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Director
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U.S. Commodity Futures Trading Commission
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Acting Director
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U.S. Commodity Futures Trading Commission
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December 15, 2021

Re: Letter Regarding the Reporting of LIBOR Swaps that will Transition to Risk-Free Rates

Dear Dr. Roust and Ms. Tente,

The Alternative Reference Rate Committee (**ARRC**) and its member firms are writing to the staff of the Division of Data and the Division of Market Oversight of the U.S. Commodity Futures Trading Commission (**Commission** or **CFTC**) to request no-action relief in relation to the reporting requirements contained in Part 43 (**P43**) and Part 45 (**P45**) of the Commission's rules[1] with respect to certain uncleared[2] swaps that will transition to risk-free rates (**RFRs**) following the cessation or non-representativeness (as applicable) of the London Interbank Offered Rate (**LIBOR**) at the end of 2021 pursuant to their terms. This letter follows and is submitted with reference to the ARRC's July 20, 2020, November 5, 2019, May 13, 2019 and July 12, 2018 letters to the Commission requesting interpretive guidance or no-action relief from other aspects of the Commodity Exchange Act (**CEA**) and the Commission's rules, and in particular the letter to the Commission dated November 5, 2019, which referred to a future relief request with respect to the Commission's reporting requirements.[3]

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[1] *See* 17 C.F.R. Part 43 and 17 C.F.R Part 45.
[2] This letter only addresses uncleared swaps and does not consider the reporting of cleared swaps by any clearinghouse. The ARRC understands LCH and CME will address the Commission's reporting requirements in relation to their cleared contracts separately, where applicable.
[3] ARRC, Letter to Directors M. Clark Hutchinson III, Dorothy D. DeWitt & Joshua B. Sterling Regarding Request for Revision of No-Action Letters 19-26, 19-27, and 19-28 Regarding the Application of Certain Swap Regulatory Requirements to Facilitate an Orderly Transition from Inter-Bank Offered Rates to Alternative Risk-Free Rates (July 20, 2020), *available at* https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/Request-Letter-CFTC-No-Action-Relief-Issues-List-7-20-20.pdf; ARRC, Letter to Directors M. Clark Hutchinson III, Vincent McGonagle & Joshua B. Sterling Regarding Treatment of Swaps Amended or Otherwise Transitioned from IBOR to Alternative Risk Free Rates under the Commodity Exchange Act (Nov. 5, 2019), *available at* https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/ARRC_CFTC_Relief_Request.pdf; ARRC, Follow-up Letter to Chairman Giancarlo Regarding Treatment of Derivatives Contracts Referencing the Alterative Risk-Free Rates (May 13, 2019), *available at* https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/ARRC_Letter_CFTC_Regulatory_Derivatives_Treatment_05132019.pdf; ARRC, Letter to U.S. Regulators Regarding Treatment of Derivatives Contracts Referencing the Alternative Risk-Free Rates and Associated Transitions under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (July 12, 2018), *available at* https://www.newyorkfed.org /medialibrary/Microsites/arrc/files/2018/ARRC-July-16-2018-titleviiletter.

I. INTRODUCTION

The ARRC has been working with regulators, other industry groups and market participants to develop recommendations to encourage a smooth transition away from U.S. Dollar LIBOR. In June 2017, the ARRC identified a broad Treasuries repo financing rate, the Secured Overnight Financing Rate (**SOFR**), as the preferred alternative to U.S. Dollar LIBOR for new U.S. Dollar derivatives and other financial contracts. The ARRC has subsequently published various milestones, guidance and best practices, and continues to take a range of other actions to build progressively the liquidity required to support the issuance of, and transition to, contracts referencing SOFR.

To assist with this transition in the swaps markets, the International Swaps and Derivatives Association, Inc. (**ISDA**) has developed fallback provisions for transactions that incorporate the 2006 ISDA Definitions.[4] We note that the 2006 ISDA Definitions are incorporated into the documentation used for a significant majority of interest rate and other derivatives transactions that are "swaps" under the CEA.[5] The fallbacks are designed to ensure that transactions that reference LIBOR (or other interbank offered rates) will continue to function following the cessation or non-representativeness of LIBOR (and certain other inter-bank offered rates) by providing that upon such an event, LIBOR will be replaced with the relevant RFR plus the relevant spread adjustment published by Bloomberg (together with any certain conforming changes to give effect to the calculation of the relevant RFR). These fallbacks are automatically incorporated into transactions that incorporate the 2006 ISDA Definitions or 2021 ISDA Definitions and are entered into after January 25, 2021. ISDA has also published the ISDA 2020 IBOR Fallbacks Protocol (the **ISDA Protocol**[6]), a multilateral protocol to allow market participants to include the fallbacks referred to above in certain transactions that were entered into prior to January 25, 2021. A significant number of market participants have adhered[7] to the ISDA Protocol or have agreed bilaterally to incorporate substantively identical fallbacks to the ISDA Protocol in their existing transactions. The fallbacks (including the spread adjustment and conforming changes described above) in the 2006 ISDA Definitions, the 2021 ISDA Definitions, the ISDA Protocol or the bilaterally incorporated provisions equivalent to the ISDA Protocol are referred to in this letter as the **LIBOR Fallbacks**.

On March 5, 2021, the UK Financial Conduct Authority (the **FCA**), as the regulatory supervisor for the administrator of LIBOR, publicly stated (the **FCA Announcement**[8]) that publication of the LIBOR settings below will cease immediately following the final publication date, as follows:

Currency	**Tenors**	**Final Publication Date**
EUR, CHF	All tenors	December 31, 2021

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[4] Similar provisions exist in the 2021 ISDA Definitions published by ISDA in June 2021, which went live on October 4, 2021.
[5] *See* 7 USC § 1a(47)(A).
[6] ISDA, ISDA 2020 IBOR Fallbacks Protocol (October 23, 2020), *available at* http://assets.isda.org/media/3062e7b4/08268161-pdf/; ISDA, Amendments to the 2006 ISDA Definitions to include new IBOR fallbacks (October 23, 2020), *available at* http://assets.isda.org/media/3062e7b4/23aa1658-pdf.
[7] As of October 8, 2021 there are 14,632 adhering parties to the ISDA Protocol, https://www.isda.org/protocol/isda-2020-ibor-fallbacks-protocol/adhering-parties.
[8] FCA, FCA announcement on future cessation and loss of representativeness of the LIBOR benchmarks (March 5, 2021), *available at* https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf.

GBP	Overnight, 1 week, 2 month and 12 month	December 31, 2021
JPY	Spot Next, 1 week, 2 month and 12 month	December 31, 2021
USD	1 week, 2 month	December 31, 2021
USD	Overnight and 12 month	June 30, 2023

In the FCA Announcement, the FCA also stated that the following LIBOR settings will become non-representative immediately following the "Final Date of Representativeness" as follows:

Currency	**Tenors**	**Final Date of Representativeness**[9]
GBP	1 month, 3 month and 6 month	December 31, 2021
JPY	1 month, 3 month and 6 month	December 31, 2021
USD	1 month, 3 month and 6 month	June 30, 2023

Section IV of this letter describes the consequences of the FCA Announcement under the LIBOR Fallbacks.

II. CURRENCY AND TENOR SCOPE

The issues discussed in this letter are relevant to LIBOR for all five currencies, being Swiss Franc (CHF), Euro (EUR), British Pound Sterling (GBP), Japanese Yen (JPY) and U.S. Dollar (USD). However, the ARRC is only requesting relief in relation to all tenors of Swiss Franc, Euro, British Pound Sterling and Japanese Yen (each a **Relevant LIBOR**).

The ARRC is not currently requesting relief in relation to Overnight, 1 month, 3 month, 6 month or 12 month U.S. Dollar LIBOR on the basis that it expects those tenors of U.S. Dollar LIBOR to continue to be published and representative up to, and including, June 30, 2023. The ARRC may engage separately with the Commission on reporting obligations in relation to transactions referencing certain tenors of U.S. Dollar LIBOR at the appropriate time.

The ARRC is not requesting relief in relation to 1 week or 2 month U.S. Dollar LIBOR on the basis that the cessation of these tenors of U.S. Dollar LIBOR at the end of 2021 does not result in a transition to an RFR or change in the floating rate under the LIBOR Fallbacks and instead it is generally addressed by interpolating between remaining tenors of U.S. Dollar LIBOR.

III. BACKGROUND ON P43 AND P45 REPORTING OBLIGATIONS

To provide context for the ARRC's request for relief, this section provides a brief overview of P45 and P43 reporting obligations.

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[9] It is possible that certain LIBOR settings will continue to be published on a "synthetic" basis after the final date of representativeness. However, the Fallback Amendments are triggered notwithstanding any publication of synthetic LIBOR and therefore this letter does not consider "synthetic" LIBOR.

As a threshold matter, this request does not address the swap data reporting rule amendments for which the compliance date is May 25, 2022.[10] This is because the ARRC understands that its member firms will continue to comply with the original P43 and P45 reporting requirements at the point that the Relevant LIBORs will cease to be published or become non-representative (*i.e.*, on January 1, 2022).

CEA section 2(a)(13)(G)[11] and P45 require reporting of certain swap creation data upon the execution of any swap,[12] regardless of whether it is a publicly reportable swap transaction under P43.[13] In addition, P45 requires the reporting of certain continuation data throughout the life of the swap.[14] For example, reporting counterparties are required to report changes to a swap's "primary economic terms," defined as the terms matched or affirmed by the counterparties in verifying the swap, including at a minimum the relevant primary economic terms listed in appendix 1 to P45.[15] Changes to a swap's primary economic terms may currently be reported as they occur (*i.e.*, by reporting "life cycle event data" for any "life cycle event"[16]) or by providing a snapshot of the swap's primary economic terms on a daily basis (*i.e.*, by reporting "state data"[17]).

In addition to specifying the circumstances in which swap data must be reported, P45 specifies how quickly this data must be reported. Although the precise timing requirements may vary based on a variety of factors, in many cases creation data reporting is required "as soon as technologically practicable" (in some cases no later than 15 minutes after execution),[18] and continuation data reporting is in most cases required "the same day" as the reportable event.[19] As discussed in more detail below, the timing under the P45 reporting requirements may present substantial operational challenges for market participants when transitioning from LIBOR to the relevant RFR under the LIBOR Fallbacks.

P43 defines a "publicly reportable swap transaction" under CFTC Rule 43.2 to include an "amendment . . . that changes the pricing of the swap." The obligation to report arises "as soon as technologically practicable after execution" of the transaction, with "execution" defined under CFTC Rule 43.2 as "an agreement by the parties, by any method, to the terms of a swap that legally binds the parties to such swap terms." A publicly reportable swap transaction must be reported to a swap data repository under CFTC Rule 43.3 "as soon as technologically practicable after execution." For an interest

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[10] *See* CFTC, Final Rule, Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75503 (Nov. 25, 2020); CFTC, Final Rule, Real-Time Public Reporting Requirements, 85 Fed. Reg. 75422 (Nov. 25, 2020).
[11] 7 U.S.C. § 2(a)(13)(G).
[12] Deliverable FX forwards and FX swaps that are excluded from being regulated as swaps under the Commodity Exchange Act for some purposes are subject to the requirements of P45, although they are not subject to the requirements of P43. *See* 77 Fed. Reg. 69694 (Nov. 20, 2012).
[13] *See* 17 C.F.R. §§ 45.1, 45.3-45.4.
[14] Reporting counterparties must report swap continuation data "in a manner sufficient to ensure that all data in the swap data repository concerning the swap remains current and accurate, and includes all changes to the primary economic terms of the swap occurring during the existence of the swap. *See* 17 C.F.R §§ 45.4(a).
[15] As relevant for purposes of the letter, appendix 1 to P45 provides that the "Floating rate index name/rate period (*E.g.*, USD-LIBOR-BBA)" is a primary economic term for interest rate swaps.
[16] The term "life cycle event data" is defined as "all of the data elements necessary to fully report any life cycle event." "Life cycle event" is defined as "any event that would result in either a change to a primary economic term of a swap or to any primary economic terms data previously reported to a swap data repository in connection with a swap."
[17] The term "state data" is defined as "all of the data elements necessary to provide a snapshot view, on a daily basis, of all of the primary economic terms of a swap in the swap asset class of the swap in question, including any change to any primary economic term or to any previously-reported primary economic terms data since the last snapshot."
[18] *See, e.g.*, 17 C.F.R. § 45.3(b)(1)(i) (P45 creation data reporting counterparty obligations); 17 C.F.R. § 45.10 (reporting to a single swap data repository).
[19] *See* 17 C.F.R. § 45.4(d)(1)(i) (P45 continuation data reporting counterparty obligations).

rate swap, pricing is currently reported under Part 43 using the "Price Notation" field, which identifies any applicable spread above or below the relevant reference rate.[20]

IV. REQUEST FOR RELIEF

A. Discussion of P45

The LIBOR Fallbacks are included in a transaction between two parties entered into prior to January 25, 2021 when those parties adhere to the ISDA Protocol (or agree bilaterally to include the LIBOR Fallbacks).[21] The LIBOR Fallbacks are included in a transaction between two parties entered into after January 25, 2021 when those parties enter into the transaction.[22]

As stated in the FCA Announcement, each Relevant LIBOR will cease to be published or will be non-representative from, and including, January 1, 2022. Under the terms of the LIBOR Fallbacks, each transaction which includes the LIBOR Fallbacks will, from, and including, January 1, 2022 no longer use the Relevant LIBOR and will instead fallback to the relevant RFR plus the spread adjustment fixed on March 5, 2021 (as published by Bloomberg). The LIBOR Fallbacks include other technical "conforming changes" to enable the RFR plus spread adjustment to be calculated and the resulting amounts paid.

The ARRC and its member firms intend to report the change in the floating rate pursuant to the LIBOR Fallbacks under P45, because the LIBOR Fallbacks may be a change to a primary economic term of the swap (i.e., the applicable floating rate), such that the reporting party is required to report continuation data as life cycle event data or state data under P45. The ARRC understands that this is consistent with the practice that will be adopted in the context of reporting requirements established by other global regulators (including the European Securities and Markets Authority, the FCA[23] and the Australian Securities and Investments Commission) with respect to the analogous requirement to P45 in the relevant jurisdiction. The ARRC understands that the FCA has stated that firms have one business day after 31 December 2021 to report the change in the floating rate under the analogous requirement to P45 in the UK.[24] As more fully described in this letter, the ARRC requests up to five business days from, but excluding, December 31, 2021 relief because it understands from its member firms that, based on their assessment of their respective swap portfolios, the volume of swaps subject to the P45 reporting requirement is materially greater than the volume of swaps subject to reporting requirements in other

[20] *See* 17 CFR Part 43, Appendix A (stating that the "Price Notation" field should include the "price, yield, **spread**, coupon, etc., depending on the type of swap" and is intended to provide "[i]nformation needed to describe the publicly reportable swap transaction and to help market participants and the public evaluate the price of the publicly reportable swap transaction") (emphasis supplied); *see also* CFTC, Final Rule, Real-Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182, 1226 (Jan. 19, 2012) (stating that the "Price Notation" field "indicates the price" of the swap). The reference rates are currently identified using the "Underlying Asset 1" and "Underlying Asset 2" field. Under the amended version of Part 43 for which the compliance date is May 25, 2022, interest rate swap prices will be reported using new "Spread" and "Fixed Rate" fields. *E.g.*, CFTC, *Technical Specification: Parts 43 and 45 swap data reporting and public dissemination requirements* 21 (Sept. 17, 2020) (stating that for "[i]nterest rate swaps . . . it is understood that the information included in the data elements Fixed rate and Spread may be interpreted as the price of the transaction").

[21] The fallbacks are not included if the parties expressly agree to the contrary.

[22] The fallbacks do not apply if the parties disapply Supplement 70 to the ISDA 2006 Definitions or do not incorporate the ISDA 2006 Definitions or the ISDA 2021 Definitions.

[23] https://www.fca.org.uk/firms/uk-emir/news

[24] https://www.fca.org.uk/firms/uk-emir/news

jurisdictions, and this creates a materially greater burden from an operational and technological perspective.

The ARRC understands from its member firms that reporting the change to the floating rate from LIBOR to the relevant RFR plus spread within the timeframe required under P45 will pose significant operational challenges for its members given the volume of the contracts impacted and the fact that the change will occur simultaneously across all impacted contracts on a single date. ARRC's member firms vary in size and operational and technological capacity, and therefore the ARRC's member firms have requested that the relief is sufficient to address that variation across member firms. The ARRC understands that member firms are currently preparing systems and operational processes in order to achieve compliance with the applicable P45 reporting deadline for reporting fallbacks, when triggered and applied, however, the volumes in scope for P45 CFTC reporting are expected to be higher than that of any other reporting jurisdiction, including EMIR. To the extent that firms do require additional time to report, the ARRC understands that those firms would make best efforts to report within the timeframe under P45, and in any event not later than 5 business days from, but excluding, December 31, 2021. As the transition will occur over the calendar year-end, the operational and technological challenges referred to above will be exacerbated, considering the volumes also referred to earlier, for market participants due to calendar year-end code freezes, systems upgrades and fixes. A time-limited delay would assist in managing P45 reporting in light of those constraints.

The ARRC also believes that a time-limited delay to P45 reporting will not unnecessarily impact on regulatory oversight in relation to transition to the RFRs, due to the long-known nature of the transition from LIBOR to the relevant RFRs, the close involvement of the Commission and other regulators in planning for and facilitating the transition, the transparency of the list of Protocol-adhering parties and the fact that under the terms of the LIBOR Fallbacks each Relevant LIBOR will fallback to a pre-defined corresponding RFR in relation to the relevant currency – for CHF LIBOR the RFR will be the Adjusted Swiss Average Rate Overnight (SARON), for EUR LIBOR the RFR will be the Adjusted Euro Short-term Rate (€STR), for GBP LIBOR the RFR will be the Adjusted Sterling Overnight Index Average (SONIA) and for JPY LIBOR the RFR will be the Adjusted Tokyo Overnight Average Rate (TONA).

B. Discussion of P43

The change to the relevant risk-free rate, the numerical value of the spread, and the conforming changes in each case to a swap pursuant to a LIBOR Fallback discussed above are pre-determined and form part of the contractual terms of the swap prior to such change. None of these changes require, or are the result of, further agreement or negotiation between the parties to the swap at the time a LIBOR Fallback is triggered and will occur automatically. The changes arising from the LIBOR Fallbacks have been fixed and are publicly known (and the relevant risk-free rate and Bloomberg Spread is the same for all swaps including the LIBOR Fallbacks for a given currency and tenor), and the parties adhering to the LIBOR Fallbacks are also publicly known. The designated Bloomberg Spread, which would be reported as the price of the changes to the floating rate pursuant to P43, was set on March 5, 2021 as a consequence of the FCA's announcement.

The ARRC understands from its member firms that reporting the changes to a swap arising from the LIBOR Fallbacks being triggered would therefore not benefit price discovery as it would not provide new pricing information, and may harm market transparency and data integrity as it would suggest more current price forming activity than is actually the case.

C. Request for Relief

The ARRC requests no-action relief from the Rule 45.4 timelines for reporting the change in the floating rate pursuant to the LIBOR Fallbacks in uncleared swaps referencing any tenor of Relevant LIBOR. Specifically, the ARRC requests no-action relief so long as market participants will make best efforts to report the change in the floating rate pursuant to the LIBOR Fallbacks in accordance with the timing requirements of Part 45, provided that to the extent it is not possible to comply with such timing requirements the market participants will report the required information under P45 not later than 5 business days from, but excluding, December 31, 2021.

The ARRC further requests relief from the requirements for public reporting under Rule 43.3 in uncleared swaps referencing any tenor of Relevant LIBOR, to the extent that the triggering of LIBOR Fallbacks in any such swaps would constitute a "publicly reportable swaps transaction" under Rule 43.2.

D. Reporting the change to the floating rate – P45

The ARRC wishes to convey to the Commission that industry participants intend to report the change to the floating rate for fallback amendments when triggered and applied by adding a suffix of "fallback" to the four-letter code[25] that described the floating rate prior to the application of the fallback, for the "Floating rate index name / rate period" field for P45 reporting. ARRC's member firms intend to take this approach because they believe it will clearly identify swaps that have transitioned under the fallback amendments, is technologically feasible given the constraints detailed above, and aligns with approaches taken for other reporting jurisdictions, such as the FCA.[26] Moreover, it is ARRC's understanding that the SDRs have the capability to support this solution.

[25] https://www.iso20022.org/standardsrepository/type/BenchmarkCurveName2Code
[26] https://www.fca.org.uk/firms/uk-emir/news

V. CONCLUSION

Thank you for your consideration of our request. Please feel free to contact Simon Winn (simon.winn@us.bnpparibas.com), Priya Bindra (Priya.Bindra@morganstanley.com), Deborah North (deborah.north@allenovery.com), James Bryson (james.bryson@allenovery.com), Chelsea Pizzola (chelsea.pizzola@allenovery.com) or Eleanor Hsu (EHsu@isda.org) should you have any questions or concerns.

Sincerely,

Tom Wipf
Chair
ARRC

Cc: Ms. Alicia L. Lewis, Designated Federal Officer, CFTC Market Risk Advisory Committee