOs? If so, are DCOs capable of managing that risk? Please explain why or why not and provide supporting data.

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

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

17. Would adopting 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, create conditions that increase or facilitate an exercise of market power over clearing services by any DCO that would: (i) Adversely affect competition for clearing services and/or access to product markets for swaps referencing alternative reference rates (including conditions that would adversely affect competition for these product markets and/or increase the cost of such swaps); or (ii) increase the cost of clearing services? Please explain why or why not and provide supporting data.

18. What new information, if any, should the Commission consider as it prepares to review whether interest rate swaps linked to the alternative reference rates should be subject to a clearing requirement? Are there specific regulatory requirements that the Commission should consider when reviewing overall market conditions, such as uncleared margin requirements implemented by prudential regulators and/or the uncleared margin requirements for swap dealers and major swap participants under part 23 of the Commission's regulations?

iii. New Swap Product Documentation

19. With respect to all new swap products, including those referencing alternative reference rates, is there additional documentation that the Commission should require DCOs to submit with swap submissions beyond the documentation that Commission regulation 39.5 currently requires?

iv. Swap Clearing Requirement Specifications

20. The Commission recognizes that at this time a majority of the swaps subject to the Clearing Requirement fall within the fixed-to-floating swap class. That may change as new alternative reference rates are adopted and will be characterized as OIS or other types of swaps. Should the Commission designate any additional classes of swaps or specifications for purposes of classifying swaps under Commission regulation 50.4? Do DCOs or market participants have suggestions about how to reorganize or structure the classes of swaps subject to the clearing requirement under Commission regulation 50.4? Should the Commission include a new class covering variable notional swaps as a table under Commission regulation 50.4(a)?

v. Cost-Benefit Considerations

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

Issued in Washington, DC, on November 17, 2021, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendix To Swap Clearing Requirement Amendments To Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates—Commission Voting Summary

On this matter, Acting Chairman Behnam and Commissioner Stump voted in the affirmative. No Commissioner voted in the negative.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 418

[Docket No. SSA–2021–0006]

RIN 0960–AI55

Addressing Certain Types of Fraud Affecting Medicare Income Related Monthly Adjusted Amounts (IRMAA)

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: Certain Medicare beneficiaries may have their taxable income affected by fraudulent activity, which in turn could affect the amount