

MEMO# 34183

June 16, 2022

ICI Draft Letter on CFTC Proposal Regarding Swap Clearing Requirements and LIBOR Transition: Your Comments Requested by June 24

[34183]

June 17, 2022

TO: Derivatives Markets Advisory Committee RE: ICI Draft Letter on CFTC Proposal
Regarding Swap Clearing Requirements and LIBOR Transition: Your Comments Requested
by June 24

On May 9, the Commodity Futures Trading Commission (CFTC or "Commission") proposed amendments ("Proposal") to its swap clearing requirements reflecting the cessation of LIBOR and certain other IBORs and the transition to alternative reference rates (i.e., overnight, nearly risk-free reference rates (RFRs)). The CFTC proposes removing certain swaps referencing LIBOR from the clearing requirements while requiring swaps referencing RFRs to be cleared.[\[1\]](#) Comments on the Proposal are due to the CFTC on June 30.

ICI, with the assistance of outside counsel, Karen Stretch and Philip Hinkle of Dechert, has prepared the attached draft comment letter for your review. Please send your written comments on the draft to Sarah Bessin at sarah.bessin@ici.org no later than **Friday, June 24**. The draft letter is summarized briefly below.

ICI's letter generally supports the Proposal, which would amend the Clearing Requirement to remove all swaps referencing LIBOR and EONIA and add certain corresponding swaps referencing RFRs to the overnight interest rate swap (OIS) class. However, we urge the Commission in mandating clearing for these swaps to continue to respect the separate and distinct nature of its Clearing Requirement and its mandatory trade execution requirement, which could apply, by virtue of a "made available to trade" (MAT) determination, to those swaps mandated to be cleared.

Specifically, if the Commission adopts a Clearing Requirement for certain categories of swaps referencing RFRs, we urge the Commission to not approve or allow certification of a subsequent MAT determination following a Clearing Requirement for a new swap referencing an RFR solely on the basis of the swap being subject to the Clearing Requirement. Making a MAT determination on that basis would inappropriately conflate the

Clearing Requirement and the trade execution requirement to the detriment of market participants. We explain that it is critically important that the Commission make an independent assessment of whether it is appropriate for a cleared swap to be subject to the trade execution requirement. Ensuring a separate and independent MAT process is especially important with respect to the longer-dated swaps proposed to be cleared under the Proposal (i.e., those with tenors up to 30-50 years), which are characterized by lower levels of liquidity.

ICI supports the Commission's ongoing consideration of how to improve the MAT process and believe that any MAT determination process with respect to swaps referencing RFRs should capture only that subset of cleared swaps that is the most liquid.

Sarah A. Bessin
Associate General Counsel

endnotes

[1] For a summary of the Proposal, please see ICI Memorandum No. 34145 (May 16, 2022), available at <https://www.ici.org/memo34145>.

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