

June 30, 2022

VIA ELECTRONIC SUBMISSION ([Link](#))
Commodity Futures Trading Commission
Office of Public Affairs
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 2058

Re: The CFTC Proposed Rule on 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

The Global Association of Central Counterparties (“CCP12”) is the international association for CCPs, representing 40 members who operate over 60 individual central counterparties (CCPs) across the Americas, EMEA, and the Asia-Pacific region.

CCP12 appreciates the opportunity to respond to the Commodity Futures Trading Commission (“CFTC” or “the Commission”) Proposed Rule on 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 Rates¹ (“the Proposed Rule”). CCP12 already contributed to the CFTC’s Request for information and comment on the Swap Clearing Requirement To Account for the Transition From LIBOR and Other IBORs to Alternative Reference Rates² with its comment letter of January 24th, 2022³.

We generally welcome the Proposed Rule and commend the CFTC for broadly taking into account the feedback received in the previous consultation round from CCP12 and some of our members. We notice that the Commission values the importance of central clearing and its positive impact on the mitigation of systemic risk. The benefits of clearing were already appreciated by the G20 Leaders in the aftermath of the Global Financial Crisis. Since then, CCPs have grown stronger and proven very resilient, including in times of unprecedented stresses, such as the recent Covid-19 crisis and the Russian war against Ukraine.

¹ The Commodity Futures Trading Commission, Proposed Rule on 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 (May 2022), available at [Link](#)

² The Commodity Futures Trading Commission, Request for information and comment on the Swap Clearing Requirement To Account for the Transition From LIBOR and Other IBORs to Alternative Reference Rates (November 2021), available at [Link](#)

³ CCP12, Response to the CFTC Request for information and comment on the Swap Clearing Requirement To Account for the Transition From LIBOR and Other IBORs to Alternative Reference Rates (January 2022), available at [Link](#)

As central clearing provides market participants with numerous advantages over bilateral arrangements, including increased safety, transparency, and customer protection, growth in central clearing has been driven by voluntary clearing by global market participants, as well as by the implementation of the 2009 Pittsburgh G20 commitments. The latter introduced the concept of a clearing requirement for certain OTC swaps which has been implemented by major jurisdictions worldwide.

CCPs have continued to support the needs of markets during this period of growth by supporting the clearing of mandated swap products and also by meeting voluntary clearing demand. Most recently, CCPs have met the needs of markets by playing an important role in the market transition from Interbank Offered Rates (“IBORs”) to Risk Free Rates (“RFRs”) by offering clearing for new RFR swap products, thereby encouraging participation, growth, and liquidity in these markets. As has been observed by many authorities and market participants, CCPs enabled a very smooth conversion of certain cleared IBOR swaps to RFR Overnight Index Swaps (“OIS”) at the end of 2021. Market participants and regulatory authorities are also expected to endorse a CCP-led transition from cleared USD LIBOR swaps to the relevant SOFR RFR OIS, scheduled to take place in 2023. It is worth noticing that SOFR liquidity has improved materially in the past 12 months as a function of the SOFR First initiative (adopted by the CFTC’s Market Risk Advisory Committee and launched in July 2021) and of the subsequent restrictions on the opening of new USD LIBOR contracts that kicked off on January 1st, 2022. These initiatives were clearly communicated to the market and also helped facilitate the transition.

The benefits of the CCP model reach beyond the realisation of the clearing requirement – even now, when a clearing requirement does not yet apply to market participants with regard to swaps referencing RFRs, a significant majority of clearing members (and clients) voluntarily use the CCPs’ services while concluding these types of transactions.

The above-mentioned benefits of central clearing and the organic move of the market towards CCP clearing of the RFR-related interest rate swaps, which has already taken place, leads to a conclusion that including these types of contracts in the scope of financial instruments subject to the clearing obligation would be appropriate, which is in line with the 2009 Pittsburgh G20 commitments for clearing of OTC swaps.

Therefore, CCP12 supports the proposed amendments to regulation 17 CFR 50.4(a) which consist in removing, in appropriate separate stages based on the relevant cessation / “non-representative” date for the relevant rate, all LIBOR and EUR EONIA swap clearing requirements and adding requirements to clearing corresponding RFR swaps. Supporting this, clearing services for swaps covered in the proposed amendments are already provided by most CCPs clearing swaps globally and, as noted above, market participants are already utilizing these services on a voluntary basis prior to the implementation of any clearing requirement.

Derivatives clearing organizations (“DCOs”) registered with the CFTC, or exempted from registration under the existing framework, already have significant experience with clearing of swaps within the OIS class referencing RFRs. This demonstrates that the criteria that need to be fulfilled to make a new clearing requirement determination are met and further illustrates the effective provision of central clearing of such OIS to market participants. In commencing the clearing of these products, these DCOs have been required to ensure that they have sufficient resources and liquidity, adequate pricing data, and risk management practices and capabilities in terms of managing a default (including those on default

auctions and porting) in relation to swaps covered by the proposed clearing requirement. Furthermore, bearing in mind the significant existing adoption of voluntary clearing of RFR OIS and that the overall cost of transition to non-USD IRS referencing RFRs has already been borne by the market, the introduction of the clearing requirement should not increase the cost of clearing. Additionally, as the market has already gravitated towards central clearing of RFR-related OIS to a significant degree (including SOFR OIS, notwithstanding that a “representative” USD LIBOR rate will continue to be published until end June 2023), the proposed compliance date of 30 days after the publication of the final rule in the Federal Register should provide market participants with sufficient time to comply with the new determination as for the majority of them it will not mean a material change in their operations.

Finally, CCP12 welcomes the Commission’s intention to coordinate its actions with those of other jurisdictions globally. It is well noted that the Proposed Rule would allow the US to broadly align its clearing requirements with other major jurisdictions, such as the EU and the UK. A harmonised approach and timely introduction of the amended clearing requirement are important for CCPs and market participants as they would promote legal certainty, regulatory transparency, and preservation of liquidity in the cleared space. It would also reduce the potential operational burden for clearing members and clients of having to comply with the same, or very similar, clearing mandates but at different times in different jurisdictions.

To conclude, CCP12 would like to make an observation that IRS referencing IBORs have constituted a significant part of the instruments that have been subject to mandatory clearing. Bearing in mind that the benefits of central clearing are widely recognised and that the transition to RFRs is a realisation of a global benchmark reform which will further increase the markets’ safety and reliability, it seems logical that the clearing requirement determination reflects and is consistent with this reform and thus subjects the RFR-related instruments to mandatory clearing.

About CCP12

CCP12 is the global association for CCPs, representing 40 members who operate over 60 individual central counterparties (CCPs) across the Americas, EMEA, and the Asia-Pacific region.

CCP12 promotes effective, practical, and appropriate risk management and operational standards for CCPs to ensure the safety and efficiency of the financial markets it represents. CCP12 leads and assesses global regulatory and industry initiatives that concern CCPs to form consensus views, while also actively engaging with regulatory agencies and industry constituents through consultation responses, forum discussions, and position papers.

For more information, please contact the office by e-mail at office@ccp12.org or through our website by visiting www.ccp12.org.

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