

**MEMO# 33977**

January 4, 2022

# **LIBOR Update: CFTC Staff Issues Updated No-Action Relief**

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TO: Derivatives Markets Advisory Committee

LIBOR Transition Working Group RE: LIBOR Update: CFTC Staff Issues Updated No-Action Relief

Recently, the staff of the US Commodity Futures Trading Commission issued two sets of guidance on LIBOR transition for market participants.[\[1\]](#) First, the CFTC extended the effectiveness dates and made other updates to previous no-action letters related to LIBOR transition. Second, the agency released new guidance on Part 43 and Part 45 swap reporting obligations for swaps transitioning under the ISDA LIBOR fallback provisions. We discuss these two sets of guidance in further detail below.

## **Revised No-Action Relief**

In 2020, the CFTC staff of the Divisions of Swap Dealer and Intermediary Oversight,[\[2\]](#) Market Oversight, and Clearing and Risk separately issued three no-action letters expanding previously-issued relief granted to swap dealers and other market participants transitioning from LIBOR to alternative reference rates.[\[3\]](#) The CFTC staff recently updated those three expanded no-action letters as follows:

- Letter 21-26[\[4\]](#) updates previous Letter 20-23, which generally granted relief from certain requirements applicable to swap dealers and de minimis dealers making qualifying amendments to uncleared swaps that reference an impaired reference rate, such as LIBOR.

For swaps that qualify for a user-based exception or exemption from the swap margin rules, Letter 20-23 provided relief from certain qualifying conditions to eligible end-users and corresponding interest rate swap transactions ("Covered IRS") that become subject to a qualifying amendment. In response to a request from the ARRC, Letter 21-26 updates the previous relief to state that swap dealers and their eligible end users "should use their best efforts to work toward amending the reference rate provisions in both Covered IRS documentation and the related commercial arrangement documentation so that the rates referenced therein are aligned again by December 31, 2021," or, to the extent that the Covered IRS references one of the USD

LIBOR settings that cease in 2023, by June 30, 2023.

- Letter 21-27<sup>[5]</sup> updates previous Letter 20-24, which generally provided no-action relief from certain swap trade execution requirements for swaps that are modified or created to replace LIBOR (or another IBOR) with a risk-free rate. Letter 21-27 extends that previous relief for swaps referencing one of the USD LIBOR settings that cease in 2023 until June 30, 2023.
- Letter 21-28<sup>[6]</sup> updates previous Letter No. 20-25, which generally provided relief from certain swap clearing requirements for uncleared legacy interest rate swaps that are subject to a qualifying amendment to transition to a new alternative reference rate. Letter 21-28 extends the no-action position with respect to those qualifying amendments until June 30, 2023 for swaps referencing one of the USD LIBOR settings that cease in 2023.

Further, for swaps that qualify for a user-based exception or exemption from the clearing requirement, the letter updates the previous relief from certain qualifying conditions for eligible end-users and corresponding interest rate swap transactions, including related commercial arrangements, that become subject to a qualifying amendment. Like Letter 21-26, Letter 21-28 states that eligible end-users and their swap counterparties should use their "best efforts toward amending the reference rate provisions in both Covered IRS documentation and the related commercial arrangement documentation so that the rates referenced therein match again by June 30, 2023" to the extent that the Covered IRS references one of the USD LIBOR settings that cease in 2023.

### **No-Action Relief for Part 43 and 45 Swap Reporting Obligations**

Staff of the Division of Data issued no-action relief regarding certain Part 43 and Part 45 swap reporting obligations specifically for swaps that transitioned from referencing certain LIBORs to risk-free rates under the ISDA LIBOR fallback provisions for those LIBORs on December 31, 2021.<sup>[7]</sup>

In particular, the staff will not recommend an enforcement action against an entity for failure to report under Part 43 a change in the floating rate for a swap modified after execution to incorporate the ISDA LIBOR fallback provisions for Swiss Franc, Euro, British Pound Sterling, and Japanese Yen LIBOR.

Further, the staff will not recommend an enforcement action against an entity for failure to timely report under Part 45 a change in a swap's floating rate if that change is made under the ISDA LIBOR fallback provisions for Swiss Franc, Euro, British Pound Sterling, or Japanese Yen LIBOR. This relief is conditioned on the entity having used its best efforts to report the change by the applicable deadline in Part 45 and in no case reports the required information later than 5 business days from, but excluding, December 31, 2021.

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## endnotes

- [1] See CFTC Staff Revises No-Action Letters Regarding Market Participants Transitioning from LIBOR, Release No. 8473-21 (December 22, 2021), *available at* <https://www.cftc.gov/PressRoom/PressReleases/8473-21>; see also CFTC Staff Issues No-Action Letter Regarding Certain Reporting Requirements for Swaps Transitioning from Certain LIBORs to Risk-Free Rates, Release No. 8475-21, *available at* <https://www.cftc.gov/PressRoom/PressReleases/8475-21>.
- [2] The Division of Swap Dealer and Intermediary Oversight changed its name to the Market Participants Division.
- [3] For a detailed overview of the previous relief, *please see* ICI Memorandum No. 32745, *available at* <https://www.ici.org/memo32745>.
- [4] See Revised No-Action Positions to Facilitate an Orderly Transition of Swaps from Inter-Bank Offered Rates to Alternative Benchmarks (December 20, 2021), *available at* <https://www.cftc.gov/csl/21-26/download>.
- [5] See Extension of Certain Staff No-Action Relief from the Trade Execution Requirement to Facilitate an Orderly Transition from Inter-Bank Offered Rates to Alternative Risk-Free Rates (December 20, 2021), *available at* <https://www.cftc.gov/csl/21-27/download>.
- [6] See Revised Staff No-Action Relief from the Swap Clearing Requirement for Amendments to Legacy Uncleared Swaps to Facilitate and Orderly Transition from Inter-Bank Offered Rates to Alternative Risk-Free Rates (December 20, 2021), *available at* <https://www.cftc.gov/csl/21-28/download>.
- [7] See No-Action Position With Respect to Certain Requirements of Parts 43 and 45 for Registered Entities and Swap Counterparties Reporting Swap Data for LIBOR Swaps That Will Transition to Risk-Free Rates (December 22, 2021), *available at* <https://www.cftc.gov/csl/21-30/download>.