

# Managed Funds Association

The Voice of the Global Alternative Investment Industry

Washington, D.C. | New York



January 24, 2022

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

**Re: Swap Clearing Requirement to Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates (RIN Number 3038-AF18)**

Dear Mr. Kirkpatrick:

Managed Funds Association<sup>1</sup> (“**MFA**”) welcomes the opportunity to provide comments to the Commodity Futures Trading Commission (the “**Commission**”) on its request for information and comment, “Swap Clearing Requirement to Account for the Transition from LIBOR and Other IBORs to Alternative Reference Rates,” RIN 3038-AF18 (Nov. 17, 2021) (the “**Request**”), which seeks information and public comment on how the Commission could amend its swap clearing requirement to address the cessation of certain interbank offered rates (“**IBORs**”) used as benchmark reference rates and the market adoption of alternative reference rates; namely, overnight, nearly risk-free reference rates (“**RFRs**”).

We support the Dodd-Frank Wall Street Reform and Consumer Protection Act’s (“**Dodd-Frank Act**”)<sup>2</sup> swap clearing reforms and the Commission’s continued efforts to ensure a smooth and timely transition away from the London Interbank Offered Rate (“**LIBOR**”) and recognition that “[s]ound functioning systemically important benchmarks are vital to derivatives markets that the [Commission] oversees.”<sup>3</sup> Interrelated to both policy priorities is the need for the standard benchmark reference rate for the USD interest rate derivatives market to be set forth in Commission regulation 50.4 (the “**Swap Clearing Requirement**”).<sup>4</sup>

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<sup>1</sup> MFA represents the global alternative investment industry and its investors by advocating for regulatory, tax and other public policies that foster efficient, transparent, and fair capital markets. MFA’s more than 150 member firms collectively manage nearly \$1.6 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time. MFA has a global presence and is active in Washington, London, Brussels, and Asia.

<sup>2</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> Statement from CFTC Staff on Transition Away from Libor (July 14, 2021), <https://www.cftc.gov/PressRoom/SpeechesTestimony/mpddmosfrstatement071421>.

<sup>4</sup> 17 CFR 50.4.

MFA strongly recommends that the Commission modify its Swap Clearing Requirement under Commission regulation 50.4 by adding a clearing obligation to the OIS class for SOFR swaps with a maturity range of 7 days to 50 years as soon as practicable. Since trading activity continues to occur in USD LIBOR swaps as well, USD LIBOR should not be removed from the Swap Clearing Requirement until such time as the rate is not available (either because the rate is permanently discontinued or is deemed non-representative as of its cessation date).<sup>5</sup>

As documented in the Request, the Bank of England and ESMA have made significant progress in updating the scope of their clearing obligations to reflect the market's transition to risk-free reference rates. However, the Bank of England deferred on the question of updating its clearing obligations to reflect the transition to SOFR because "the most widely used USD settings will cease in June 2023 (*i.e.*, over a longer time horizon than the other benchmarks being discontinued)."<sup>6</sup>

Consistent with the international harmonization envisioned by Section 752(a) of the Dodd-Frank Act,<sup>7</sup> MFA recommends that the Commission bring SOFR swaps within the Swap Clearing Requirement to establish a template for non-U.S. regulatory authorities seeking to update their clearing obligations by adding SOFR swaps and eventually eliminating USD LIBOR swaps. The Commission has been at the forefront of global central clearing issues, and we believe that once the Commission updates its clearing obligation, other jurisdictions will follow.

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MFA is supportive of the Commission's goal of ensuring that the globally interconnected interest rate swaps market is not negatively affected by the transition away from LIBOR and the other IBORs to alternative reference rates, and we believe that consistent international standards for clearing are both necessary for a smooth transition away from USD LIBOR to SOFR and mandated by the Dodd-Frank Act.

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<sup>5</sup> In other words, the dates for the modifications to the clearing obligations should align with the dates the clearinghouses are expected to convert outstanding contracts referencing the discontinued benchmark rate. *See* Bank of England, "Derivatives clearing obligation – modifications to reflect interest rate benchmark reform: Amendments to BTS 2015/2205," Sept. 29, 2021, available at <https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-modifications-to-reflect-interest-rate-benchmark-reform> ("The Bank proposes to align the dates for the modifications to the clearing obligation with the dates CCPs are expected to contractually convert outstanding contracts referencing the benchmarks being discontinued, and remove these benchmarks from the lists of contracts eligible for clearing.").

<sup>6</sup> Bank of England, "Derivatives clearing obligation – modifications to reflect interest rate benchmark reform: Amendments to BTS 2015/2205," Sept. 29, 2021, available at <https://www.bankofengland.co.uk/paper/2021/derivatives-clearing-obligation-modifications-to-reflect-interest-rate-benchmark-reform>. The Bank of England further noted that "[t]he Bank will continue to monitor developments in the USD interest rate derivatives market and, where possible, coordinate with the CFTC on changes to our respective clearing obligations." *Id.*

<sup>7</sup> Section 752(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010) ("In order to promote effective and consistent global regulation of swaps..., the Commodity Futures Trading Commission..., as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation...of swaps...").

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MFA would be pleased to discuss the Request and the issues raised in this letter with Commission staff. Please do not hesitate to contact the undersigned at (202) 730-2600.

Respectfully Submitted,

/s/ Jennifer W. Han

Jennifer W. Han  
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Chief Counsel & Head of Regulatory Affairs  
Managed Funds Association