SUBMISSION COVER SHEET

***IMPORTANT*: Check box if Confidential Treatment is requested** ☐

Registered Entity Identifier Code (optional): 20-517

Organization: Chicago Mercantile Exchange Inc. ("CME")

Filing as a: ☐ **DCM** ☐ **SEF** ☒ **DCO** ☐ **SDR**

Please note - only ONE choice allowed.

Filing Date (mm/dd/yy): 12/08/20

Filing Description: Modifications to Interest Rate Swap Products to Implement IBOR Fallbacks

SPECIFY FILING TYPE

Please note only ONE choice allowed per Submission.

Organization Rules and Rule Amendments

☐	Certification	§ 40.6(a)
☒	Approval	§ 40.5(a)
☐	Notification	§ 40.6(d)
☐	Advance Notice of SIDCO Rule Change	§ 40.10(a)
☐	SIDCO Emergency Rule Change	§ 40.10(h)

Rule Numbers: See filing.

New Product **Please note only ONE product per Submission.**

☐	Certification	§ 40.2(a)
☐	Certification Security Futures	§ 41.23(a)
☐	Certification Swap Class	§ 40.2(d)
☐	Approval	§ 40.3(a)
☐	Approval Security Futures	§ 41.23(b)
☐	Novel Derivative Product Notification	§ 40.12(a)
☐	Swap Submission	§ 39.5

Product Terms and Conditions (product related Rules and Rule Amendments)

☐	Certification	§ 40.6(a)
☐	Certification Made Available to Trade Determination	§ 40.6(a)
☐	Certification Security Futures	§ 41.24(a)
☐	Delisting (No Open Interest)	§ 40.6(a)
☐	Approval	§ 40.5(a)
☐	Approval Made Available to Trade Determination	§ 40.5(a)
☐	Approval Security Futures	§ 41.24(c)
☐	Approval Amendments to enumerated agricultural products	§ 40.4(a), § 40.5(a)
☐	"Non-Material Agricultural Rule Change"	§ 40.4(b)(5)
☐	Notification	§ 40.6(d)

Official Name(s) of Product(s) Affected:

Rule Numbers:

CME Group

Christopher Bowen
Managing Director and Chief Regulatory Counsel
Legal Department

December 8, 2020

VIA ELECTRONIC PORTAL

Mr. Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Regulation 40.5(a) Submission of Rules for Commission Review and Approval – Modifications to Interest Rate Swap Products to Implement ISDA IBOR Fallback Provisions
CME Submission No. 20-517

Dear Mr. Kirkpatrick:

Chicago Mercantile Exchange Inc. ("CME"), a registered derivatives clearing organization ("DCO") under the Commodity Exchange Act, as amended ("CEA" or "Act") hereby requests approval by the Commodity Futures Trading Commission ("CFTC") of a new rule intended to implement contractual fallbacks to alternative reference rates which shall be binding on all position holders in certain over-the-counter ("OTC") Interest Rate Swap products referencing certain inter-bank offered rates ("IBORs") that are cleared by CME, in order to align CME's approach to contractual fallbacks with recent initiatives in the OTC uncleared derivatives market led by the International Swaps and Derivatives Association ("ISDA") endorsed by global regulatory authorities.

CME is a systemically important derivatives clearing organization ("SIDCO")[1] and its clearing division (the "Clearing House") offers clearing for all products traded on the CME, The Board of Trade of the City of Chicago, Inc., New York Mercantile Exchange, Inc., and Commodity Exchange, Inc. as well as other cleared products, and provides clearing services to third parties.

Background

Since the emergence of reports of attempted manipulation of certain global interest rate benchmarks, and subsequent enforcement actions by regulatory authorities from 2012 onwards, global regulatory authorities have consistently emphasized the need for reform of major interest rate benchmarks, and of IBORs in particular. In 2013 the International Organization of Securities Commissions ("IOSCO") published its Principles for Financial Benchmarks ("Principles") intended to promote the reliability of benchmark determinations, and address benchmark governance, quality and accountability mechanisms.[2] In 2014 the Financial Stability Board ("FSB") noted the key role played by interest rate benchmarks in global financial markets and made a number of recommendations to reform IBORs in response both to cases of attempted

[1] On July 18, 2012, CME Inc. was designated as a systemically important financial market utility under Title VIII of the Dodd-Frank Act.

[2] IOSCO published the Principles in July 2013. See https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf. The Principles have been endorsed by the Financial Stability Board. Principle 13 of the IOSCO Principles for Financial Benchmarks requires benchmark administrators to encourage subscribers and other stakeholders to take steps to make sure that contracts that reference a benchmark have robust fallback provisions in the event of material changes to, or cessation of, the referenced benchmark.

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IBOR manipulation and to declining liquidity in key interbank unsecured funding markets, also identifying a need to mitigate the systemic risk that could occur in the event of cessation of a key IBOR. The FSB's Official Sector Steering Group ("OSSG") made further recommendations in July 2014 focused on strengthening existing benchmarks for key IBORs and for promoting the development and adoption of alternative, transaction-based "nearly risk-free reference rates" ("RFRs") that would apply in the event of a cessation of an interest rate benchmark. The OSSG concluded in its recommendations that "In most cases, fall-back provisions are not sufficiently robust for a permanent discontinuation of a key IBOR".[3]

In response to these recommendations, relevant national regulators and industry working groups have identified robust and transaction-based RFRs, compliant with the IOSCO Principles, to serve as an alternative reference rate in each case to IBORs falling under their respective jurisdiction in the event of a cessation of such IBOR.[4] Furthermore, since 2016, the ISDA has supported the work of the FSB OSSG in working with market participants to address the absence of contractual fallback provisions in the legal documentation underlying uncleared derivative transactions, which has been widely recognized as a significant challenge to the transition to alternative reference rates in derivatives markets.

Following extensive consultation with the OSSG, market participants and regulatory authorities, ISDA's work on contractual fallbacks for bilateral uncleared derivatives concluded with the October 2020 publication of ISDA's IBOR Fallbacks Supplement[5] and IBOR Fallbacks Protocol[6]. These documents are designed to provide a contractual framework for implementation of fallback provisions for derivative market participants using ISDA legal documentation for transactions referencing the relevant IBORs falling within scope of the ISDA IBOR Fallbacks Supplement, and include contractual fallbacks to term and spread-adjusted versions of RFRs triggered by defined fallback trigger events, i.e. a permanent discontinuation of a covered IBOR, or additionally in the case of LIBORs, a non-representativeness determination by the relevant regulatory authority (the "ISDA IBOR Fallbacks").[7] The ISDA IBOR Fallbacks Supplement amends and supplements ISDA's standard definitions for derivatives transactions to incorporate these robust

[3] Fallbacks are contractual provisions that set out the consequences of a defined event; for example, a fallback provision would set out trigger circumstances, such as the discontinuation of a benchmark, and the resulting approach to move a pricing reference point to an alternative benchmark rate. See FSB OSSG July 2014 recommendations, available at https://www.fsb.org/wp-content/uploads/r_140722b.pdf

[4] Each RFR has been determined by the relevant public/private-sector working group as the alternative rate to that IBOR. For example, in 2014 the Federal Reserve Board and the Federal Reserve Bank of New York convened the Alternative Reference Rates Committee ("ARRC") in 2017 tasked with the mandate of identifying a successor to the London Interbank Offered Rate benchmark interest rate for U.S. Dollars ("LIBOR"). The ARRC fulfilled this mandate by selecting the Secured Overnight Financing Rate ("SOFR"), a reference rate administered by the Federal Reserve Bank of New York. SOFR provides a broad measure of the cost of borrowing USD cash overnight collateralized by Treasury securities and is based on overnight observable transactions in the active and liquid USD Treasury repo market. The USD ICE LIBOR rate is administered by ICE Benchmark Administration Limited, which is regulated and supervised by the UK Financial Conduct Authority as administrator of the relevant benchmark. The LIBOR rate is designed to provide an average rate at which certain international banks can borrow funds for certain tenors in the wholesale unsecured funding market.

[5] The ISDA IBOR Fallbacks Supplement is titled "Amendments to the 2006 ISDA Definitions to include new IBOR fallbacks, Supplement number 70 to the 2006 ISDA Definitions, Final on October 23, 2020 and published and effective on January 25, 2021". The ISDA IBOR Fallbacks Supplement will have the effect of amending the 2006 ISDA Definitions to include new IBOR fallback provisions for new contracts entered into from the date of implementation. The ISDA IBOR Fallbacks Supplement is available at http://assets.isda.org/media/3062e7b4/23aa1658-pdf/.

[6] The ISDA 2020 IBOR Fallbacks Protocol is a voluntary protocol for market participants that wish to incorporate the ISDA IBOR Fallbacks into existing contracts with other adhering bilateral counterparties from the date of implementation of the ISDA IBOR Fallbacks Supplement. The Protocol is available at http://assets.isda.org/media/3062e7b4/08268161-pdf/.

[7] In each case, fallback triggers, fallback rates and the term and spread adjustment have been determined by ISDA following feedback during the extensive consultation process conducted by ISDA, details of which are available at https://www.isda.org/2020/05/11/benchmark-reform-and-transition-from-libor/#consultations. For example, term and spread adjustments are considered necessary because IBORs are available in multiple tenors and incorporate bank credit premiums and other factors that are not applicable to overnight RFRs. ISDA conducted extensive public consultation on methodologies for spread and term adjustments to overnight RFRs to inform the fallback approach.

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contractual fallbacks for new derivative transactions linked to certain IBORs[8] entered into from January 25, 2021 or such other date as may be notified by ISDA (the "ISDA IBOR Fallback Implementation Date"). The ISDA IBOR Fallbacks Protocol is designed to facilitate arrangements between bilateral counterparties for the voluntary incorporation of the same contractual fallbacks into existing "legacy" contracts outstanding between bilateral counterparties as at the ISDA IBOR Fallback Implementation Date.

Therefore, from the ISDA IBOR Fallback Implementation Date, all new bilateral uncleared derivatives that reference a covered IBOR and the relevant ISDA definitions will include the robust ISDA IBOR Fallback contractual fallback provisions to term and spread-adjusted versions of RFRs on the occurrence of a fallback trigger event, as determined in the ISDA IBOR Fallback Supplement. In addition, market participants are widely expected to adhere to the ISDA IBOR Fallbacks Protocol, as evidenced by the considerable numbers of adhering parties to date[9], driven by the initiatives led by global regulatory bodies to promote and encourage adherence to the Protocol by the firms they regulate. Global regulatory bodies have, for example, recommended adoption of the ISDA IBOR Fallbacks Protocol as a key part of LIBOR transition readiness for supervised financial and non-financial firms, preparations for which are expected to come under renewed focus following the issuance of a public consultation by ICE Benchmark Administration ("IBA") regarding its intention to cease publication of certain LIBORs after the end of 2021 and others in June 2023.[10] As a result of these global regulatory initiatives it is widely anticipated that market participants will take action to adhere to the ISDA IBOR Fallbacks Protocol such that significant volumes of outstanding "legacy" derivatives will also incorporate the ISDA IBOR Fallbacks from the ISDA IBOR Fallback Implementation Date.

CME Group considers that the ISDA IBOR Fallbacks represent robust contractual fallbacks to transaction based RFRs that are appropriate for use in derivatives contracts to address the risk of a permanent

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[8] The IBORs covered by the ISDA IBOR Fallbacks framework are CHF LIBOR, EUR LIBOR, GBP LIBOR, JPY LIBOR, USD LIBOR, EURIBOR, Yen TIBOR, Euroyen TIBOR, BBSW, CDOR, HIBOR, SOR and THBFIX. The ISDA IBOR Fallbacks therefore apply to a broader range of contracts than those cleared by CME. CME does not clear EUR LIBOR, JPY TIBOR, JPY Euroyen TIBOR or THBFIX.

[9] ISDA maintains a public list noting those market participants that have adhered to the ISDA IBOR Fallbacks Protocol to date at https://www.isda.org/protocol/isda-2020-ibor-fallbacks-protocol/adhering-parties

[10] Global regulatory authorities have consistently warned market participants of the risk that certain IBORs may be discontinued or become "non-representative" after the end of 2021, reminding market participants of the need to have appropriate arrangements to fall back to the applicable RFR, including for "legacy" contracts. See UK FCA speech, August 2020: https://www.fca.org.uk/news/speeches/libor-transition-critical-tasks-ahead-us-second-half-2020. On November 18, 2020 IBA, the FCA-regulated and authorised administrator of LIBOR, announced that it will consult on its intention that the euro, sterling, Swiss franc and yen LIBOR panels would, subject to confirmation following the consultation, cease at end-2021 – see https://www.fca.org.uk/news/statements/fca-consults-on-new-benchmark-powers and https://ir.theice.com/press/news-details/2020/ICE-Benchmark-Administration-to-Consult-On-Its-Intention-to-Cease-the-Publication-of-GBP-EUR-CHF-and-JPY-LIBOR/default.aspx. IBA issued a second announcement on November 30, 2020 notifying market participants of its proposal to consult on its intention to cease the publication of the one week and two month USD LIBOR settings immediately following the LIBOR publication on December 31, 2021, and the remaining USD LIBOR settings immediately following the LIBOR publication on June 30, 2023 – see https://ir.theice.com/press/news-details/2020/ICE-Benchmark-Administration-to-Consult-on-Its-Intention-to-Cease-the-Publication-of-One-Week-and-Two-Month-USD-LIBOR-Settings-at-End-December-2021-and-the-Remaining-USD-LIBOR-Settings-at-End-June-2023/default.aspx. The resulting consultation was published by IBA on December 4, 2020 and is available at: https://www.theice.com/publicdocs/ICE_LIBOR_Consultation_on_Potential_Cessation.pdf.
The FSB has strongly encouraged widespread and early adherence to the ISDA IBOR Fallbacks Protocol by all affected financial and non-financial firms as a critical step in benchmark transition ahead of end-2021. See https://www.fsb.org/2020/10/fsb-encourages-broad-and-timely-adherence-to-the-isda-ibor-fallbacks-protocol/. Members of the ISDA Board of Directors strongly support broad adherence to the ISDA IBOR Fallback Protocol among all market participants globally that have non-cleared derivatives exposure to LIBOR and other IBORs and understands there to be broad market consensus supporting their adoption, noting in July 2020 that "The IBOR Fallback Protocol is the most efficient way for participants in the vast majority of non-cleared derivatives markets to mitigate against the risks associated with the discontinuation of a key IBOR, and is a critical part of addressing both individual firm risks and systemic risks associated with the expected discontinuation and/or non-representativeness of LIBOR in particular." See ISDA Board statement July 29, 2020 https://www.isda.org/2020/07/29/isda-board-statement-on-adherence-to-the-ibor-fallback-protocol/.

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discontinuation of a key IBOR, or the "non-representativeness" of a key LIBOR rate. CME Group supports improvements in fallback arrangements to IBOR fallback rates and we believe that a coordinated approach to triggers and fallbacks between cleared and uncleared derivatives markets is positive for the market place.[11] In October 2020, the FSB's Global Transition Roadmap for LIBOR confirmed that the FSB expects providers of cleared products linked to LIBOR should also ensure that these incorporate fallback provisions equivalent to the ISDA IBOR Fallbacks, as appropriate, by the ISDA IBOR Fallback Implementation Date.[12] As a result, in order to align our approach to CME OTC cleared interest rate swap products with the bilateral uncleared market, subject to regulatory approval, CME will amend the rules of CME (the "CME Rulebook") to incorporate the ISDA IBOR Fallbacks into the terms of each CME cleared contract in relevant interest rate swap products, with effect from the ISDA IBOR Fallback Implementation Date, including for the avoidance of doubt:

- "new" trades accepted for clearing by CME from the ISDA IBOR Fallback Implementation Date; and
- "legacy" cleared trades registered for clearing by CME (and that remain outstanding) prior to the ISDA IBOR Fallback Implementation Date,

in each case, as set out in this filing.[13]

<u>Overview of ISDA IBOR Fallbacks</u>

The ISDA IBOR Fallbacks set out the contractual framework for implementation of fallback provisions for ISDA derivative contracts for relevant IBORs covered by the ISDA IBOR Fallbacks Supplement. The ISDA IBOR Fallbacks incorporate defined contractual trigger events that might affect any relevant covered IBOR (known as "Index Cessation Events") and also incorporate robust contractual provisions to "fall back" to a term and spread-adjusted version of the relevant nominated RFR for such IBOR as the reference rate for the derivative contract on the occurrence of such a relevant trigger event for that IBOR, as summarized below:

<u>Fallback Trigger Events (known as "Index Cessation Events" in ISDA IBOR Fallbacks Supplement)</u>

Under the ISDA IBOR Fallback provisions, contractual fallback to the relevant term and spread adjusted version of the relevant RFR would occur from the effective date of the following fallback "trigger" events / "Index Cessation Events":

- For any in-scope IBOR:
    - a public statement or publication of information by or on behalf of the administrator of the relevant IBOR announcing that it has ceased or will cease to provide the relevant IBOR permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the relevant IBOR; or

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[11] CME Group has fully supported the efforts of the official sector, ARRC and ISDA and their industry-wide working groups to improve and strengthen LIBOR fallbacks and indicated at an early stage our intention to align with ISDA to include revised fallback language in our rules at a time which is concurrent with amendments or new definitions being adopted across the OTC derivative marketplace: https://www.cmegroup.com/education/articles-and-reports/cme-group-supports-isda-s-libor-fallback-provisions.html

[12] FSB Global Transition Roadmap for LIBOR, 16 October 2020, see https://www.fsb.org/wp-content/uploads/P161020-1.pdf. The FSB also reminded firms that continued reliance by global financial markets on LIBOR poses clear risks to global financial stability, that the LIBOR benchmarks are not guaranteed to continue to be available after the end of 2021, and therefore preparations should be underway to reduce reliance on these rates well ahead of that point.

[13] Note that CME does not propose to apply the ISDA IBOR Fallback approach in full to CME cleared trades in Forward Rate Agreements, as described in more detail below.

- a public statement or publication of information by the regulatory supervisor for the administrator of the relevant IBOR, the central bank for the currency of the relevant IBOR, an insolvency official with jurisdiction over the administrator for the relevant IBOR, a resolution authority with jurisdiction over the administrator for the relevant IBOR or a court or an entity with similar insolvency or resolution authority over the administrator for the relevant IBOR, which states that the administrator of the relevant IBOR has ceased or will cease to provide the relevant IBOR permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the relevant IBOR; or

- Additionally, for CHF LIBOR, EUR LIBOR, GBP LIBOR, JPY LIBOR and USD LIBOR:

  - a public statement or publication of information by the regulatory supervisor for the administrator of such relevant LIBOR announcing that (A) the regulatory supervisor has determined that such relevant LIBOR is no longer, or as of a specified future date will no longer be, representative of the underlying market and economic reality that such relevant LIBOR is intended to measure and that representativeness will not be restored and (B) it is being made in the awareness that the statement or publication will engage certain contractual triggers for fallbacks activated by pre-cessation announcements by such supervisor (howsoever described) in contracts.

The effective date of the Index Cessation Event would be the first date on which the relevant IBOR is no longer provided or, in the case of a LIBOR, the first date on which the relevant LIBOR is either non-representative (including where it continues to be published) or no longer provided (the "Index Cessation Effective Date").

Fallback Rates

Under the ISDA IBOR Fallbacks, on an "Index Cessation Event" the relevant contract reference rate would "fall back" from the relevant IBOR to the relevant (term and spread adjusted) RFR for that IBOR referenced in the ISDA IBOR Fallbacks.[14] The relevant IBOR fallback reference rates are based on the alternative RFRs identified for each relevant IBOR[15] and in each case are tenor, term and spread adjusted (the "all-in" fallback rate), as calculated and published by Bloomberg Index Services Limited ("Bloomberg") or such other relevant provider under the ISDA IBOR Fallback Supplement:

- Adjusted RFR: the compounded setting in arrears RFR for each relevant term – daily compounding of publicly available RFRs (e.g. for USD, the Secured Overnight Financing Rate ("SOFR"), etc.).
- Spread Adjustment: the median of the historical differences between the IBOR for each tenor and the compounded RFR for that tenor over a five year period prior to a fallback trigger event.
- Fallback Rate: the "all-in" fallback rate (i.e., the Adjusted RFR plus the Spread Adjustment for each tenor).[16]

[14] Term and spread adjustments are considered necessary because IBORs are available in multiple tenors and incorporate bank credit premiums and other factors that are not applicable to overnight RFRs. These have been determined in each case during the extensive consultation process conducted by ISDA, further details of which are available at https://www.isda.org/2020/05/11/benchmark-reform-and-transition-from-libor/#consultations. See footnote 15 for further detail.

[15] The corresponding RFR for each IBOR is: BBSW (AONIA), CDOR (CORRA), CHF LIBOR (SARON), EUR LIBOR (ESTR), EURIBOR (ESTR), GBP LIBOR (SONIA), HIBOR (HONIA), JPY LIBOR (TONA), TIBOR (TONA), Euroyen TIBOR (TONA), USD LIBOR (SOFR).

[16] Further information on the calculations and rates performed by Bloomberg, for example, are available on the Bloomberg website at: https://data.bloomberglp.com/professional/sites/10/IBOR-Fallbacks-Fact-Sheet.pdf. Bloomberg maintains a publicly available

The fallback trigger events / "Index Cessation Events" are relevant to the calculation of the Spread Adjustment because the relevant trigger events determine the fixing date for the Spread Adjustment. However, the relevant Fallback Rate will not apply until the actual cessation of the relevant IBOR (or actual date of non-representativeness of the relevant LIBOR), as detailed in the ISDA IBOR Fallbacks Supplement.

Under the ISDA IBOR Fallbacks, upon the occurrence of an Index Cessation Event, the rate for the next Reset Date (as defined in the 2006 ISDA Definitions) of an affected contract occurring on or after the Index Cessation Effective Date will see a shift in the fixing date based on the methodology set out in the ISDA IBOR Fallbacks Supplement. Under the ISDA IBOR Fallbacks, after the Index Cessation Effective Date, the rate for a Reset Date will be determined as if references to the relevant IBOR reference rate were references to the relevant Fallback Rate for the Original Rate Record Day that corresponds to the Reset Date for that IBOR, as most recently provided or published at the prescribed time on the day that is two business days preceding the related payment date.[17]

Incorporation of ISDA IBOR Fallbacks into 2006 ISDA Definitions

The 2006 ISDA Definitions incorporate any amendments made from time to time by ISDA by way of supplements. The ISDA IBOR Fallbacks Supplement amends the 2006 ISDA Definitions to incorporate the ISDA IBOR Fallback provisions into new contracts that reference those definitions entered into from the ISDA IBOR Fallback Implementation Date.[18] Specifically, the ISDA IBOR Fallbacks Supplement amends the 2006 ISDA Definitions of "Rate Option" and "Floating Rate Option" to incorporate the ISDA IBOR Fallbacks establishing the contractual fallback provisions from a relevant IBOR to the relevant Fallback Rate on one of the specified "Index Cessation Events".

Incorporation of ISDA IBOR Fallbacks into the terms of CME cleared trades

The CME Rulebook rules in Chapter 900, 901 and 902 of the CME Rulebook incorporate by reference certain of the 2006 ISDA Definitions, including the definitions of "Rate Option" and "Floating Rate Option" which, as noted above, are amended by the implementation of the ISDA IBOR Fallbacks Supplement to incorporate the ISDA IBOR Fallbacks for new contracts from the ISDA IBOR Fallback Implementation Date.[19] As a result, the ISDA IBOR Fallback provisions will be incorporated into the terms of any relevant

rulebook (the "IBOR Fallback Rate Adjustments Rule Book", available at https://data.bloomberglp.com/professional/sites/10/IBOR-Fallback-Rate-Adjustments-Rule-Book.pdf) which sets out the processes that Bloomberg will implement to calculate the rate adjustments in line with the approach agreed by market participants under ISDA's extensive consultation process. In summary, the Bloomberg Rulebook sets forth in the formulae, definitions, rules and conventions to effect the following key adjustments: (i) to account for the fact that IBORs have a term structure (e.g., 1-month, 2-month, etc.) whereas RFRs are overnight rates, the RFRs will be compounded in arrears over a period similar to the applicable IBOR tenor (e.g., 30 days for 1-month, 60 days for 2-month, etc.). These compounded RFRs are each generally referred to as the "Adjusted Reference Rate"; (ii) to account for the (nearly) risk-free nature of the RFRs v. the liquidity characteristics and supply/demand factors affecting IBORs, a spread adjustment will be calculated for each RFR/IBOR pair (per tenor) using a five year historical median calculation. These calculations are each generally referred to as the "Spread Adjustment"; and (iii) adding (i) and (ii) together on a per RFR, per tenor basis for the resulting "Fallback Rate".

[17] Or as otherwise determined in the ISDA IBOR Fallbacks Supplement for the relevant rate. This date is termed the "Fallback Observation Day" under the ISDA IBOR Fallbacks Supplement. This approach is adopted to reflect the fact that IBORs are forward-looking whereas RFRs are backward-looking and therefore the compounding in arrears for the term adjustments means that the floating amount payable for a calculation period will not be known until the end of that period. As a result, for example in certain cases, under ISDA's IBOR Fallback Supplement methodology the calculation period is moved such that the observation period ends on the Fallback Observation Day, 2 business days prior to the payment date, which provides for sufficient time for the relevant payment amounts to be calculated based on the methodology prescribed in the ISDA IBOR Fallbacks and for payment to be made on the payment date. This approach is the result of ISDA's extensive consultation exercises with market participants.

[18] Bilateral counterparties to uncleared trades wishing to incorporate the ISDA IBOR Fallbacks into a "legacy" contract must adhere to the ISDA IBOR Fallbacks Protocol and ensure their relevant counterparty is also an adhering party.

[19] CME Rulebook Chapter 900 (Interest Rate Products) includes Rule 90001 (Scope of Chapter) which provides that "Capitalized terms in this Chapter that are not otherwise defined in either this Chapter or the other Chapters of the Rules shall have the meanings set forth in the [2006] ISDA Definitions." Rule 90002.F (Contract Elections for IRS Swaps) provides that an IRS Participant submitting

OTC IRS trades accepted for clearing by CME from the ISDA IBOR Fallback Implementation Date and the resulting amendment of the 2006 ISDA Definitions which are incorporated by reference into the relevant chapters of the CME Rulebook.[20]

Given the anticipated widespread adoption of the ISDA IBOR Fallbacks Protocol by the significant majority of market participants, in order to align CME's approach with these market participants and the approach encouraged by global regulatory authorities (as most recently illustrated in the FSB's Global Transition Roadmap for LIBOR[21]), CME considers it necessary also to implement the ISDA IBOR Fallbacks into "legacy" CME cleared OTC IRS trades that remain outstanding on the ISDA IBOR Fallback Implementation Date. The incorporation of ISDA IBOR Fallbacks into these "legacy" cleared contracts will promote close alignment of cleared and uncleared markets, which is considered to be critical to an orderly transition away from any benchmark rate that is subject to an Index Cessation Event.

CME does not propose to apply the ISDA IBOR Fallback approach in full to CME cleared trades in Forward Rate Agreements ("FRAs"). This is because the full application of the ISDA IBOR Fallback approach to FRAs, without modification, could result in the fallback procedure shifting the interest rate risk period of a FRA which could in turn create problems for market participants, such that many market participants consider the ISDA IBOR Fallback approach to be incompatible with FRAs in certain respects. This is because Fallback Rates are "backward-looking" rates, calculated in arrears over the relevant interest period, and therefore the relevant rate is not known until the end of the term of the interest rate period. Unlike other interest rate swap products, which generally pay out at the end of the relevant interest period, FRAs do not feature a time lag between the fixing date and the payment date of the contract and therefore the FRA is designed to pay out at the start of the interest period. As a result, under the terms of the ISDA IBOR Fallbacks Supplement, in these circumstances the Fallback Rate published for the previous fixing period would be used instead, amending the economic exposure under the cleared trade, which many market participants consider to be undesirable.

As a result, CME does not propose to apply the ISDA IBOR Fallbacks in full to FRAs. Instead, in the event of an Index Cessation Event that leads to an Index Cessation Effective Date affecting a CME cleared FRA (and where the fixing date falls after the Index Cessation Effective Date), CME proposes to convert each affected FRA into an equivalent single period interest rate swap, referencing the relevant Fallback Rate, which is otherwise economically equivalent to the relevant original FRA (i.e with an effective date corresponding to the settlement date of the original FRA and with the same fixed rate, maturity date, notional and direction). From discussions with market participants, CME understands that this approach to FRAs is accepted by market participants as preferable to implementation of the ISDA IBOR Fallbacks in full for FRAs. Further details will be provided by CME in due course prior to implementation.

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an IR Swap for acceptance for clearing by the Clearing House as an IR Swap Contract that is not an Underlying IR Swap Contract must make certain elections, including the Floating Rate Option (as defined in the 2006 ISDA Definitions). CME Rulebook Chapter 901 (Interest Rate Swaps Contract Terms) states at Rule 90101 (Scope of Chapter) that "the terms and conditions of each IRS Contract shall be defined by this Chapter, as supplemented by the [2006] ISDA Definitions…and the relevant Contract Elections, and as further supplemented and amended by provisions of these Rules" and that "Capitalized terms in this Chapter that are not otherwise defined in either this Chapter or the other Chapters of the Rules shall have the meanings set forth in the [2006] ISDA Definitions." CME Rule 90102.E.1 (Rate Options) sets out the available Rate Options that may be elected by the IRS Participant with respect to an IRS Contract in accordance with Rule 90002.F, which include certain of the Floating Rate Options to which the ISDA IBOR Fallbacks apply, e.g.: USD-LIBOR-BBA, GBP-LIBOR-BBA, etc. CME will add a note to each relevant affected CME Rulebook Chapter to refer to the Clearing Advisory Notice in Exhibit 1 regarding incorporation of the 2006 ISDA Definitions and the ISDA IBOR Fallback Supplement.

[20] The relevant CME IRS products are: (i) Interest Rate Swaps ("IRS") (GBP, CHF, USD, JPY (LIBOR), EURIBOR, BBSW, CDOR, HIBOR (non-LIBOR)) and (ii) Swaptions (USD 3M LIBOR (physical settlement, European expiry). Note that uncleared swaptions contracts that exercise into CME cleared swaps in these IRS products prior to the date of implementation will exercise into cleared swaps on the same terms as those in (i).

[21] FSB Global Transition Roadmap for LIBOR, 16 October 2020, see https://www.fsb.org/wp-content/uploads/P161020-1.pdf.

CME proposes that these rule changes to implement the ISDA IBOR Fallbacks in the CME Rulebook will be implemented via Advisory Notice published by the Clearing House setting out the terms and application of the CME Rulebook changes to be applied with respect to cleared trades in affected products following the effective date of the notice, in the form set out in Exhibit 1 (the "Advisory Notice"). CME intends that the Advisory Notice will be binding on all position holders and Clearing Members from the ISDA IBOR Fallback Implementation Date, pending regulatory approval.

Application of ISDA IBOR Fallbacks to CME Cleared OTC Interest Rate Swap Products

Subject to regulatory approval, the changes to the CME Rulebook to implement the ISDA IBOR Fallbacks will apply to cleared trades in the following CME cleared interest rate swap products (the "Affected Products") from the ISDA IBOR Fallback Implementation Date:

(i) Interest Rate Swaps except where the fixing date for the final coupon period falls before the Index Cessation Effective Date (as defined in the ISDA IBOR Fallbacks Supplement):
- GBP, CHF, USD, JPY (LIBOR);
- EURIBOR, BBSW, CDOR, HIBOR (non-LIBOR), SOR

(ii) Swaptions:
- USD 3M LIBOR (physical settlement, European expiry).

Implementation of CME Rulebook Changes to Incorporate ISDA IBOR Fallbacks

No specific amendments to the text of the Affected Product contract terms or the text of the CME Rulebook are necessary to implement the ISDA IBOR Fallbacks for CME cleared trades in the Affected Products. The implementation of the ISDA IBOR Fallbacks within the CME Rulebook will be effected via Advisory Notice published by the Clearing House setting out the application of the ISDA IBOR Fallback provisions in the ISDA IBOR Fallbacks Supplement to relevant CME cleared contracts in Affected Products, in the form of the Advisory Notice set out in Exhibit 1. The Advisory Notice will be made available to Clearing Members, market participants and the general public via the CME website.

Subject to regulatory approval, following implementation of the ISDA IBOR Fallbacks via the Advisory Notice on the ISDA IBOR Fallback Implementation Date, the ISDA IBOR Fallbacks shall apply to all CME cleared trades in Affected Products from the ISDA IBOR Fallback Implementation Date, including for the avoidance of doubt open cleared trades in Affected Products entered into before the ISDA IBOR Fallback Implementation Date and cleared trades in such products accepted for clearing after the ISDA IBOR Fallback Implementation Date.

Market participants will be reminded in the Advisory Notice that position holders that do not wish to hold open cleared trades in Affected Products that incorporate the ISDA IBOR Fallbacks must close out any cleared trades in Affected Products prior to the effective date of implementation.

Governance, Industry Consultation, Comments/Opposing Views:

ISDA engaged in extensive public consultation with market participants in formulating the ISDA IBOR Fallbacks, including consultation on fallback trigger events and the term and spread adjustment methodologies for covered IBORs, as well as issuing an open tender invitation prior to selection of a vendor to perform and distribute the necessary adjustments to RFRs.[22] ISDA's consultations received significant

[22] An overview of the various relevant ISDA consultations on the ISDA IBOR Fallbacks is available at https://www.isda.org/2020/05/11/benchmark-reform-and-transition-from-libor/#consultations, and summarized in brief below:

market participant attention and feedback and informed the final approach adopted by ISDA in the ISDA IBOR Fallbacks for the relevant in scope IBORs. The ISDA IBOR Fallbacks have in turn received widespread market participant support and endorsement by global regulatory authorities for use in both "new" and "legacy" derivative contracts, with many global regulatory bodies promoting and encouraging adherence by the firms they regulate, for example, as part of LIBOR transition readiness.

The FSB has strongly encouraged widespread and early adherence to the ISDA IBOR Fallbacks Protocol by all affected financial and non-financial firms as a critical step in benchmark transition for LIBORs ahead of end-2021.[23] The FSB's Global Transition Roadmap for LIBOR also confirmed that the FSB expects that providers of cleared products linked to LIBOR should also ensure that they incorporate fallback provisions equivalent to the ISDA IBOR Fallbacks, as appropriate, by the ISDA IBOR Fallback Implementation Date.[24]

CME Group has fully supported the efforts of the official sector and ISDA and their industry-wide working groups to improve and strengthen IBOR fallbacks. CME Group indicated at an early stage of ISDA's consultations that it was our intention to align with ISDA to include revised fallback language in our rules applicable to cleared OTC interest rate products at a time which is concurrent with amendments or new definitions being adopted across the OTC derivative marketplace.[25] To this end, CME has engaged with market participants, ISDA and relevant global regulatory authorities during the extensive ISDA consultation process to ensure that our approach to implementation of IBOR fallbacks is aligned with the approach set out in the ISDA IBOR Fallbacks. CME has engaged with market participants regarding the implementation

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In relation to fallback trigger events, in May 2020, ISDA published its final report that summarized the final responses to its consultation on the implementation of pre-cessation fallbacks for derivatives referenced to LIBOR "Summary of Responses to the ISDA 2020 Consultation on How to Implement Pre-cessation Fallbacks in Derivatives". The results of the consultation indicated that a significant majority of respondents supported including pre-cessation and permanent cessation fallbacks without optionality or flexibility in the amended 2006 ISDA Definitions for LIBOR and in a single protocol for including the updated definitions in legacy trades - see https://www.isda.org/a/IuQTE/ISDA-Publishes-Final-Results-of-Consultation-on-Pre-cessation-Fallbacks-Final.pdf.

Given the fundamental differences between an IBOR and the relevant RFR in each case, ISDA consulted market participants on the adjustments considered necessary to enable contractual fallbacks to RFRs to function in contracts referencing such IBOR rates, engaging in a series of public consultations to determine the relevant term and spread adjustment methodologies. ISDA issued an initial market-wide consultation in July 2018 which focused on technical issues related to fallbacks for derivative contracts that reference GBP LIBOR, CHF LIBOR, JPY LIBOR, TIBOR, Euroyen TIBOR, and BBSW, followed by a supplemental market-wide consultation published in May 2019 which focused on the same issues related to fallbacks for derivative contracts that reference USD LIBOR, CDOR, HIBOR, and certain aspects of fallbacks for derivatives that reference SOR, followed by a further market-wide consultation in September 2019 on final parameters of spread and term adjustments for fallbacks in derivatives contracts referencing the IBORs covered by the prior consultations. These consultations established that the majority of respondents preferred the compounded setting in arrears rate to address the difference in tenors between IBORs and overnight RFRs and the historical mean/median approach for the spread adjustment to address differences in credit risk and other risk factors between IBORs and corresponding RFRs, and further that a majority of participants preferred an implementation based on a historical median approach over a five-year lookback period. A majority of respondents also preferred not to include a "transitional period" in the spread adjustment calculation, not to exclude outliers, and not to exclude any negative spreads for calculations. For the compounded setting in arrears rate, a majority favored a backward shift adjustment for operational and payment purposes. In December 2019 ISDA published a supplemental market-wide consultation on spread and term adjustments, including final parameters for those adjustments, for fallbacks in derivatives referencing EUR LIBOR and EURIBOR, as well as other less widely used IBORs. The responses to the December 2019 consultation were largely consistent with the outcome of the earlier consultations.

ISDA also issued a tender invitation for a vendor to perform and distribute the necessary adjustments to RFRs for certain IBORs, subsequently awarded to Bloomberg, which began publishing calculating and publishing fallbacks that ISDA intends to implement for certain key IBORs in July 2020: https://www.isda.org/a/h4mTE/Bloomberg-Begins-Publishing-Calculations-Related-to-IBOR-Fallbacks.pdf

[23] See https://www.fsb.org/2020/10/fsb-encourages-broad-and-timely-adherence-to-the-isda-ibor-fallbacks-protocol/. In addition, in October 2020, the FSB's Global Transition Roadmap for LIBOR strongly encouraged market participants to adhere to the ISDA protocol by the ISDA IBOR Fallbacks Implementation Date, see https://www.fsb.org/wp-content/uploads/P161020-1.pdf.

[24] FSB Global Transition Roadmap for LIBOR, 16 October 2020, see https://www.fsb.org/wp-content/uploads/P161020-1.pdf. The FSB also reminded firms that continued reliance of global financial markets on LIBOR poses clear risks to global financial stability, that the LIBOR benchmarks are not guaranteed to continue to be available after the end of 2021 and therefore preparations should be underway to reduce reliance on these rates well ahead of that point.

[25] See https://www.cmegroup.com/education/articles-and-reports/cme-group-supports-isda-s-libor-fallback-provisions.html

of IBOR fallbacks across our suite of exchange traded and OTC derivative products.[26] The proposed implementation of the ISDA IBOR Fallbacks into the CME Rulebook and the text of the Advisory Notice is a product of these discussions.

The approach to the implementation of the ISDA IBOR Fallbacks in the CME Rulebook set out in the Advisory Notice and the timeframe for implementation of those changes to the CME Rulebook reflects the industry-wide initiative to implement the ISDA IBOR Fallbacks across derivative contracts in a coordinated manner on the ISDA IBOR Fallback Implementation Date. We recognize the importance of industry alignment to implement the ISDA IBOR Fallbacks at the same time across cleared and uncleared markets. As a result, CME's proposed timeline for the implementation of the ISDA IBOR Fallbacks into the CME Rulebook is designed to align with these broader industry initiatives, subject to regulatory approval.

During the ISDA consultation process and CME's own engagement with industry bodies and market participants, there were no substantive opposing views raised by market participants with respect to CME's proposal to align our approach to IBOR fallbacks with the ISDA IBOR Fallbacks as set out in the text of the Advisory Notice. We understand that CME's approach to implementation is in line with the expectations of market participants, industry groups (including ISDA) and also global regulatory authorities.

The Clearing House IRS Risk Committee reviewed and approved the CME Rulebook changes to implement the IBOR Fallback Provisions (as set out in the Advisory Notice) in the November 5th, 2020 meeting of the committee. No objections to the implementation of the ISDA IBOR Fallbacks were raised in the meeting.

The Clearing House Oversight Committee ("CHOC") reviewed and approved the CME Rulebook changes to implement the IBOR Fallback Provisions for OTC IRS in the December 8th, 2020 meeting of the committee.[27]

Analysis of the IBOR Fallback Provisions and Advisory Notice under DCO Core Principles

CME reviewed the derivatives clearing organization core principles ("Core Principles") as set forth in the CEA. During the review, CME identified the following Core Principles as potentially being impacted:

Core Principle D – Risk Management: Following the extensive market consultation undertaken by ISDA and the early confirmation provided by CME of our intention to align our approach to IBOR fallbacks with that of ISDA, the implementation and timetable for the implementation of the changes to the CME Rulebook to implement the ISDA IBOR Fallbacks via the Advisory Notice has been designed to align with the broader ISDA led industry initiative to implement IBOR fallbacks for uncleared derivatives, which has in turn been endorsed by global regulatory bodies. Market participants welcome the planned industry alignment on timing of implementation because it will ensure alignment between cleared and uncleared markets for OTC interest rate swap products, consistent with the needs and expectations of market participants.

[26] For example, see CME Nov 2019 Webinar entitled "Fallbacks for Eurodollars" which included an overview of CME's proposed approach to IBOR fallbacks across CME Group exchange traded derivatives and OTC interest rate swap products. CME Group also participated in CFTC Market Risk Advisory Committee ("MRAC") meetings in which IBOR fallback matters have been discussed, along with industry bodies, market participants and other CCPs. For example, CME Group participated in the December 2019 MRAC, expressing support for implementation of IBOR fallbacks and ISDA's initiative and noting the importance of a coordinated approach across cleared and uncleared markets and also the need for fallback trigger events to include a scenario where a reference rate was deemed to be "non-representative" by the regulatory supervisory of the administrator of the relevant reference rate, see https://www.cftc.gov/sites/default/files/2020/06/1592422053/mrac_121119_transcript.pdf

[27] CME proposes to effect the Rulebook amendments under the authority of CME under Chapter 2 (Government) of the CME Rulebook which provides (at Rule 230.(j)) that the CME Board of Directors shall "make and amend the Rules; provided the Board may also delegate authority to make and amend the rules as it deems appropriate". The CHOC is a Committee of the Board of Directors of CME. The CHOC Charter states that the CHOC shall review and approve all substantive amendments to the CME Rulebook impacting the Clearing House Division.

Core Principle L – Public Information: The implementation of the ISDA IBOR Fallbacks within the CME Rulebook will take place via the Advisory Notice, which will be made publicly available and will also be distributed to Clearing Members and market participant recipients of CME Advisory Notices. CME has taken appropriate steps to provide market participants with sufficient information to enable those market participants to identify and evaluate the changes to the CME Rulebook and the effect of the implementation of the ISDA IBOR Fallbacks in respect of Affected Products. The relevant IBOR fallback trigger events and reference rates are based on the alternative RFRs identified for each relevant IBOR referred to in the ISDA IBOR Fallback Supplement, which is publicly available, and the tenor, term and spread adjusted Fallback Rates are calculated according to the ISDA IBOR Fallback Supplement, for example, by Bloomberg and made publicly available on the Bloomberg website for the majority of the Fallback Rates.[28]

The legal basis for the implementation of the relevant changes to the CME Rulebook will be made publicly available through the Advisory Notice.

Core Principle N – Antitrust Considerations: The proposed implementation of the ISDA IBOR Fallbacks is necessary and appropriate to support the long-term stability of the derivatives markets. The ISDA IBOR Fallbacks and their application also to cleared OTC interest rate swap products is widely supported by market participants and regulatory authorities as a key part of ensuring robust benchmark fallbacks and readiness for any future transition from IBORs. Thus, while the proposed implementation of the ISDA IBOR Fallbacks in the CME Rulebook does not result in any unreasonable restraint of trade or material anticompetitive burden, as explained below, even if arguably it did, the proposed implementation of ISDA IBOR Fallbacks is consistent with CEA Core Principle N, as "necessary or appropriate to achieve the purposes of th[e] Act," including by facilitating the derivatives market's transition to a benchmark based on actual transactions, a goal embraced by domestic and international regulators as critical to financial stability. 7 U.S.C. §7a-1(c)(2)(N).

On October 1, 2020 the US Department of Justice's Antitrust Division announced that it had completed its review of ISDA's proposal to implement the ISDA IBOR Fallbacks. The department concluded that ISDA's proposed amendments to its standardized documentation are unlikely to harm competition and that, therefore, the department does not presently intend to challenge ISDA's proposed amendments to its standardized documentation for derivatives, noting that "ISDA's process, including its cooperation with government regulators and its consultation-driven process for obtaining feedback from industry participants, has had the effect of clarifying the practical issues involved in planning for when LIBOR and other IBORs are no longer available and preparing for a smooth transition away from IBORs to other reference rates".[29]

CME has engaged with regulatory authorities, market participants and industry groups regarding its approach for the implementation of ISDA IBOR Fallbacks. Notably, during those communications, CME did not receive any comments regarding any antitrust/fair competition concerns. The absence of such concerns is not surprising, given that it is well-established that the shift away from IBORs to alternative reference rates that are supported by a sufficiently liquid market was initiated and strongly encouraged by government authorities in the United States, including the Financial Stability Oversight Council, and across the globe, including the FSB and the UK FCA. The pervasive government role in this initiative, and the transparent process that ISDA has undertaken to address international regulators' concerns and objectives, make clear

[28] Please see the ISDA IBOR Fallbacks Supplement for details on the specific Fallback Rate provider for each IBOR. Further information on the calculations and rates calculated by Bloomberg are available on the Bloomberg website at: https://data.bloomberglp.com/professional/sites/10/IBOR-Fallbacks-Fact-Sheet.pdf together with the Bloomberg IBOR Fallback Rate Adjustments Rulebook available at https://data.bloomberglp.com/professional/sites/10/IBOR-Fallback-Rate-Adjustments-Rule-Book.pdf.

[29] See https://www.justice.gov/opa/pr/justice-department-issues-favorable-business-review-letter-isda-proposed-amendments-address.

that the coordinated approach to implementation of IBOR fallbacks is designed to mitigate risks to financial stability identified by regulators and not to harm competition.

The text of the Advisory Notice is provided in Exhibit 1. The Advisory Notice is intended to be effective as of the ISDA IBOR Fallback Implementation Date, pending regulatory approval.

Pursuant to Section 5c(c) of the CEA and CFTC Regulation 40.5(a), CME certifies that the new rule in the form of the Advisory Notice complies with the CEA and the regulations thereunder.

CME certifies that this submission has been concurrently posted on CME Group's website at http://www.cmegroup.com/market-regulation/rule-filings.html.

Should you have any questions concerning the above, please contact the undersigned at (212) 299-2200 or via e-mail at CMEGSubmissionInquiry@cmegroup.com.

Sincerely,

/s/ Christopher Bowen
Managing Director & Chief Regulatory Counsel

Attachment: Exhibit 1 – Form of CME Advisory Notice

Exhibit 1 Form of Advisory Notice

CME Group | Advisory Notice

TO: Clearing Member Firms
Back Office Managers

DATE: ***Effective Date Jan 25th, 2021***

FROM: CME Clearing

NOTICE #: 20-[ ]

SUBJECT: Implementation of IBOR Fallbacks for OTC IRS Products

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The purpose of this Advisory Notice is to implement the ISDA IBOR Fallbacks (as defined below) for CME cleared contracts. Subject to regulatory approval, from the ISDA IBOR Fallbacks Implementation Date (as defined below) this Advisory Notice shall be binding on all Clearing Members and position holders of cleared trades in affected OTC IRS products[1] and the ISDA IBOR Fallbacks will be incorporated into the terms of all CME cleared trades in relevant interest rate products, including for the avoidance of doubt:

- "new" trades accepted for clearing by CME on or after the ISDA IBOR Fallbacks Implementation Date; and
- "legacy" cleared trades registered for clearing by CME (and that remain outstanding) prior to the ISDA IBOR Fallbacks Implementation Date.

CME intends that the effective date of implementation of the ISDA IBOR Fallbacks within the CME Rulebook will be aligned with the ISDA IBOR Fallback Implementation Date, subject to regulatory approval.

Background

On October 23, 2020, ISDA launched its IBOR Fallbacks Supplement[2] and IBOR Fallbacks Protocol[3] which amend and supplement ISDA's standard definitions and facilitate arrangements between bilateral counterparties to in-scope interest rate swap contracts to incorporate robust contractual fallbacks for such derivatives linked to certain inter-bank offered rates ("IBORs").[4] From the effective date of implementation of January 25, 2021 (or such other date that may be notified by ISDA), all new bilateral uncleared derivatives that are in scope of the ISDA Fallbacks Supplement and reference the relevant ISDA definitions will include ISDA's contractual IBOR fallbacks to term and spread-adjusted versions of nearly risk-free reference rates

[1] The scope of affected OTC IRS products is detailed below. Note that this Advisory Notice does not apply to cleared Forward Rate Agreements ("FRAs").

[2] The ISDA IBOR Fallbacks Supplement is titled "Amendments to the 2006 ISDA Definitions to include new IBOR fallbacks, Supplement number 70 to the 2006 ISDA Definitions, Final on October 23, 2020 and published and effective on January 25, 2021". The ISDA IBOR Fallbacks Supplement will have the effect of amending the 2006 ISDA Definitions from January 25th, 2021. The ISDA IBOR Fallbacks Supplement is available at http://assets.isda.org/media/3062e7b4/23aa1658-pdf/.

[3] The ISDA 2020 IBOR Fallbacks Protocol is available at http://assets.isda.org/media/3062e7b4/08268161-pdf/.

[4] Fallbacks are contractual provisions that set out the consequences of a defined event; for example, the discontinuation of a benchmark. ISDA's fallback provisions for use by market participants are summarized and made available on the ISDA website: https://www.isda.org/2020/10/23/isda-launches-ibor-fallbacks-supplement-and-protocol/. The IBORs covered by the ISDA Fallbacks framework are CHF LIBOR, EUR LIBOR, GBP LIBOR, JPY LIBOR, USD LIBOR, EURIBOR, Yen TIBOR, Euroyen TIBOR, BBSW, CDOR, HIBOR, SOR and THBFIX. The ISDA IBOR Fallbacks therefore apply to a broader range of contracts than those cleared by CME. CME does not clear EUR LIBOR, JPY TIBOR, JPY Euroyen TIBOR or THBFIX.

("RFRs")[5] triggered by a permanent discontinuation of a covered IBOR, or additionally in the case of LIBORs, a non-representativeness determination by the relevant regulatory authority (the "ISDA IBOR Fallbacks"). Market participants may also choose to adhere to the ISDA IBOR Fallbacks Protocol to incorporate the ISDA IBOR Fallbacks into their outstanding legacy derivatives trades with other adhering counterparties from the date of implementation of the ISDA IBOR Fallbacks Supplement.

The adoption of the ISDA IBOR fallbacks has widespread market support and is further endorsed by global regulatory authorities which have consistently warned participants of the risk that certain IBORs may be discontinued or become "non-representative" after the end of 2021, reminding market participants of the need to have appropriate arrangements to fall back to the applicable RFR.[6] Market participants are widely expected to adhere to the ISDA IBOR Fallbacks Protocol, as evidenced by the considerable numbers of adhering parties to date[7], and global regulatory bodies are promoting and encouraging adherence by the firms they regulate, for example, as part of LIBOR transition readiness.[8]

CME Group supports improvements to fallback procedures to IBOR fallback rates and we believe that a coordinated approach to triggers and fallbacks between cleared and uncleared derivatives markets is positive for the market place[9]. As a result, in order to align our approach with the bilateral uncleared market, and subject to regulatory approval, Chicago Mercantile Exchange Inc. ("CME" or the "Clearing House") will amend the rules of CME (the "CME Rulebook") that are applicable to relevant OTC cleared IRS products in order to incorporate the ISDA IBOR Fallbacks into the CME Rulebook and into the terms of each relevant CME cleared contract, with effect from the date of implementation of the ISDA IBOR Fallbacks on January 25th, 2021 or such other date as may be notified by ISDA (the "ISDA IBOR Fallbacks Implementation Date").

CME does not propose to apply the ISDA IBOR Fallback approach in full to CME cleared trades in FRAs at this stage and, as a result, this Advisory does not apply to FRAs. This is because the full application of the ISDA IBOR Fallback approach to FRAs, without modification, could result in the fallback procedure shifting the interest rate risk period of a FRA which could in turn create problems for market participants,

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[5] Each RFR has been determined by the relevant public/private-sector working group as the alternative rate to that IBOR, for example, the Secured Overnight Financing Rate ("SOFR") for USD LIBOR, etc.

[6] See UK FCA speech, August 2020: https://www.fca.org.uk/news/speeches/libor-transition-critical-tasks-ahead-us-second-half-2020.On November 18, 2020 ICE Benchmark Administration ("IBA"), the FCA-regulated and authorised administrator of LIBOR, announced that it will consult on its intention that the euro, sterling, Swiss franc and yen LIBOR panels would, subject to confirmation following the consultation, cease at end-2021 – see https://www.fca.org.uk/news/statements/fca-consults-on-new-benchmark-powers and https://ir.theice.com/press/news-details/2020/ICE-Benchmark-Administration-to-Consult-On-Its-Intention-to-Cease-the-Publication-of-GBP-EUR-CHF-and-JPY-LIBOR/default.aspx. IBA issued a second announcement on November 30, 2020 notifying market participants of its proposal to consult on its intention to cease the publication of the one week and two month USD LIBOR settings immediately following the LIBOR publication on December 31, 2021, and the remaining USD LIBOR settings immediately following the LIBOR publication on June 30, 2023 – see https://ir.theice.com/press/news-details/2020/ICE-Benchmark-Administration-to-Consult-on-Its-Intention-to-Cease-the-Publication-of-One-Week-and-Two-Month-USD-LIBOR-Settings-at-End-December-2021-and-the-Remaining-USD-LIBOR-Settings-at-End-June-2023/default.aspx. The resulting consultation was published by IBA on December 4, 2020 and is available at: https://www.theice.com/publicdocs/ICE_LIBOR_Consultation_on_Potential_Cessation.pdf.

[7] ISDA maintains a public list noting those market participants that have adhered to the ISDA IBOR Fallbacks Protocol to date at https://www.isda.org/protocol/isda-2020-ibor-fallbacks-protocol/adhering-parties

[8] The FSB has strongly encouraged widespread and early adherence to the ISDA IBOR Fallbacks Protocol by all affected financial and non-financial firms as a critical step in benchmark transition ahead of end-2021.See https://www.fsb.org/2020/10/fsb-encourages-broad-and-timely-adherence-to-the-isda-ibor-fallbacks-protocol/. Members of the ISDA Board of Directors strongly support broad adherence to the ISDA IBOR Fallback Protocol among all market participants globally that have non-cleared derivatives exposure to LIBOR and other IBORs and understands there to be broad market consensus supporting their adoption, noting in July 2020 that "The IBOR Fallback Protocol is the most efficient way for participants in the vast majority of non-cleared derivatives markets to mitigate against the risks associated with the discontinuation of a key IBOR, and is a critical part of addressing both individual firm risks and systemic risks associated with the expected discontinuation and/or non-representativeness of LIBOR in particular." See ISDA Board statement July 29, 2020 https://www.isda.org/2020/07/29/isda-board-statement-on-adherence-to-the-ibor-fallback-protocol/.

[9] CME Group has fully supported the efforts of the official sector, ARRC and ISDA and their industry-wide working groups to improve and strengthen LIBOR fallbacks and indicated at an early stage our intention to align with ISDA to include revised fallback language in our rules at a time which is concurrent with amendments or new definitions being adopted across the OTC derivative marketplace: https://www.cmegroup.com/education/articles-and-reports/cme-group-supports-isda-s-libor-fallback-provisions.html

such that many market participants consider the ISDA IBOR Fallback approach to be incompatible with FRAs in certain respects. This is because Fallback Rates are "backward-looking" rates, calculated in arrears over the relevant interest period, and therefore the relevant rate is not known until the end of the term of the interest rate period. Unlike other interest rate swap products, which generally pay out at the end of the relevant interest period, FRAs do not feature a time lag between the fixing date and the payment date of the contract and therefore the FRA is designed to pay out at the start of the interest period. As a result, under the terms of the ISDA IBOR Fallbacks Supplement, in these circumstances the Fallback Rate published for the previous fixing period would be used instead, amending the economic exposure under the cleared trade, which many market participants consider to be undesirable.

As a result, CME does not propose to apply the ISDA IBOR Fallbacks in full to FRAs. Instead, CME proposes to implement rules and procedures in due course that will apply to affected FRAs to convert each affected FRA on a fallback event effective date into an equivalent single period interest rate swap, referencing the relevant Fallback Rate, which is otherwise economically equivalent to the relevant original FRA (i.e with an effective date corresponding to the settlement date of the original FRA and with the same fixed rate, maturity date, notional and direction). From discussions with market participants, CME understands that this approach to FRAs is accepted by market participants as preferable to implementation of the ISDA IBOR Fallbacks in full for FRAs. Further details will be provided by CME to market participants in due course prior to implementation.

Background and application of ISDA IBOR Fallbacks

Global regulatory authorities have identified the need for reform of major interest rate benchmarks and have focused particularly on efforts to mitigate the systemic risk that could occur in the event of cessation of a key IBOR.[10] Since 2016 ISDA has supported the work of the FSB OSSG in working with market participants to develop contractual fallbacks for key IBORs. Following extensive consultation with the OSSG, market participants and regulatory authorities, ISDA's work on contractual fallbacks culminated in the October 2020 publication of the ISDA IBOR Fallbacks Supplement and IBOR Fallbacks Protocol which set out the contractual framework for implementation of fallback provisions for ISDA derivative contracts for relevant covered IBORs, including defined trigger events and fallbacks to term and spread-adjusted versions of RFRs, as summarized below: [11]

<u>Fallback Trigger Events (known as "Index Cessation Events" in ISDA IBOR Fallbacks Supplement)</u>

Under the ISDA IBOR Fallback provisions, contractual fallback to the relevant term and spread adjusted version of the relevant RFR would occur from the effective date of the following "trigger" events:

- For any in-scope IBOR:
    - a public statement or publication of information by or on behalf of the administrator of the relevant IBOR announcing that it has ceased or will cease to provide the relevant IBOR permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the relevant IBOR; or

[10] Principle 13 of the IOSCO Principles for Financial Benchmarks requires benchmark administrators to encourage subscribers and other stakeholders to take steps to make sure that contracts that reference a benchmark have robust fallback provisions in the event of material changes to, or cessation of, the referenced benchmark. After conducting a review in 2014 the Financial Stability Board ("FSB") Official Sector Steering Group ("OSSG") concluded that "In most cases, fall-back provisions are not sufficiently robust for a permanent discontinuation of a key IBOR", representing a significant challenge to potential transition paths to alternative reference rates. See https://www.fsb.org/wp-content/uploads/r_140722b.pdf

[11] Term and spread adjustments are considered necessary because IBORs are available in multiple tenors and incorporate bank credit premiums and other factors that are not applicable to overnight RFRs. These have been determined in each case during the consultation process conducted by ISDA.

- a public statement or publication of information by the regulatory supervisor for the administrator of the relevant IBOR, the central bank for the currency of the relevant IBOR, an insolvency official with jurisdiction over the administrator for the relevant IBOR, a resolution authority with jurisdiction over the administrator for the relevant IBOR or a court or an entity with similar insolvency or resolution authority over the administrator for the relevant IBOR, which states that the administrator of the relevant IBOR has ceased or will cease to provide the relevant IBOR permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the relevant IBOR; or

- Additionally, for CHF LIBOR, EUR LIBOR, GBP LIBOR, JPY LIBOR and USD LIBOR:

    - a public statement or publication of information by the regulatory supervisor for the administrator of such relevant LIBOR announcing that (A) the regulatory supervisor has determined that such relevant LIBOR is no longer, or as of a specified future date will no longer be, representative of the underlying market and economic reality that such relevant LIBOR is intended to measure and that representativeness will not be restored and (B) it is being made in the awareness that the statement or publication will engage certain contractual triggers for fallbacks activated by pre-cessation announcements by such supervisor (howsoever described) in contracts.

The effective date would be the first date on which the relevant IBOR is no longer provided or, in the case of a LIBOR, the first date on which the relevant LIBOR is either non-representative (including where it continues to be published) or no longer provided.

<u>Fallback Rates</u>

In each case the contract reference rate would "fall back" from the relevant IBOR to the relevant (adjusted) RFR. IBOR fallbacks are based on the alternative RFRs for each relevant IBOR[12] and tenor, term and spread adjusted (the "all-in" fallback rate), as calculated and published in accordance with the ISDA IBOR Fallback Supplement, for example, by Bloomberg Index Services Limited ("Bloomberg"):

- Adjusted RFR: the compounded setting in arrears RFR for each relevant term – daily compounding of publicly available RFRs (e.g. SOFR, etc.).
- Spread Adjustment: the median of the historical differences between the IBOR for each tenor and the compounded RFR for that tenor over a five year period prior to a fallback trigger event.
- Fallback Rate: the "all-in" fallback rate (i.e., the Adjusted RFR plus the Spread Adjustment for each tenor).[13]

[12] The corresponding RFR for each IBOR is: BBSW (AONIA), CDOR (CORRA), CHF LIBOR (SARON), EUR LIBOR (ESTR), EURIBOR (ESTR), GBP LIBOR (SONIA), HIBOR (HONIA), JPY LIBOR (TONA), TIBOR (TONA), Euroyen TIBOR (TONA), USD LIBOR (SOFR).

[13] Further information on the calculations and rates calculated by Bloomberg are available on the Bloomberg website at: https://data.bloomberglp.com/professional/sites/10/IBOR-Fallbacks-Fact-Sheet.pdf. Bloomberg maintains a publicly available rulebook (the "IBOR Fallback Rate Adjustments Rule Book", available at https://data.bloomberglp.com/professional/sites/10/IBOR-Fallback-Rate-Adjustments-Rule-Book.pdf) which sets out the rules that Bloomberg will implement to calculate the rate adjustments in line with the approach agreed by market participants under ISDA's extensive consultation process. In summary, the Bloomberg Rulebook sets forth in the formulae, definitions, rules and conventions to effect the following key adjustments: (i) to account for the fact that IBORs have a term structure (e.g., 1-month, 2-month, etc.) whereas RFRs are overnight rates, the RFRs will be compounded in arrears over a period similar to the applicable IBOR tenor (e.g., 30 days for 1-month, 60 days for 2-month, etc.). These compounded RFRs are each generally referred to as the "Adjusted Reference Rate"; (ii) to account for the (nearly) risk-free nature of the RFRs v. the liquidity characteristics and supply/demand factors affecting IBORs, a spread adjustment will be calculated for each RFR/IBOR pair (per tenor) using a five year historical median calculation. These calculations are each generally referred to as the "Spread Adjustment"; and (iii) adding (i) and (ii) together on a per RFR, per tenor basis for the resulting "Fallback Rate".

The fallback trigger events ("Index Cessation Events") are relevant to the calculation of the Spread Adjustment because the relevant trigger events determine the fixing date for the Spread Adjustment. However, the relevant Fallback Rate will not apply until the actual cessation of the relevant IBOR (or actual date of non-representativeness of the relevant LIBOR).

Under the ISDA IBOR Fallbacks, upon the occurrence of an Index Cessation Event, the rate for the next Reset Date (as defined in the 2006 ISDA Definitions) of an affected contract occurring on or after the Index Cessation Effective Date will see a shift in the fixing date based on the methodology set out in the ISDA IBOR Fallbacks Supplement. Under the ISDA IBOR Fallbacks, after the Index Cessation Effective Date, the rate for a Reset Date will be determined as if references to the relevant IBOR reference rate were references to the relevant Fallback Rate for the Original Rate Record Day' that corresponds to the Reset Date for the relevant IBOR, as most recently provided or published at the prescribed time on the day that is two business days preceding the related payment date.[14]

<u>Incorporation of ISDA IBOR Fallbacks into 2006 ISDA Definitions</u>

The 2006 ISDA Definitions incorporate any amendments made from time to time by ISDA by way of supplements. The ISDA IBOR Fallbacks Supplement amends the 2006 ISDA Definitions to incorporate the ISDA IBOR Fallback provisions into new contracts entered into from the date of implementation that reference those definitions.[15] Specifically, the ISDA IBOR Fallbacks Supplement amends the 2006 ISDA Definitions of "Rate Option" and "Floating Rate Option" to incorporate contractual fallbacks from a relevant IBOR to the relevant Fallback Rate on one of the specified "Index Cessation Events".

<u>Incorporation of ISDA IBOR Fallbacks into the terms of CME cleared trades</u>

The CME Rulebook rules in Chapter 900, 901 and 902 of the CME Rulebook incorporate by reference certain of the 2006 ISDA Definitions, including the definitions of "Rate Option" and "Floating Rate Option" which, as noted above, are amended by the implementation of the ISDA IBOR Fallbacks Supplement to incorporate the ISDA IBOR Fallbacks.[16] As a result, the ISDA IBOR Fallback provisions will be incorporated into the terms of any relevant trades accepted by CME for clearing from the date of implementation of the

[14] Or otherwise as described in the ISDA IBOR Fallbacks Supplement for the relevant rate. This date is termed the "Fallback Observation Day" under the ISDA IBOR Fallbacks Supplement. This approach is adopted to reflect the fact that IBORs are forward-looking whereas RFRs are backward-looking and therefore the compounding in arrears for the term adjustments means that the floating amount payable for a calculation period will not be known until the end of that period. As a result, for example, in certain cases, under ISDA's IBOR Fallback Supplement methodology the calculation period is moved such that the observation period ends on the Fallback Observation Day, 2 business days prior to the payment date, which provides for sufficient time for the relevant payment amounts to be calculated based on the methodology prescribed in the ISDA IBOR Fallbacks and for payment to be made on the payment date. This approach is the result of ISDA's extensive consultation exercises with market participants.

[15] Bilateral counterparties to uncleared trades wishing to incorporate the ISDA IBOR Fallbacks into a "legacy" contract must adhere to the ISDA IBOR Fallbacks Protocol and ensure their relevant counterparty is also an adhering party.

[16] CME Rulebook Chapter 900 (Interest Rate Products) includes Rule 90001 (Scope of Chapter) which provides that "Capitalized terms in this Chapter that are not otherwise defined in either this Chapter or the other Chapters of the Rules shall have the meanings set forth in the [2006] ISDA Definitions." Rule 90002.F (Contract Elections for IRS Swaps) provides that an IRS Participant submitting an IR Swap for acceptance for clearing by the Clearing House as an IR Swap Contract that is not an Underlying IR Swap Contract must make certain elections, including the Floating Rate Option (as defined in the 2006 ISDA Definitions). CME Rulebook Chapter 901 (Interest Rate Swaps Contract Terms) states at Rule 90101 (Scope of Chapter) that "the terms and conditions of each IRS Contract shall be defined by this Chapter, as supplemented by the [2006] ISDA Definitions…and the relevant Contract Elections, and as further supplemented and amended by provisions of these Rules" and that "Capitalized terms in this Chapter that are not otherwise defined in either this Chapter or the other Chapters of the Rules shall have the meanings set forth in the [2006] ISDA Definitions." CME Rule 90102.E.1 (Rate Options) sets out the available Rate Options that may be elected by the IRS Participant with respect to an IRS Contract in accordance with Rule 90002.F, which include certain of the Floating Rate Options to which the ISDA IBOR Fallbacks apply, e.g.: USD-LIBOR-BBA, GBP-LIBOR-BBA, etc. CME will add a note to each relevant affected CME Rulebook Chapter to refer to the Clearing Advisory Notice regarding incorporation of the 2006 ISDA Definitions and the ISDA IBOR Fallbacks Supplement.

ISDA IBOR Fallbacks Supplement and the resulting amendment of the 2006 ISDA Definitions incorporated by reference into the relevant chapters of the CME Rulebook.[17]

Given the anticipated widespread adoption of the ISDA IBOR Fallbacks Protocol by the significant majority of market participants, in order to align with these market participants and the approach encouraged by global regulatory authorities, CME considers it necessary also to implement the ISDA IBOR Fallbacks into "legacy" CME cleared trades that remain outstanding at the effective time of implementation of the ISDA IBOR Fallbacks into the 2006 ISDA Definitions. The incorporation of ISDA IBOR Fallbacks into these "legacy" cleared contracts will promote close alignment of cleared and uncleared markets.

This Advisory Notice sets out the binding rules under which CME Clearing will implement the ISDA IBOR Fallbacks into the CME Rulebook. The effect of this Advisory Notice is to:

- confirm the incorporation of the ISDA IBOR Fallbacks into the terms of all relevant "new" trades registered for clearing by CME from the ISDA IBOR Fallbacks Implementation Date; and
- amend the terms of all relevant outstanding CME cleared trades at the ISDA IBOR Fallbacks Implementation Date to incorporate the ISDA IBOR Fallbacks into each such cleared trade.

Capitalized terms used in this Advisory Notice but not defined in this Advisory Notice or the CME Rulebook shall have the meaning set out in the 2006 ISDA Definitions.

CME hereby makes the following changes to the CME Rulebook to implement the ISDA IBOR Fallbacks, which shall be binding on Clearing Members and position holders in cleared trades in all relevant IRS products from the ISDA IBOR Fallbacks Implementation Date, subject to regulatory approval:

<u>Changes to the CME Rulebook to implement ISDA IBOR Fallbacks</u>

1. From the effective date of implementation of the ISDA IBOR Fallbacks Supplement as determined by ISDA (the "Effective Date"):

    a. references to the 2006 ISDA Definitions in Chapters 900, 901 and 902 in the CME Rulebook shall be to the 2006 ISDA Definitions, as amended and supplemented by ISDA from time to time, including but not limited to those amendments and supplements set out in the ISDA IBOR Fallbacks Supplement; and

    b. capitalized terms used in Chapters 900, 901 and 902 in the CME Rulebook that are not otherwise defined in such Chapter or the other Chapters of the CME Rulebook shall have the meanings set forth in the 2006 ISDA Definitions, as amended and supplemented by ISDA from time to time, including but not limited to those amendments and supplements set out in the ISDA IBOR Fallbacks Supplement,

    in each case in respect of CME cleared trades in the following interest rate swap products (the "Affected Products"):

    (i) Interest Rate Swaps ("IRS") except where the fixing date for the final coupon period falls before the Index Cessation Effective Date (as defined in the ISDA IBOR Fallbacks Supplement)[18]:

[17] The relevant CME IRS products are: (i) Interest Rate Swaps ("IRS") (GBP, CHF, USD, JPY (LIBOR), EURIBOR, BBSW, CDOR, HIBOR (non-LIBOR)) and (ii) Swaptions (USD 3M LIBOR (physical settlement, European expiry). Note that uncleared swaptions contracts that exercise into CME cleared swaps in these IRS products prior to the date of implementation will exercise into cleared swaps on the same terms as those in (i).

[18] Note that FRAs are not included in the products within scope of this Advisory Notice.

- GBP, CHF, USD, JPY (LIBOR);
- EURIBOR, BBSW, CDOR, HIBOR (non-LIBOR), SOR

(ii) Swaptions:

- USD 3M LIBOR (physical settlement, European expiry).

2. From the Effective Date:

   a. the contract terms of all trades in Affected Products accepted for clearing by CME will incorporate the ISDA IBOR Fallbacks for the relevant "Rate Option" set out in the ISDA IBOR Fallbacks Supplement; and

   b. the contract terms of all outstanding CME cleared trades in Affected Products will be deemed amended so as to incorporate the ISDA IBOR Fallbacks for the relevant "Rate Option" set out in the ISDA IBOR Fallbacks Supplement.

3. Rules 90103.A and 90204.A (Contract Modifications; CME Rules) shall not apply for the purposes of the modifications to the terms applicable to CME cleared contracts set out in this Advisory Notice.

4. The terms of this Advisory Notice are binding on Clearing Members and position holders in cleared trades in all Affected Products from the Effective Date. To the extent that there is any conflict between the CME Rulebook and the terms of this Advisory Notice, this Advisory Notice shall prevail.

Inquiries regarding the aforementioned may be directed to:

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