

CFTC proposes mandatory clearing of interest rate swaps on IBOR alternatives

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In light of the global transition away from interbank offered rates, the CFTC has proposed amendments to its list of interest rate swaps subject to mandatory clearing to remove swaps referencing discontinued rates and require clearing of certain swaps referencing preferred alternative rates.

Section 2(h) of the Commodity Exchange Act requires the clearing of certain swaps, subject to various exceptions, such as for swaps used by commercial end-users to hedge. The CFTC has authority to determine which swaps should be cleared. Currently, the only swaps subject to mandatory clearing are (1) certain classes of interest rate swaps in major currencies referencing floating rates, including the London Interbank Offered Rate (LIBOR) and Euro Overnight Index Average (EUR EONIA), and (2) certain credit default swaps on broad-based indices. The four classes of interest rate swaps currently subject to mandatory clearing are (1) fixed-to-floating swaps, (2) basis swaps (i.e., floating-to-floating swaps), (3) forward rate agreements and (4) overnight index swaps (OIS) (i.e., fixed-to-floating swaps on a daily overnight floating rate).

LIBOR publication ended on December 31, 2021 for all currencies except for the most commonly used tenors of USD LIBOR, which will continue until June 30, 2023.¹ Liquidity has shifted to interest rate swaps referencing alternative risk-free rates, such as the Secured Overnight Financing Rate (SOFR) for USD instruments and the Euro Short-Term Rate (€STR).

On May 9, 2022, the CFTC [proposed](#) to amend CFTC Rule 50.4, which lists the types of swaps subject to mandatory clearing, to remove all interest rate swaps referencing or derived from LIBOR and EUR EONIA, and replace them with swaps referencing alternative risk-free rates that have become generally accepted market alternatives.² The swaps newly subject to mandatory clearing would fall into the OIS class, rather than the fixed-to-floating class, because the alternative risk-free rates are all daily overnight floating rates. The CFTC is not proposing to require clearing for basis swaps on these risk-free rates because such basis swaps are generally used only to move swap positions on discontinued rates into risk-free rate positions at this time. The CFTC has not proposed to require clearing for forward rate agreements referencing these alternative risk-free rates.

The amendments would occur in two phases:

- **Phase 1:** Effective 30 days after a final rule is published in the Federal Register: (A) interest rate swaps referencing non-USD LIBOR and EUR EONIA would no longer be subject to mandatory clearing, and (B) clearing would be required for non-USD interest rate swaps referencing alternative risk-free rates and USD interest rate swaps referencing SOFR.
- **Phase 2:** Effective July 1, 2023, clearing would no longer be required for interest rate swaps referencing USD LIBOR or the Singapore Swap Offer Rate (SOR-VWAP).³

Comments will be due 30 days after publication in the Federal Register, which is expected shortly.

Summary of changes to reference rates

The following changes would be made to the types of interest rate swaps subject to mandatory clearing:

Proposed reference rates to remove (classes) (phase)	Proposed reference rates to add (classes) (phase)
Swiss Franc LIBOR (fixed-to-floating swaps) (Phase 1)	Swiss Average Rate Overnight (OIS) (Phase 1)
Sterling LIBOR (fixed-to-floating swaps, basis swaps, forward rate agreements) (Phase 1)	Expanded scope of Sterling Overnight Index Average (OIS) ⁴ (Phase 1)
Yen LIBOR (fixed-to-floating swaps, basis swaps, forward rate agreements) (Phase 1)	Tokyo Overnight Average (OIS) (Phase 1)
EUR EONIA (OIS) (Phase 1)	€STR (OIS) (Phase 1)
SOR-VWAP (fixed-to-floating swaps) (Phase 2)	Singapore Overnight Rate Average (OIS) (Phase 1)
USD LIBOR (fixed-to-floating swaps, basis swaps, forward rate agreements) (Phase 2)	SOFR (OIS) (Phase 1)

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- ¹ EUR EONIA ended publication on January 3, 2022.
- ² Clearing for interest rate swaps referencing other rates would not be changed.
- ³ SOR-VWAP uses USD LIBOR as an input.
- ⁴ OIS interest rate swaps referencing the Sterling Overnight Index Average are currently subject to mandatory clearing for a stated termination range of seven days to three years. The proposed amendments would expand this range to seven days to 50 years.