

**MEMO# 35266**

April 28, 2023

# Tradeweb SEF Submits Made Available to Trade Determination for Certain Overnight Index Swaps

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TO: Derivatives Markets Advisory Committee  
LIBOR Transition Working Group RE: Tradeweb SEF Submits Made Available to Trade Determination for Certain Overnight Index Swaps

On April 12, Tradeweb's registered swap execution facility (SEF), TW SEF LLC ("TW SEF") filed a "made available to trade" (MAT) submission with the CFTC for certain interest rate swaps referencing specific risk-free rates (RFRs).<sup>[1]</sup> The swaps covered in this filing are a subset of swaps that became subject to the CFTC's clearing mandate in 2022,<sup>[2]</sup> pursuant to CFTC rule amendments<sup>[3]</sup> to its swap clearing requirement to reflect the market shift away from the London Interbank Offered Rate (LIBOR) and other Interbank Offered Rates (IBORs).

If you have comments or concerns about this MAT filing please contact Nhan Nguyen ([nhan.nguyen@ici.org](mailto:nhan.nguyen@ici.org)) or Nico Valderrama ([nvalderrama@ici.org](mailto:nvalderrama@ici.org)) as soon as possible.

## Background on the MAT Process

The Commodity Exchange Act ("CEA"), as amended by the Dodd-Frank Act, provides that any swap subject to the clearing requirement must be executed on a SEF or designated contract market (DCM) unless no SEF or DCM "makes the swap available to trade." When submitting a proposed MAT determination, CFTC regulations require a SEF or DCM to consider one or more of six specific liquidity factors.<sup>[4]</sup> Upon being deemed "available to trade," a swap that is not of block trade size must be executed as a Required Transaction on a SEF (order book or RFQ-to-3) or a DCM.

A SEF or DCM may submit a proposed MAT determination through either the approval process pursuant to CFTC Rule 40.5 or the "self-certification" process pursuant to CFTC Rule 40.6.<sup>[5]</sup> Under Rule 40.5, a MAT determination may be deemed approved 45 days after receipt by the CFTC, unless the SEF or DCM is notified otherwise. Under Rule 40.6, on the other hand, a MAT determination may become certified in potentially as few as 10 business days.<sup>[6]</sup> Under both rules, a proposed determination will become effective or certified unless the CFTC finds that the determination is inconsistent with the CEA or CFTC

regulations.[\[7\]](#)

A MAT determination may become effective without public comment if the CFTC does not extend a Rule 40.5 review period or does not stay a 40.6 self-certification for an additional 90 days.[\[8\]](#) Rule 40.5 does not require any comment period, and Rule 40.6 only provides for a public comment period if the CFTC elects to stay the determination.[\[9\]](#) The CFTC, however, has pointed out that it routinely solicits public comments on rule proposals submitted pursuant to Rule 40.5 and can issue a stay on a MAT determination submitted pursuant to Rule 40.6, which would initiate a 30-day mandatory public comment period.

ICI has previously raised several concerns regarding the risks and problems inherent in the current MAT process.[\[10\]](#) Note that no SEF had proposed a MAT determination since 2013.[\[11\]](#)

## **Timing for Approval of TW SEF's MAT Determination and Comment Period**

TW SEF submitted its MAT filing "for Commission review and approval pursuant to CFTC Rules 37.10 and 40.5," with an effective date of June 1.[\[12\]](#) As such, under Rule 40.5, the MAT filing may be deemed approved by May 27, 2023, unless TW SEF is notified otherwise. If the CFTC determines to extend the review period for another 45 days because the MAT filing presents novel or complex issues, the MAT filing may then be deemed approved by July 11, 2023.

We note that the CFTC has yet to solicit public comment on TW SEF's MAT submission.

## **TW SEF's MAT Determination**

The MAT determination covers the following overnight index swaps (OIS), which became subject to the CFTC's clearing requirement in 2022 and are currently listed on TW SEF:

- OIS denominated in USD that reference SOFR as a floating rate index, when trades start at spot (T+2), with whole year tenors of 2-7, 10, 12, 15, 20, and 30 years;
- OIS denominated in USD that reference SOFR as a floating rate index, when trades start at the next two international monetary market (IMM) dates, and the fixed rate is set at par, with whole year tenors of 2-7, 10, 12, 15, 20, and 30 years (Standard and IMM end/roll date convention);
- OIS denominated in USD that reference SOFR as a floating rate index, when trades start at the next two IMM dates, and the fixed rate is set as a standard coupon, with whole year tenors of 1-6, 7, 10, 12, 15, 20, and 30 years (Standard end/roll date conventions);
- OIS denominated in GBP that reference SONIA as a floating rate index, when trades start at spot (T+2), with whole year tenors of 1-10, 12, 15, 20, 25, and 30 years.
- OIS denominated in GBP that reference SONIA as a floating rate index, when trades start at the next two IMM dates, with whole year tenors of 1-10, 12, 15, 20, 25, and 30 years (Standard and IMM end/roll date convention).

TW SEF uses aggregate data from the period between January 2022 and November 2022 to address how these swaps meet the six MAT factors. The submission, however, does not breakdown the swap data in a granular fashion, e.g., by tenors.[\[13\]](#)

Nicolas Valderrama  
Counsel

#### Notes

[1] TWSEF's MAT determination (April 12, 2023), available at <https://www.cftc.gov/IndustryOversight/IndustryFilings/SMATDRules/50584>.

[2] See Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps to Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates, 87 Fed.Reg. 52182 (Aug. 24, 2022) ("Clearing Adopting Release"), available at <https://www.govinfo.gov/content/pkg/FR-2022-08-24/pdf/2022-17736.pdf>. For a summary of the Clearing Adopting Release please see ICI Memorandum No. 34269 (Aug. 24, 2022), available at <https://www.ici.org/memo34269>.

[3] Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps to Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates, 87 Fed. Reg. 32898 (May 31, 2022) ("Clearing Proposal"), available at <https://www.cftc.gov/sites/default/files/2022/05/2022-10490a.pdf>. For a summary of the Clearing Proposal and ICI's comment letter on the Clearing Proposal, see ICI Memorandum No. 34145 and Letter from Sarah A. Bessin, Associate General Counsel, ICI, to Christopher Kirkpatrick, Secretary, CFTC (June 30, 2022), <https://www.ici.org/system/files/2022-06/34211a.pdf>.

[4] CFTC Rules 37.10(b) and 38.12(b) provide that SEFs and DCMs, respectively, shall consider, as appropriate, the following factors with respect to a swap: (1) whether there are ready and willing buyers and sellers; (2) the frequency or size of transactions; (3) the trading volume; (4) the number and types of market participants; (5) the bid/ask spread; or (6) the usual number of resting firm or indicative bids or offers.

[5] See Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 Fed. Reg. 33606 (June 4, 2013) ("MAT Process Adopting Release"), available at <https://www.govinfo.gov/content/pkg/FR-2013-06-04/pdf/2013-12250.pdf>.

[6] CFTC Rule 40.6(b).

[7] See CFTC Rule 40.5(b); CFTC Rule 40.6(c)(3).

[8] CFTC Rule 40.6(c)(1) provides the CFTC with the authority to issue a 90-day stay that delays the effectiveness of a rule proposal if the rule presents novel or complex issues that require additional time to analyze, the rule is accompanied by an inadequate explanation, or the rule is potentially inconsistent with the CEA or the CFTC's regulations.

[9] 7 See CFTC Rule 40.6(c)(2). If the CFTC does not issue a stay, it is possible for a proposed MAT determination submitted pursuant to CFTC Rule 40.6 to become effective in 10 business days without any public comment.

[10] See e.g., Letter from David W. Blass, General Counsel, ICI, to Mr. Christopher Kirkpatrick, Secretary, CFTC (Aug. 17, 2015), available at <https://www.ici.org/pdf/29262.pdf> ("ICI 2015 MAT Letter").

[11] The first batch of MAT submissions to the CFTC in 2013 included Javelin SEF, LLC's MAT determination, which was widely viewed as overly broad. See ICI 2015 MAT Letter at 5-6.

[12] We note that TW SEF's MAT submission states, possibly in error, that it is a "self-certification."

[13] For instance, the MAT submission notes the following volume data for trades on TW SEF during that period: (1) total trade volume for spot OIS SOFR IRS (i.e., over USD 2.5 trillion of notional) and for spot OIS SONIA IRS (i.e., over GBP 294 billion of notional); and (2) average daily trading volume for OIS SOFR ISR (i.e., over USD 83 billion of notional) and for OIS SONIA IRS (i.e., over GBP 38 billion of notional).