

MEMO# 33992

January 12, 2022

ICI Draft Letter to CFTC Responding to Request for Information on Swap Clearing Requirements and LIBOR Transition: Your Comments Requested by January 18

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TO: Derivatives Markets Advisory Committee

LIBOR Transition Working Group RE: ICI Draft Letter to CFTC Responding to Request for Information on Swap Clearing Requirements and LIBOR Transition: Your Comments Requested by January 18

As discussed previously, in November, the Commodity Futures Trading Commission issued a request for information and comment (RFI) on amending its swap clearing requirements in light of the upcoming cessation of LIBOR and other IBORs.^[1] The CFTC is soliciting information and comment on, among other issues, whether it should update any of its prior clearing determinations for swaps currently subject to the CFTC's clearing requirement ("Clearing Requirement") and whether to subject swaps referencing alternative reference rates (i.e., overnight, nearly risk-free reference rates (RFRs)) to the Clearing Requirement. It also requests more general feedback on swap clearing and LIBOR transition.

ICI, with the assistance of our outside counsel at Dechert LLP, has prepared the attached draft letter for your review. Comments are due to the CFTC by January 24. Accordingly, please provide your comments in writing no later than Tuesday, January 18, to Sarah Bessin at sarah.bessin@ici.org, Nhan Nguyen at nhan.nguyen@ici.org, and Bridget Farrell at bridget.farrell@ici.org. Our draft letter is summarized briefly below.

ICI supports the CFTC's initiation of a dialogue on the transition from LIBOR and other IBORs to RFRs, including a review of the classes of interest rate swaps currently subject to the Clearing Requirement. We appreciate the Commission's assurances that it is monitoring the market's transition to RFRs on an ongoing basis, including the effect on trading liquidity, clearing availability, and other factors with respect to the relevant swaps that are currently subject to the Clearing Requirement.

ICI's letter explains that we support voluntary clearing of swaps that reference certain RFRs. We urge the Commission to allow the market for the relevant cleared swaps to continue to develop organically and autonomously, without being driven by a Clearing Requirement, reflecting the increasing adoption of RFRs across the financial markets. Swaps referencing RFRs should only be subject to the Clearing Requirement once the market for such swaps is sufficiently developed.

In particular, ICI explains that it is premature for the Commission to extend the Clearing Requirement to new swaps referencing RFRs unless and until:

- more data is available to demonstrate significant notional volume and trading liquidity in new swaps referencing RFRs;
- market participants, including futures commission merchants (FCMs), funds, and their managers, have an opportunity to develop the operational and technological infrastructure to support clearing of new swaps referencing RFRs; and
- there is a sufficient level of voluntary clearing of new swaps referencing RFRs to support a Clearing Requirement.

If the Commission does apply the Clearing Requirement to swaps referencing RFRs, we request that the Commission provide sufficient time for industry review of any proposed Clearing Requirement, as well as a sufficiently long implementation period for any Clearing Requirement the Commission adopts.

Furthermore, the letter asserts that, to the extent the Commission issues updated Clearing Requirements for new swaps referencing RFRs, it is critical that the Commission respect the separate and distinct nature of the mandatory clearing and trade execution requirements. A "made available to trade" (MAT) determination should not automatically follow a Clearing Requirement for a new swap referencing an RFR, and the two requirements should not be conflated to the detriment of market participants.

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endnotes

[1] For a summary of the RFI, *please see* ICI Memorandum No. 33915 (Nov. 22, 2021), available at <https://www.ici.org/memo33915>.