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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 50

RIN 3038-AF69

Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps to Account for CAD and MXN Interest Rate Benchmark Transitions.

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend its interest rate swap clearing requirement regulations adopted under applicable provisions of the Commodity Exchange Act (CEA) to address the transition from the Canadian Dollar Offered Rate (CDOR) to the Canadian Overnight Repo Rate Average (CORRA), and the transition from the Mexican Interbank Equilibrium Interest Rate (la Tasa de Interés Interbancaria de Equilibrio, or TIIE by its Spanish acronym) to the Overnight TIIE Funding Rate (TIIE de Fondeo or F-TIIE), as benchmark reference rates for interest rate swaps denominated, respectively, in Canadian dollars (CAD) and Mexican pesos (MXN). These transitions are part of an ongoing global effort by market participants, benchmark administrators, regulators, and others to shift away from reliance on certain interbank offered rates (IBORs) that are, or are expected to become, unavailable as benchmark reference rates, and increase adoption of alternative reference rates, which are predominantly overnight, nearly risk-free reference rates (RFRs). The proposed amendments would revise the set of interest rate swaps that are required to be submitted for clearing, pursuant to the CEA and the Commission's regulations, to a

derivatives clearing organization (DCO) that is registered under the CEA (registered DCO) or a DCO that has been exempted from such registration (exempt DCO). Among other things, the proposed amendments would modify the Commission's interest rate swap clearing requirement to reflect the market transitions from CAD CDOR to CAD CORRA and from MXN TIIE to MXN F-TIIE.

DATES: Comments must be received on or before [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: You may submit comments, specifically referencing "Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps to Account for CAD and MXN Interest Rate Benchmark Transitions" and RIN 3038-AF69, by any of the following methods:

- **Regulations.gov:** Go to *https://www.regulations.gov* and press the "Search" button, then proceed as follows:

1. Under Refine Documents Results – check the box to "Only show documents open for comment";

2. Under Agency – select "See More" and check the box for "Commodity Futures Trading Commission," then press the Apply button;

3. Identify this proposal in the list of CFTC documents open for comment, press the "Comment" button to open the submission form, and follow the instructions on the form.

Alternatively, if you are viewing this proposal on *www.federalregister.gov*, click the "Submit A Public Comment" button at the top of the page to open the comment form. Follow the instructions on the form to submit your comment to Regulations.gov.

- **Mail:** Send to – Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- **Hand Delivery/Courier:** Address to – CFTC Comment Submission, Attn: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through Regulations.gov are encouraged.

All comments must be submitted in English or, if not, accompanied by an English translation. Do not include in your comment text or attachments any personal identifying information or business information that you do not want published online. Comments (regardless of submission method) will be published without review for, and without removal of, any personal identifying information or information your business may consider confidential.

If you wish to submit confidential information for the Commission's consideration, please contact the CFTC personnel listed in this Notice under **FOR FURTHER INFORMATION CONTACT** before making any submission. Please also carefully review the Commission's procedures in 17 CFR 145.9 for requesting confidential treatment under the Freedom of Information Act (FOIA) of information submitted to the Commission.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, or redact all or any part of your comment submission. The CFTC also reserves the right, without further notification, to refuse to publish or to remove from public view all or any part of your submission to the extent it contains content inappropriate for publication in a comment file, such as – without limitation – obscene language, threats of violence, solicitations for commercial sales

or illegal activity, or obvious spam. If a submission that is refused for or withdrawn from publication because of inappropriate content also contains comments on the merits of this proposal, such submission will be retained in the record for the matter and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Sarah E. Josephson, Deputy Director, at 202-418-5684 or *sjosephson@cftc.gov*; Daniel O'Connell, Special Counsel, at 202-418-5583 or *doconnell@cftc.gov*; or Philip Tumminio, Special Counsel, at 202-418-5910 or *ptumminio@cftc.gov*, Division of Clearing and Risk at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
- A. Commission's Swap Clearing Requirement
- B. Global Progress on Benchmark Reform
- C. CAD and MXN Interest Rate Benchmark Transitions

II. Domestic and International Coordination and Outreach
- A. Domestic Coordination Efforts
- B. International Coordination Efforts
- C. Clearing Requirements in Other Jurisdictions

III. Proposed Amendments to Regulation § 50.4(a)
- A. Overview of the Proposed Regulation
- B. Modifications to the Clearing Requirement

IV. Proposed Determination Analysis for CAD CORRA and MXN F-TIIE OIS
- A. General Description of Information Considered
- B. Consistency with DCO Core Principles
- C. Consideration of the Five Statutory Factors

V. Proposed Implementation Schedule and Compliance Dates

VI. Cost Benefit Considerations
- A. Statutory and Regulatory Background
- B. Overview of Swap Clearing
- C. Consideration of the Costs and Benefits of the Commission's Action
- D. Costs and Benefits of the Proposed Amendments as Compared to Alternatives

E. Section 15(a) Factors
VII. Related Matters
A. Regulatory Flexibility Act
B. Paperwork Reduction Act
C. Antitrust Laws
D. Executive Orders 12866, 13563, and 14192

I. BACKGROUND

A. Commission's Swap Clearing Requirement

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established a comprehensive new regulatory framework for swaps.[1] Title VII of the Dodd-Frank Act (Title VII) amended the CEA to require, among other things, that a swap be cleared through a registered DCO or an exempt DCO if the Commission has determined that the swap, or group, category, type, or class of swaps, is required to be cleared, unless an exception to the clearing requirement applies.[2] The CEA, as amended by Title VII, provides that the Commission may issue a clearing requirement determination based either on a Commission-initiated review of a swap[3] or a swap submission from a DCO.[4]

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

[2] Section 2(h)(1)(A) of the CEA, 7 U.S.C. 2(h)(1)(A).

[3] Section 2(h)(2)(A) of the CEA, 7 U.S.C. 2(h)(2)(A). Section 2(h)(2)(A) provides for a Commission-initiated review process whereby the Commission, on an ongoing basis, must review swaps, or a group, category, type, or class of swaps, to determine whether a swap, or a group, category, type, or class of swaps, should be required to be cleared.

[4] Section 2(h)(2)(B) of the CEA, 7 U.S.C. 2(h)(2)(B). Section 2(h)(2)(B)(i) requires that each DCO submit to the Commission each swap, or group, category, type, or class of swaps, that it plans to accept for clearing. The swaps subject to this proposed determination were submitted by DCOs pursuant to CEA section 2(h)(2)(B)(i) and Regulation § 39.5(b), 17 CFR 39.5(b). Pursuant to section 2(h)(2)(B)-(C) of the CEA, 7 U.S.C. 2(h)(2)(B)-(C), the Commission must review swap submissions from DCOs to determine whether the swaps should be subject to required clearing. Regulation § 39.5(b) implements the procedural elements of section 2(h)(2)(B)-(C) by establishing the process by which a DCO must submit the swaps it offers for clearing to the Commission for purposes of considering a clearing requirement determination. DCO swap submissions are published on the Commission website at *https://www.cftc.gov/IndustryOversight/IndustryFilings/ClearingOrganizationProducts*.

Section 2(h)(2)(D)(ii) of the CEA requires the Commission to consider the following five factors when making a clearing requirement determination: (I) the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data; (II) the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is traded; (III) the effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCOs available to clear the contract; (IV) the effect on competition, including appropriate fees and charges applied to clearing; and (V) the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.[5]

1. 2012 Clearing Requirement Determination

The Commission adopted its first clearing requirement determination (First Determination) in 2012.[6] The First Determination was implemented between March 2013 and October 2013 based on the schedule described in regulation § 50.25 and the preamble to the First Determination.[7] The First Determination applied to interest rate swaps in four classes: fixed-to-floating swaps, basis swaps, forward rate agreements (FRAs), and overnight index swaps (OIS).[8]

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[5] 7 U.S.C. 2(h)(2)(D)(ii).

[6] Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74284 (Dec. 13, 2012) (First Determination).

[7] 17 CFR 50.25; First Determination, 77 FR at 74319-74321.

[8] *See generally* First Determination. An interest rate swap is generally an agreement by counterparties to exchange payments based on a series of cash flows over a specified period, typically calculated using two different rates. Fixed-to-floating swaps are interest rate swaps in which the payment(s) owed on one leg of the swap is calculated using a fixed rate, and the payment(s) owed on the other leg is calculated using a floating rate. Basis swaps are interest rate swaps for which the payments for both legs are calculated using floating rates. FRAs are interest rate

In making its initial interest rate swap clearing requirement determination, the Commission focused on the size of the interest rate swap market relative to the swap market overall, as well as the fact that interest rate swaps were already widely being cleared.[9] As set forth in regulation § 50.4(a), the Commission identified four classes of interest rate swaps having certain specifications related to (i) the currency in which the notional and payment amounts are specified; (ii) the floating rate index referenced in the swap; (iii) the stated termination date; (iv) optionality; (v) dual currencies; and (vi) conditional notional amounts.[10]

The Commission limited the interest rate swaps required to be cleared to those denominated in four currencies: (i) U.S. dollar (USD); (ii) Euro (EUR); (iii) British pound (GBP); and (iv) Japanese yen (JPY). The Commission noted that interest rate swaps denominated in these currencies comprised an outsized portion of the interest rate swap market in terms of notional amounts outstanding and trading volumes compared to interest rate swaps denominated in other currencies.[11]

The First Determination covered a number of interest rate swaps that reference IBORs, including fixed-to-floating swaps, basis swaps, and FRAs denominated in USD, GBP, and JPY, referencing, respectively, the USD London Interbank Offered Rate (LIBOR), GBP LIBOR, and

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swaps in which payments are exchanged on a predetermined date for a single period and one leg of the swap is calculated using a fixed rate while the other leg is calculated using a floating rate set on a predetermined date. OIS are interest rate swaps for which one leg of the swap is calculated using a fixed rate and the other leg is calculated using a floating rate based on a daily overnight rate.

[9] *Id.* at 74287, 74307. Significant amounts of notional in interest rate swaps continue to be traded in markets around the world, and these swaps comprise an outsized portion of notional among all swaps. According to the Bank for International Settlements (BIS), as of June 2024, there was an estimated $579 trillion in outstanding notional of interest rate swaps, which represents approximately 80% of the total outstanding notional of all over-the-counter (OTC) derivatives. *See* BIS, "OTC derivatives statistics at end-June 2024," Nov. 21, 2024, at 1-2, available at *https://www.bis.org/publ/otc_hy2411.pdf* (OTC derivatives statistics at end-June 2024).

[10] 17 CFR 50.4(a).

[11] First Determination, 77 FR at 74308.

JPY LIBOR, as well as fixed-to-floating swaps, basis swaps, and FRAs denominated in EUR referencing the Euro Interbank Offered Rate (EURIBOR). The First Determination also covered OIS denominated in USD, GBP, and EUR referencing, respectively, the Federal Funds rate, the Sterling Overnight Index Average (SONIA), and the Euro Overnight Index Average (EONIA). The Commission observed then that interest rate swaps referencing those indexes had significant outstanding notional amounts and trading liquidity.[12]

2. 2016 Clearing Requirement Determination

The Commission adopted its second clearing requirement determination (Second Determination) in 2016.[13] The Second Determination was implemented between December 2016 and October 2018,[14] and covered interest rate swaps denominated in nine additional currencies: (i) Australian dollar (AUD); (ii) CAD; (iii) Hong Kong dollar (HKD); (iv) MXN; (v) Norwegian krone (NOK); (vi) Polish zloty (PLN); (vii) Singapore dollar (SGD); (viii) Swedish krona (SEK); and (ix) Swiss franc (CHF).

The Commission adopted the Second Determination largely in order to further harmonize its interest rate swap clearing requirement with those of other jurisdictions that had already issued, or were in the process of issuing, clearing mandates for similar interest rate swaps.[15] The Second Determination covered, among other swaps, CAD-denominated fixed-to-floating swaps

[12] *Id.* at 74309.

[13] Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps, 81 FR 71202 (Oct. 14, 2016) (Second Determination).

[14] 17 CFR 50.26; Second Determination, 81 FR at 71202.

[15] *Id.* at 71203-71205. The Commission explained that such harmonization serves an important anti-evasion goal: if a non-U.S. jurisdiction issued a clearing requirement, and a swap dealer located in the United States were not subject to an analogous a clearing requirement under U.S. law, then market participants potentially could avoid the non-U.S. jurisdiction's clearing requirement by entering a swap with a swap dealer located in the United States. *Id.* at 71203.

that reference CAD CDOR and OIS that reference CAD CORRA, and MXN-denominated fixed-to-floating swaps that reference MXN TIIE.[16]

3. End of LIBOR and 2022 Clearing Requirement Determination

The Commission adopted its third clearing requirement determination (Third Determination) in 2022.[17] The Commission adopted the Third Determination to address the global transition from IBORs to RFRs; specifically, the transition from LIBOR (covering five currencies), SGD Singapore Dollar Swap Offer Rate – Volume Weighted Average Price (SOR-VWAP) (which relied on USD LIBOR as an input), and EUR EONIA to corresponding RFRs.[18] EUR EONIA ceased publication on January 3, 2022,[19] and the transition away from LIBOR was largely complete in June 2023 with the cessation or permanent loss of representativeness of the underlying markets of USD LIBOR and SGD SOR-VWAP.[20]

LIBOR was an interest rate benchmark that was intended to measure the average rate at which a bank could obtain unsecured funding in the London interbank market for a given tenor and currency. It was one of the world's most frequently referenced interest rate benchmarks and served as a reference rate for a wide variety of swaps and other financial products. LIBOR was calculated based on submissions from a panel of contributor banks for each LIBOR currency and published every London business day. Immediately prior to January 1, 2022, LIBOR was

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[16] *Id.* at 71240.

[17] Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps To Account for the Transition From LIBOR and Other IBORs to Alternative Reference Rates, 87 FR 52182 (Aug. 24, 2022) (Third Determination).

[18] *Id.* at 52183-52185.

[19] European Money Markets Institute, EONIA, available at *https://www.emmi-benchmarks.eu/benchmarks/eonia/*.

[20] Settings for GBP LIBOR, CHF LIBOR, and JPY LIBOR ceased or became unrepresentative prior to June 2023, as did settings for EUR LIBOR. The Commission did not adopt a clearing requirement for swaps referencing EUR LIBOR.

published for five currencies (USD, GBP, EUR, CHF, and JPY) and seven tenors (overnight or spot next depending on currency, 1-week, 1-month, 2-month, 3-month, 6-month, and 12-month), resulting in 35 individual LIBOR rates.[21] ICE Benchmark Administration (IBA) administered LIBOR from 2014 (when it assumed the role of administrator from the British Bankers' Association) until 2024 (when it ceased publishing synthetic LIBOR settings, as discussed below).[22]

[21] *See generally* ICE Benchmark Administration, LIBOR, available at *https://www.theice.com/iba/libor*.

[22] *Id.*; IBA, ICE Benchmark Administration to Become New Administrator of LIBOR on February 1, 2014, Jan. 17, 2014, available at *https://ir.theice.com/press/news-details/2014/ICE-Benchmark-Administration-to-Become-New-Administrator-of-LIBOR-on-February-1-2014/default.aspx*; Financial Conduct Authority, "The end of Libor," Oct. 1, 2024, available at *https://www.fca.org.uk/news/press-releases/end-libor*.

More than a decade ago, a decline in the volume of interbank lending transactions that LIBOR was intended to measure,[23] as well as government investigations concerning LIBOR,[24] gave rise to concerns regarding the integrity and reliability of LIBOR and other IBORs.[25]

Although LIBOR was subject to significant reform efforts,[26] regulators and global standard-setting bodies did not view these reforms as a long-term solution. On July 27, 2017,

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[23] Declining unsecured interbank lending volumes, due in significant part to changes in the funding of balance sheets and trading positions by market participants since the 2008 financial crisis, meant that LIBOR panel banks increasingly relied on "expert judgment" rather than reference transactions in the rate setting process. Financial Stability Oversight Council (FSOC), 2013 Annual Report, 2013, at 137, available at *https://home.treasury.gov/system/files/261/FSOC-2013-Annual-Report.pdf* (FSOC 2013 Annual Report). In its 2013 Annual Report, the Financial Stability Oversight Council noted that "the deterioration in the perception of some banks' credit risk since the beginning of the European debt crisis has exacerbated the reluctance of banks to engage in unsecured lending," "[t]he very large volume of excess reserves in the banking system provided by central banks has also contributed to significantly reduced activity in interbank lending markets," and "banks are [also] more closely managing demands on their balance sheets." *Id.* For example, while the pre-2008 financial crisis interbank market saw an estimated $100 billion in transactions per day, daily volumes had declined to an estimated $5 billion by 2018. Kyungmin Kim, et al., Finance and Economics Discussion Series, Division of Research & Statistics and Monetary Affairs, Federal Reserve Board, Washington, DC, "Can the US interbank market be revived?," Nov. 5, 2018, at 1, available at *https://www.federalreserve.gov/econres/feds/files/2018088pap.pdf*. In a June 2020 LIBOR cessation progress report, the Office of the Comptroller of the Currency noted that daily underlying transactions volumes for LIBOR were less than $1 billion. Office of the Comptroller of the Currency, LIBOR Cessation Status and Progress, June 2020, at 10, available at *https://www.occ.gov/topics/supervision-and-examination/bank-management/minority-depository-institutions/libor-knowledge-transfer-jun-2020.pdf*. In comparison, the underlying transaction volume for the USD Secured Overnight Financing Rate (discussed below), the RFR that has superseded USD LIBOR, has ranged from approximately $700 billion to over $1 trillion. Alternative Reference Rates Committee, Frequently Asked Questions, Aug. 27, 2021, at 5, available at *https://www.newyorkfed.org/medialibrary/microsites/arrc/files/ARRC-faq.pdf*.

[24] *See, e.g.*, In re Société Générale S.A., No. 18–14 (CFTC June 4, 2018) ($475 million penalty); In re Deutsche Bank AG, No. 15–20 (CFTC Apr. 23, 2015) ($800 million penalty); In re The Royal Bank of Scotland plc, No. 13–14 (CFTC Feb. 6, 2013) ($325 million penalty); In re UBS AG, No. 13–09 (CFTC Dec. 19, 2012) ($700 million penalty); In re Barclays PLC, No. 12–25 (CFTC June 27, 2012) ($200 million penalty). As a general matter, the investigations variously concerned charges of actual and attempted manipulation and false reporting in connection with the rate-setting process.

[25] *See, e.g.*, International Organization of Securities Commissions, Principles for Financial Benchmarks, July 2013, at 1, available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf*. *See also* David Bowman, et al., "How Correlated Is LIBOR With Bank Funding Costs?," FEDS Notes, June 29, 2020, available at *https://www.federalreserve.gov/econres/notes/feds-notes/how-correlated-is-libor-with-bank-funding-costs-20200629.htm*; Alternative Reference Rates Committee, *Second Report*, Mar. 2018, at 1-3, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-Second-report* (ARRC Second Report).

[26] *See generally* IBA, Methodology, available at *https://www.theice.com/publicdocs/ICE_LIBOR_Methodology.pdf*; H.M. Treasury, The Wheatley Review of LIBOR: Final Report, Sept. 2012, available at *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/191762/wheatley_*

Andrew Bailey, then-Chief Executive of the United Kingdom (UK) Financial Conduct Authority (FCA), LIBOR's primary regulator, announced that the FCA would not use its authority to compel LIBOR panel banks to contribute to the benchmark after 2021.[27]

On March 5, 2021, the FCA announced that IBA had notified the FCA that it intended to cease providing all LIBOR settings for all currencies, subject to any rights of the FCA to compel IBA to continue publication.[28] The FCA further announced that publication of LIBOR would cease in stages based on currency and tenor.[29]

LIBOR settings that became permanently unrepresentative rather than ceasing continued to be published under a synthetic methodology on a temporary basis for use in certain legacy contracts. The last of these settings (for USD LIBOR) was published on September 30, 2024.[30]

Significant private and public sector coordinated efforts have driven the transition from IBORs to RFRs.[31] In response to recommendations by international organizations, such as the

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review_libor_finalreport_280912.pdf; Intercontinental Exchange, ICE LIBOR Evolution, Apr. 25, 2018, at 4, available at *https://www.theice.com/publicdocs/ICE_LIBOR_Evolution_Report_25_April_2018.pdf*.

[27] Andrew Bailey, "The future of Libor," July 27, 2017, available at *https://www.fca.org.uk/news/speeches/the-future-of-libor*.

[28] FCA, FCA Announcement on Future Cessation and Loss of Representativeness of the LIBOR Benchmarks, Mar. 5, 2021 (FCA Announcement on LIBOR Cessation), available at *https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf.*

[29] *Id.*

[30] Financial Conduct Authority, "The end of Libor," Oct. 1, 2024, available at *https://www.fca.org.uk/news/press-releases/end-libor*. Following the cessation of the final synthetic LIBOR settings, in a joint press release, the Bank of England, the FCA, and the Working Group on Sterling Risk-Free Reference Rates (an industry-led working group convened in 2015 by the Bank of England to support benchmark reform efforts in the UK) said in a joint press release, "The transition away from LIBOR, once referenced in an estimated $400 trillion of financial contracts, has made financial markets safer, more stable and fit for modern use. UK regulators, their international counterparts and market participants have worked together over the past decade to move to risk-free rates ('RFRs'), based on robust data." *Id.*

[31] While not all interest rate benchmarks considered to be alternative reference rates for IBORs may be RFRs, private and public sector participants in benchmark reform efforts have focused on RFRs as alternatives due in part to an expectation of continued greater reliance on secured funding, structural changes in derivatives markets

Financial Stability Board (FSB), and domestic organizations, such as the Financial Stability Oversight Council in the United States, to address the risks posed by LIBOR and other IBORs,[32] central banks in IBOR currency jurisdictions convened private-public working groups (such as the Alternative Reference Rates Committee (ARRC) in the United States, convened in 2014 by the Federal Reserve Board (FRB) and the Federal Reserve Bank of New York (FRBNY)), to identify, develop, and support the implementation of reference rates to serve as alternatives to LIBOR and other IBORs.[33] In 2017, the ARRC identified the Secured Overnight Financing Rate (SOFR) as its preferred USD LIBOR alternative.[34] SOFR, which measures the cost of borrowing cash overnight collateralized by U.S. Treasury securities, is administered by the FRBNY and was first published in conjunction with the U.S. Department of the Treasury's Office of Financial Research[35] on April 3, 2018.[36]

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requiring greater use of collateral, and increased use of central clearing. Financial Stability Board, Reforming Major Interest Rate Benchmarks, July 2, 2014, at 40, available at *https://www.fsb.org/uploads/r_140722.pdf* (Reforming Major Interest Rate Benchmarks). Nevertheless, for purposes of brevity, the Commission uses the term "RFR" in this notice of proposed rulemaking to refer to alternative reference rates generally.

[32] *See, e.g.*, Reforming Major Interest Rate Benchmarks; FSOC 2013 Annual Report; BIS, "Towards better reference rate practices: a central bank perspective," Mar. 2013, available at *https://www.bis.org/publ/othp19.pdf*.

[33] The ARRC was comprised of private market participants and *ex officio* banking and financial sector regulators. ARRC, About, available at *https://www.newyorkfed.org/arrc/about*. The ARRC concluded its work in November 2023. *See* ARRC, ARRC Closing Report: Final Reflections on the Transition from LIBOR, Nov. 2023, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2023/ARRC-Closing-Report.pdf*. On September 26, 2024, the FRBNY announced the formation of the Reference Rates Use Committee to serve as a forum on the use of interest rate benchmarks and the evolution of the markets that underpin them. FRBNY, Press Release, New York Fed Launches the Reference Rate Use Committee, Sept. 26, 2024, available at *https://www.newyorkfed.org/newsevents/news/markets/2024/20240926*.

[34] ARRC Second Report at 6.

[35] FRBNY, Secured Overnight Financing Rate Data, available at *https://www.newyorkfed.org/markets/reference-rates/sofr*.

[36] FRBNY, Statement Regarding Publication of SOFR Averages and a SOFR Index, Feb. 12, 2020, available at *https://www.newyorkfed.org/markets/opolicy/operating_policy_200212*.

Regulators and global standard-setting bodies urged market participants to accelerate the use of LIBOR alternatives and to cease entering new swaps referencing LIBOR,[37] and issued guidance and regulatory relief to facilitate the transition. In the United States, on July 13, 2021, the Commission's Market Risk Advisory Committee adopted SOFR First, an initiative to switch interdealer trading conventions from reliance on USD LIBOR to USD SOFR as a reference rate for swaps, in four phases between July 2021 and December 2021.[38] SOFR First mirrored similar best practices adopted in other jurisdictions to increase activity in swaps referencing RFRs.[39] DCOs supported the transition by, among other things, offering clearing services for RFR swaps and converting IBOR swaps to RFR swaps ahead of IBOR cessation dates.[40] Market participants also played a key role in the transition by engaging with working groups such as the ARRC, providing liquidity in RFR swaps, and voluntarily clearing many RFR swaps.[41]

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[37] *See, e.g.*, FRB, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, Statement on LIBOR Transition, Nov. 30, 2020, available at *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf*; International Organization of Securities Commissions, Statement on Benchmarks Transition, June 2, 2021, available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD676.pdf*.

[38] CFTC, "CFTC Market Risk Advisory Committee Adopts SOFR First Recommendation at Public Meeting," July 13, 2021, available at *https://www.cftc.gov/PressRoom/PressReleases/8409-21*; CFTC, CFTC's Interest Rate Benchmark Reform Subcommittee Issues User Guide for the Transition of Exchange-Traded Derivatives Activity to SOFR, Dec. 16, 2021, available at *https://www.cftc.gov/PressRoom/PressReleases/8469-21*.

[39] *See, e.g.,* Bank of England, "The FCA and the Bank of England encourage market participants in further switch to SONIA in interest rate swap markets," Sept. 28, 2020, available at *https://www.bankofengland.co.uk/news/2020/september/fca-and-boe-joint-statement-on-sonia-interest-rate-swap*; Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks, "Transition of Quoting Conventions in the JPY interest rate swaps market ('TONA First')," July 26, 2021, available at *https://www.boj.or.jp/en/paym/market/jpy_cmte/data/cmt210726b.pdf*.

[40] Third Determination, 87 FR at 52185 (providing additional information regarding DCO conversions).

[41] *Id.* at 52186.

Considering these developments and following publication of a request for information[42] and notice of proposed rulemaking,[43] on August 24, 2022, the Commission published the Third Determination. The Commission amended its interest rate swap clearing requirement, finding, among other things, that LIBOR and certain other IBORs had become unavailable,[44] or would soon become unavailable; that liquidity had shifted out of swaps referencing these IBORs and into corresponding RFR OIS; and that these RFR OIS were already largely voluntarily cleared. Specifically, the Commission amended its interest rate swap clearing requirement as follows.

First, effective September 23, 2022, the Commission (i) removed the requirement to clear swaps referencing GBP LIBOR, CHF LIBOR, and JPY LIBOR, and EUR EONIA, in each of the fixed-to-floating swap, basis swap, FRA, and OIS classes, as applicable; (ii) added a requirement to clear OIS referencing CHF Swiss Average Rate Overnight (SARON) (with a stated termination date range of seven days to 30 years), JPY Tokyo Overnight Average Rate (TONA) (seven days to 30 years), and EUR Euro Short-Term Rate (€STR) (seven days to three years); and (iii) extended the stated termination date range for GBP SONIA OIS required to be cleared to include seven days to 50 years.

[42] Swap Clearing Requirement To Account for the Transition From LIBOR and Other IBORs to Alternative Reference Rates, 86 FR 66476 (Nov. 23, 2021).

[43] Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps To Account for the Transition From LIBOR and Other IBORs to Alternative Reference Rates, 87 FR 32898 (May 31, 2022).

[44] For brevity, where this proposal refers to benchmark rates that have become "unavailable," "unavailable" may variously mean that the rate has ceased publication, there has been a permanent loss of representativeness in the underlying markets which will not be restored, and/or the benchmark has been prohibited for use (*e.g.*, by its home country regulator).

Second, effective October 31, 2022, the Commission added a requirement to clear OIS referencing USD SOFR (seven days to 50 years) and SGD Singapore Overnight Rate Average (SORA) (seven days to 10 years).[45]

Third, effective July 1, 2023, the Commission removed the requirement to clear interest rate swaps referencing USD LIBOR and SGD SOR-VWAP in each of the fixed-to-floating swap, basis swap, and FRA classes, as applicable.

In addition to the CFTC's third clearing requirement determination, regulators in other jurisdictions, including the UK, European Union, Australia, Japan, and Switzerland, also updated interest rate swap clearing requirements to reflect the transition from LIBOR and other IBORs to corresponding RFRs.[46]

B. Global Progress on Benchmark Reform

While global benchmark reform efforts have focused on LIBOR, certain other IBORs continue to be published, and swaps referencing some such IBORs remain subject to the

[45] This implementation date aligned with the timing for the Bank of England's implementation of its USD SOFR interest rate swap clearing requirement; the International Swaps and Derivatives Association (ISDA) supported such timing, and no commenters opposed the implementation date. Third Determination, 87 FR at 52190-52191, 52204-52205.

[46] Bank of England, Public Register for the Clearing Obligation, Apr. 23, 2023, available at *https://www.bankofengland.co.uk/-/media/boe/files/eu-withdrawal/clearing-obligation-public-register.pdf*; European Securities and Markets Authority, Public Register for the Clearing Obligation under EMIR, June 4, 2024, available at *https://www.esma.europa.eu/sites/default/files/library/public_register_for_the_clearing_obligation_under_emir.pdf*; Australian Government, Federal Register of Legislation, Australian Securities and Investments Commission Derivative Transaction Rules (Clearing) 2015, Mar. 19, 2024, available at *https://www.legislation.gov.au/F2015L01960/latest/text*; Japan Securities Clearing Corporation, List of Clearing Products, available at *https://www.jpx.co.jp/jscc/en/cash/irs/product.html* (the Japan Financial Services Agency requires the clearing of products cleared at the Japan Securities Clearing Corporation); Swiss Financial Market Supervisory Authority, Verordnung der Eidgenössischen Finanzmarktaufsicht über die Finanzmarktinfrastrukturen und das Marktverhalten im Effekten-und Derivatehandel, Dec. 8, 2022, available at *https://www.finma.ch/en/~/media/finma/dokumente/dokumentencenter/anhoerungen/abgeschlossene-anhoerungen/20220509-finanzmarktinfrastrukturverordnung/20221208_finfrav_finma_aenderungserlass.pdf?sc_lang=en&hash=6CB5337D2F528B15DFA01FA1B0AD4B26*.

Commission's interest rate swap clearing requirement, as well as clearing requirements in other jurisdictions. In adopting the Third Determination, the Commission noted that, in the future, it may consider further modifications to the interest rate swap clearing requirement in regulation § 50.4 to address the cessation of additional IBORs and market adoption of corresponding RFRs.[47]

Since the Commission adopted the Third Determination, two benchmarks for which linked swaps are subject to the Commission's interest rate swap clearing requirement became unavailable. CAD CDOR ceased publication on June 28, 2024.[48] Banco de México announced that 28-day MXN TIIE was prohibited as a reference rate for new contracts entered into by financial entities regulated by Banco de México beginning on January 1, 2025, subject to a waiver period that allowed for the trading of new swaps referencing 28-day MXN TIIE until December 31, 2025, provided such swaps did not mature after that date.[49] These transitions, which are the subject of this proposed rulemaking, are discussed in greater detail below.

C. CAD and MXN Interest Rate Benchmark Transitions

CAD CDOR ceased publication on June 28, 2024, and 28-day MXN TIIE became unavailable beginning on January 1, 2025, subject to Banco de México's waiver. With respect to both interest rate benchmark transitions, as was the case with the transition away from LIBOR,

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[47] Third Determination, 87 FR at 52192 n. 94.

[48] *See* Canadian Alternative Reference Rate Working Group, CDOR Transition FAQs, July 10, 2024, available at *https://www.bankofcanada.ca/wp-content/uploads/2023/08/cdor-transition-faqs.pdf* (CDOR Transition FAQs).

[49] Banco de México, "Transition from TIIE with tenors greater than one business day (28, 91 and 182 days) to the Overnight TIIE Funding Rate (TIIE de Fondeo)," Dec. 20, 2022, available at *https://www.banxico.org.mx/markets/mexican-alternative-reference-rates-working-group/d/%7B2D6F5896-CF86-3F28-0C02-98D17B7542B9%7D.pdf* (discussing the transition from MXN TIIE to MXN F-TIIE); Banco de México, 10th Meeting of the Working Group on Alternative Reference Rates in Mexico (GTTR), Dec. 6, 2023, at 10, available at *https://www.banxico.org.mx/markets/mexican-alternative-reference-rates-working-group/d/%7B8AAAB86C-BAD5-AD0F-513C-B465BAFDE75E%7D.pdf* (discussing the waiver period). As discussed below, Banco de México prohibited the use of 91- and 182-day MXN TIIE as reference rates for new contracts entered by financial entities regulated by Banco de México as of January 1, 2024.

benchmark administrators and working groups established a transition plan, with DCOs and market participants playing an important role in the adoption of corresponding RFRs.

1. Transition from CAD CDOR to CAD CORRA

Prior to its cessation in June 2024, CAD CDOR had been the primary wholesale interest rate benchmark in Canada, referenced in over $20 trillion of gross notional exposure as of 2021.[50] Ninety-seven percent of that exposure was related to derivatives; namely, cleared interest rate swaps.[51] CAD CDOR was developed in the 1980s as a survey-based benchmark to determine the interest rate for bankers' acceptance (BA)-related credit facilities.[52] CAD CDOR measured the average rate at which Canadian banks were willing to lend to corporate borrowers with existing committed BA credit facilities.[53] Refinitiv Benchmark Services (UK) Limited (RBSL) administered CAD CDOR from December 31, 2014 until CAD CDOR's cessation.[54]

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[50] Canadian Alternative Reference Rate Working Group, CARR's Review of CDOR: Analysis and Recommendations, Dec. 18, 2021, at 8, available at *https://www.bankofcanada.ca/wp-content/uploads/2021/12/CARR-Review-CDOR-Analysis-Recommendations.pdf* (CDOR White Paper).

[51] *Id.* at 10.

[52] A banker's acceptance is an instrument by which a bank promises to make a requested future payment.

[53] In this manner, CAD CDOR was distinct from LIBOR, which measured the rate at which banks were able to *borrow*.

[54] CDOR White Paper at 9. Thomson Reuters was appointed as administrator of CAD CDOR (for which it was already calculation agent and distributor) as well as of CAD CORRA following a tender process announced by the Canadian Bankers Association and the Investment Industry Association of Canada. Thomson Reuters, "Thomson Reuters to administer two of Canada's fundamental financial benchmarks," Jan. 6, 2015, available at *https://www.thomsonreuters.com/en/press-releases/2015/january/thomson-reuters-to-administer-two-of-canadas-fundamental-financial-benchmarks.html*; Investment Industry Association of Canada, CDOR/CORRA Administrator Tender Notice, June 2, 2014, available at *https://iiac-accvm.ca/wp-content/uploads/CDOR-CORRA-Tender-Notice.pdf*. Thomson Reuters sold Refinitiv, its financial and risk business which administered CAD CDOR, to the London Stock Exchange Group in 2021. Thomson Reuters, Thomson Reuters Announces Closing of Sale of Refinitiv to London Stock Exchange Group, Jan. 29, 2021, available at *https://www.thomsonreuters.com/en/press-releases/2021/january/thomson-reuters-announces-closing-of-sale-of-refinitiv-to-london-stock-exchange-group.html*.

Immediately prior to its cessation, RBSL calculated CAD CDOR based on submissions from six banks and published CAD CDOR for one-month, two-month, and three-month tenors.[55]

CAD CORRA, the interest rate benchmark that superseded CAD CDOR, measures the cost of overnight general collateral funding in CAD using Canadian treasury bills and bonds as collateral for repurchase (repo) transactions.[56] CAD CORRA is calculated based on overnight repo transactions between unaffiliated counterparties that are collateralized by Canadian treasury securities.[57] The underlying volume of daily transactions on which CAD CORRA is based has generally been in the range of $15 billion to $20 billion.[58]

The Bank of Canada first published CAD CORRA in 1997.[59] RBSL was appointed as administrator of CAD CORRA in 2014.[60] The Bank of Canada assumed the role of CAD CORRA's administrator from RBSL in June 2020 and published the benchmark under an enhanced methodology since that time.[61]

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[55] CDOR White Paper at 9-10.

[56] Bank of Canada, Canadian Overnight Repo Rate Average, available at *https://www.bankofcanada.ca/rates/interest-rates/corra/*.

[57] CDOR White Paper at 7.

[58] CDOR Transition FAQs.

[59] Bank of Canada, "Bank of Canada to begin publishing Canadian Overnight Repo Rate Average in June," Feb. 18, 2020, available at *https://www.bankofcanada.ca/2020/02/bank-canada-begin-publishing-canadian-overnight-repo-rate-average-june/*.

[60] Thomson Reuters, "Thomson Reuters to administer two of Canada's fundamental financial benchmarks," Jan. 6, 2015, available at *https://www.thomsonreuters.com/en/press-releases/2015/january/thomson-reuters-to-administer-two-of-canadas-fundamental-financial-benchmarks.html*.

[61] *Id.*; CDOR White Paper at 6-7. While CAD CDOR is a forward-looking rate (*i.e.*, the three-month CAD CDOR rate is the interest rate that will apply for the next three months), CAD CORRA is an overnight rate that reflects market activity on the previous day. To derive a CAD CORRA rate that spans a tenor period, which would make the rate easier to use in loans and floating rate notes, since April 2021, the Bank of Canada has published a CAD CORRA Compounded Index that compounds CAD CORRA settings over the relevant interest period. *Id.* at 8; Bank of Canada, Canadian Overnight Repo Rate Average, available at *https://www.bankofcanada.ca/rates/interest-rates/corra/*. In September 2023, Candeal Benchmark Solutions and TMX Datalinx launched one-month and three-

In 2018, the Canadian Fixed-Income Forum (CFIF), a committee established by the Bank of Canada to discuss developments, practices, and policy issues in fixed-income markets, established the Canadian Alternative Reference Rate Working Group (CARR) to help guide benchmark reform efforts in Canada.[62] In October 2020, CFIF, in consultation with the CAD CDOR contributor banks, requested that CARR analyze the effectiveness of CAD CDOR as a benchmark in Canada and make recommendations regarding the future of CAD CDOR.[63]

In December 2021, CARR published a white paper analyzing these issues.[64] CARR's findings, among others, included findings that the determination of CAD CDOR was based predominantly on expert judgment and that the BA lending model on which CAD CDOR was premised was no longer seen as an effective way for banks to provide credit to corporate clients.[65] Additionally, CARR noted that the departure of contributor banks could further imperil CAD CDOR's robustness.[66] These observations echoed similar concerns raised with regard to LIBOR.[67]

month term CAD CORRA rates for use in certain loans and derivatives used to hedge them. Bank of Canada, "Term CORRA to be launched on September 5, 2023," Aug. 10, 2023, available at *https://www.bankofcanada.ca/2023/08/term-corra-to-be-launched-on-september-5-2023/*; Canadian Alternative Reference Rate Working Group, "CARR's allowable use cases for Term CORRA – Finalized," Aug. 29, 2023, available at *https://www.bankofcanada.ca/wp-content/uploads/2023/01/carr-approved-use-cases-term-corra.pdf.*

[62] CDOR White Paper at 5.

[63] *Id.*

[64] *See generally* CDOR White Paper.

[65] *Id.* at 22-25.
[66] *Id.* at 25.

[67] *See* Third Determination at 52219-52220.

CARR recommended that CAD CDOR should cease publication after June 30, 2024, and that markets should transition to CAD CORRA.[68] CARR further recommended that the cessation should occur in two stages. The first stage would end on June 30, 2023, and would result in the transition of all new derivatives and securities exposures to CAD CORRA, with no new exposures after that date except for limited exceptions, such as derivatives that hedge or reduce CAD CDOR exposures of derivatives or securities transacted before June 30, 2024.[69] The second stage would end on June 30, 2024, after which there would be no new use of CAD CDOR, CAD CDOR would no longer be published, and applicable CAD CDOR fallbacks would come into effect for any remaining CAD CDOR exposures.[70] CARR intended this phased approach to provide firms with additional time to transition loan agreements and manage potential issues related to the repapering of legacy securities.[71]

In May 2022, following a public consultation,[72] RBSL announced that the calculation and publication of all CAD CDOR tenors would permanently cease after the June 28, 2024 publication.[73] In August 2022, CARR published an overview of its transition roadmap for CAD

[68] CDOR White Paper at 28.

[69] *Id.*

[70] *Id.* at 3, 28. A fallback rate is the rate provided for use in a contract if the benchmark that the contract uses becomes unavailable. ISDA, Understanding IBOR Benchmark Fallbacks, June 2, 2020, available at *https://www.isda.org/a/YZQTE/Understanding%20Benchmarks-Factsheet.pdf*. Under the ISDA 2020 IBOR Fallbacks Protocol, the fallback rate for CAD CDOR is a spread-adjusted version of CAD CORRA. *See* ISDA, ISDA 2020 IBOR Fallbacks Protocol, Oct. 23, 2020, at 41-42, available at *https://assets.isda.org/media/3062e7b4/08268161-pdf/*.

[71] CDOR White Paper at 28.

[72] RBSL, Canadian Dollar Offered Rate (CDOR): Consultation on Potential Cessation of CDOR, Jan. 31, 2022, available at *https://www.lseg.com/content/dam/ftse-russell/en_us/documents/consultation/future-of-cdor-consultation.pdf*.

[73] RBSL, Canadian Dollar Offered Rate (CDOR) Announcement of Cessation of CDOR in June 2024, May 16, 2022, available at *https://www.lseg.com/content/dam/ftse-russell/en_us/documents/announcement/cdor-cessation-notice.pdf*.

CDOR, confirming its proposed two-stage cessation and announcing two "CORRA First" initiatives,[74] similar to "RFR First" plans developed in other IBOR jurisdictions, such as SOFR First in the United States.[75] Under these initiatives, inter-dealer linear derivatives trading in CAD interest rate swaps moved from CAD CDOR to CAD CORRA on January 9, 2023, and inter-dealer non-linear derivatives (in CAD swaptions) and inter-dealer cross-currency swaps moved from CAD CDOR to CAD CORRA on March 27, 2023.[76] As CAD CDOR transition dates approached, CARR published guidance to help market participants facilitate the transition of derivatives and cash market products to CAD CORRA.[77]

DCOs also played a role in the transition from CAD CDOR to CAD CORRA, much as they did in the transition from LIBOR to corresponding RFRs. Prior to the cessation of CAD CDOR, Chicago Mercantile Exchange, Inc. (CME) and LCH Limited (LCH) cleared CAD CDOR fixed-to-floating swaps with maximum termination dates of, respectively, 31 years and 41 years.[78] LCH also cleared CAD CDOR-CAD CDOR and CAD CDOR-CAD CORRA basis

[74] CARR, Overview of CARR's Transition Roadmap, Aug. 2022, at 10, 17, available at *https://www.bankofcanada.ca/wp-content/uploads/2022/06/transition-plan-roadmap.pdf*.

[75] *See, e.g.*, CFTC, SOFR First, July 13, 2021, available at *https://www.cftc.gov/media/6176/MRAC_SOFRFirstSubcommitteeRecommendation071321/download.*

[76] CARR, "CARR's CORRA-first initiatives for derivatives to begin on January 9 – update," Dec. 15, 2022, available at *https://www.bankofcanada.ca/2022/12/carrs-corra-first-initiatives-derivatives-begin-january-9/*.

[77] CARR, Key Documents, available at *https://www.bankofcanada.ca/markets/canadian-alternative-reference-rate-working-group/canadian-alternative-reference-rate-working-group-key-documents/*.

[78] CME, Cleared OTC Interest Rate Swaps, Download Product Scope, available at *https://www.cmegroup.com/trading/interest-rates/cleared-otc.html;* LCH, LCH Limited Self-Certification: Tenor Extensions, Jan. 25, 2022, available at *https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/proposed-rule-changes/lch-ltd/lch-self-cert-hkd-nok-cad-extensions-20220125-final.pdf*.

swaps, both with a maximum termination date of 41 years.[79] CME and LCH currently clear CAD CORRA OIS with maximum termination dates, respectively, of 31 years and 41 years.[80]

CME and LCH converted CAD CDOR swaps to CAD CORRA OIS ahead of the CAD CDOR cessation.[81] CME conducted its conversion in two stages in May 2024 and July 2024.[82] CME converted each CAD CDOR swap into a corresponding short-dated CAD CDOR swap for any representative CAD CDOR fixings that settled following CME's primary conversion,[83] and

[79] LCH, LCH Limited Self-Certification: Tenor Extensions, Jan. 25, 2022, available at *https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/proposed-rule-changes/lch-ltd/lch-self-cert-hkd-nok-cad-extensions-20220125-final.pdf*.

[80] CME, Cleared OTC Interest Rate Swaps, Download Product Scope, available at *https://www.cmegroup.com/trading/interest-rates/cleared-otc.html;* LCH, Product Specific Contract Terms and Eligibility Criteria Manual, Nov. 2024, available at *https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/rulebooks/lch-ltd/lch-product-specific-contract-terms-eligiblity-for-zar-zaronia-ois-compound-241104.pdf*.

[81] CME, Advisory Notice # 24-136, CAD CDOR to CORRA Primary Swap Conversion – May 17, available at *https://www.cmegroup.com/content/dam/cmegroup/notices/clearing/2024/05/Chadv24-136.pdf*; CME, CME Conversion for CAD CDOR Cleared Swaps, Jan. 2024, available at *https://www.cmegroup.com/content/dam/cmegroup/trading/interest-rates/files/cme-conversion-for-cad-cdor-cleared-swaps.pdf* (CME CAD CDOR Conversion Presentation); London Stock Exchange Group, LCH SwapClear CAD CDOR Conversion Quick Guide, Feb. 21, 2024, available at *https://www.lch.com/system/files/?file=media_root/swapclear-cad-cdor-quickquide-021624-03.pdf* (LCH CAD CDOR Conversion Guide).

[82] CME conducted a two-staged conversion featuring a primary conversion on May 17, 2024 for all cleared CAD CDOR swaps with fixings beyond June 28, 2024, and a secondary conversion on July 2, 2024 for all new CAD CDOR swaps cleared following the primary conversion and that contained fixings beyond July 28, 2024. CME CAD CDOR Conversion Presentation at 6.

[83] Such swaps maintained CAD CDOR coupons associated with fixings prior to July 2, 2024 (the ISDA "Index Cessation Effective Date" on which CAD-denominated OTC interest rate swaps fell back to spread-adjusted CAD CORRA). The coupons were settled at the end of the last representative compounding period. *Id.* at 20.

a forward starting CAD CORRA OIS.[84] Post-conversion, CME no longer clears CAD CDOR swaps.[85]

LCH conducted its conversion of CAD CDOR fixed-to-floating swaps into market standard CAD CORRA OIS on June 8, 2024.[86] LCH's conversion entailed replacement of CAD CDOR swaps with CAD CORRA swaps,[87] with overlay CAD CDOR bookings to preserve

[84] *Id.* at 6. The resulting CAD CDOR swap was created to settle all remaining fixings before the cessation date, and the resulting CAD CORRA swap was created to settle all remaining cash flows and the cash compensation fee. *Id.* at 15. The effective date for the forward starting CAD CORRA OIS was the next compound period start date immediately following the Index Cessation Event Date. *Id.* at 20. ISDA's fallback spread adjustment for CAD CORRA applied to the floating leg of the OIS; additionally, key economics of the swap being replaced were duplicated in the replacement swaps. *Id.* at 6. ISDA fallback spread adjustments are adjustments (calculated and distributed by Bloomberg) to account for structural differences between the overnight RFR and term IBOR rates, and the historical spread differences between IBORs and their term equivalent RFR compounded rates. ISDA employs a five-year median comparison calculation between the compounded in arrears RFR (*i.e.*, calculated using daily rates published during the relevant interest period rather than over a period prior to the start of the interest period) and the IBOR. ISDA, IBOR Fallback Rate Adjustments: Frequently Asked Questions, Aug. 2024, at 7, available at *https://www.isda.org/a/fp8gE/Fallbacks_FAQ_V13_August-2024.pdf*; *see also, e.g.,* FRBNY, SOFR "in Arrears" Conventions for Syndicated Business Loans, 2020, at 1, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_SOFR_Synd_Loan_Conventions.pdf*. CME applied cash compensation as an upfront fee on the CAD CORRA replacement swap. CME CAD CDOR Conversion Presentation at 6. Cash compensation is intended to account for any differences in value between the CAD CDOR swap being converted and the corresponding replacement swaps.

[85] CME, Cleared OTC Interest Rate Swaps, available at *https://www.cmegroup.com/trading/interest-rates/cleared-otc.html* (noting, "Clearing support will be limited to spot and forward trades for swap products where an index cessation or modification effective date has occurred. Any IBOR indexed swaps submitted for clearing will be converted to a corresponding risk free rate (RFR) swap.").

[86] LCH CAD CDOR Conversion Guide at 3.

[87] Carrying over key terms, including effective date and maturity date.

coupons associated with CAD CDOR fixings before the CAD CDOR cessation date.[88] Post-conversion, LCH also no longer clears CAD CDOR swaps.[89]

2. Transition from MXN TIIE to MXN F-TIIE

Banco de México began administering and publishing MXN TIIE in 1995 as a more accurate reflection of the cost of funding in the Mexican banking market than the existing Average Interbank Interest Rate (la Tasa Interés Interbancaria Promedio, or TIIP by its Spanish acronym).[90] Historically, each bank business day, Banco de México published 28-, 91-, and 182-day MXN TIIE rates calculated based on quotations submitted by a panel of commercial banks.[91]

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[88] *Id.* at 5. The overlay booking inherited the periodicity and fixed-leg day count fraction, as well as the effective date, of the original CAD CDOR swap, and matured when the last representative CAD CDOR period prior to cessation settled. Additionally, the CAD CDOR leg of the overlay booking replicated the CAD CDOR leg of the original CAD CDOR swap, except with a shorter maturity. *Id.* LCH's conversion process entailed CAD CDOR-CAD CORRA basis swap overlay bookings for house accounts, and pairs of CAD CDOR versus fixed and CAD CORRA versus fixed swaps for client accounts. *Id.*; LCH, "SwapClear consultation: CAD CDOR contract conversion," Aug. 2023, at 10, available at *https://www.lch.com/system/files/media_root/lch-cad-cdor-conversion-consultation.pdf*. LCH applied ISDA's spread adjustment to the floating leg of the CAD CDOR OIS. LCH CAD CDOR Conversion Guide at 3-4. LCH also delivered cash compensation as an upfront fee on a new 1 CAD notional CAD CORRA OIS with a minimum remaining term to maturity. *Id.* at 6. For basis swaps, LCH made available to market participants a Unilateral Basis Splitting Tool to voluntarily split CAD CDOR basis swaps into separate CAD CDOR fixed-to-floating swaps and CAD CORRA OIS. *Id.* (CME did not support clearing of CAD CDOR basis swaps at the time of its CAD CDOR conversion. CME CAD CDOR Conversion Presentation at 8.) LCH mandatorily split any in-scope CAD CDOR basis swaps outstanding at the time of the conversion. LCH CAD CDOR Conversion Guide at 3. LCH's conversion also encompassed the CAD CDOR swaps that resulted from basis swap splitting.

[89] *See generally* LCH, What We Clear, available at *https://www.lseg.com/en/post-trade/clearing/lch-services/swapclear/what-we-clear*.

[90] Banco de Mexico, Informe Anual, 1995, at 130, available at *https://www.banxico.org.mx/publicaciones-y-prensa/informes-anuales/%7B04840DAE-89CE-942C-ADC0-7F8D6DD0971D%7D.pdf*. MXN TIIP was first published in 1993 and ceased publication in 2001. Banco de México, Economic Information System, Securities Prices and Interest Rates, Interbank Interest Rates (CF111), n.3, available at *https://www.banxico.org.mx/SieInternet/consultarDirectorioInternetAction.do?accion=consultarCuadro&idCuadro=CF111&sector=18&locale=en*. While both MXN TIIP and MXN TIIE were designed to serve as survey-based indicators of the cost of funds in the Mexican banking market, MXN TIIE accounts for the supply and demand curve for such loans. *See generally* FSB, Progress in Reforming Major Interest Rate Benchmarks, July 9, 2015, at 15, available at *https://www.fsb.org/uploads/OSSG-interest-rate-benchmarks-progress-report-July-2015.pdf*.

[91] Banco de México, Economic Information System, Securities Prices and Interest Rates, Representative Interest Rates (CA51), n.3, available at

In order to foster the sound development of the financial system and abide by the recommendations of international standard-setting bodies with respect to benchmark methodology, in January 2020, Banco de México began administering and publishing MXN F-TIIE as an alternative to MXN TIIE.[92] MXN F-TIIE is calculated based on a volume-weighted median of daily observed MXN-denominated wholesale overnight repurchase agreement transactions settled by banks and brokerage firms and secured by debt instruments issued by the Mexican government, the Mexican Bank Savings Protection Institute (Instituto para la Protección al Ahorro Bancario, or IPAB by its Spanish acronym), Banco de México.[93] Banco de México also announced enhancements to governance, accountability, and quality requirements with respect to MXN TIIE rates with maturities of greater than overnight, and a Code of Conduct for institutions that participate in determining MXN TIIE rates.[94]

In December 2022, Banco de México announced that, after careful analysis conducted with the support of financial market participants in Mexico, Banco de México deemed it necessary to prohibit the use of MXN TIIE rates with tenors greater than one business day as

https://www.banxico.org.mx/SieInternet/consultarDirectorioInternetAction.do?sector=18&accion=consultarCuadroAnalitico&idCuadro=CA51&locale=en. The 28-, 91-, and 182-day MXN TIIE rates refer to the tenor of the interbank transactions that MXN TIIE is intended to measure.

[92] Banco de México, "Publication of the overnight TIIE funding rate and improvement of TIIE rates with longer than overnight maturities," Jan. 15, 2020, available at *https://www.banxico.org.mx/publications-and-press/other-announcements/%7BA3CFC638-5913-1C42-1843-360A95F89A92%7D.pdf*.

[93] *Id.* Daily average turnover in the Mexican repo market is approximately MXN 2.4 trillion (approximately $117 billion). International Monetary Fund, Mexico: Financial Sector Assessment Program-Technical Note on Systemic Liquidity Management, Nov. 10, 2022, at 8, available at *https://www.elibrary.imf.org/downloadpdf/view/journals/002/2022/338/article-A001-en.pdf*.

[94] *Id.* The enhancements are reflected in Banco de México Circular 3/2012, available at *https://www.banxico.org.mx/marco-normativo/normativa-emitida-por-el-banco-de-mexico/circular-3-2012/%7B4E0281A4-7AD8-1462-BC79-7F2925F3171D%7D.pdf*.

reference rates for new contracts.[95] Accordingly, Banco de México determined the following: (1) use of 91- and 182-day tenor MXN TIIE as reference rates would be prohibited for new contracts entered into by financial entities regulated by Banco de México beginning on January 1, 2024; (2) use of the 28-day MXN TIIE rate as a reference rate for new contracts entered into by the financial entities regulated by Banco de México would be prohibited beginning January 1, 2025; and (3) Banco de México would modify the methodology for calculation of MXN TIIE with tenors greater than one business day so that contracts tied to MXN TIIE with tenors greater than one business day that are still active as of the transition dates would not require adjustment through legal amendment.[96] The new methodology was based on the overnight MXN TIIE rate on the day prior to the reference day being determined, compounded by the number of days of the corresponding term, with a fixed historical spread adjustment based on the historical median of the daily differences between MXN TIIE with tenors greater than one business day and MXN

[95] Banco de México, "Transition from TIIE with tenors greater than one business day (28, 91, and 182 days) to the Overnight TIIE Funding Rate (TIIE de Fondeo)," Dec. 20, 2022, available at *https://www.banxico.org.mx/markets/mexican-alternative-reference-rates-working-group/d/%7B2D6F5896-CF86-3F28-0C02-98D17B7542B9%7D.pdf*. Spanish-language versions of the consultation, draft provisions, comments, and comment summary are available at *https://www.banxico.org.mx/ConsultaRegulacionWeb/* (see, under "Históricas," "PROYECTO DE DISPOSICIONES PARA MODIFICAR LA CIRCULAR 3/2012, CON OBJETO DE ESTABLECER LAS FECHAS A PARTIR DE LAS CUALES SE RESTRINGIRÁ EL USO DE LAS TIIE A PLAZOS MAYORES A UN DÍA HÁBIL BANCARIO, ASÍ COMO MODIFICAR LA METODOLOGÍA PARA SU CÁLCULO"). *See also generally* Banco de México, 7th Meeting of the Working Group on Alternative Reference Rates in Mexico (GTTR), Mar. 2023, at 6-8, available at *https://www.banxico.org.mx/markets/mexican-alternative-reference-rates-working-group/d/%7BA0239E58-6DE1-A4BC-D0DE-88E94841D16F%7D.pdf* (summarizing comments on the consultation). Consistency with international efforts and best practices to move interest rate swap markets from survey-based IBORs to transaction-based RFRs was a significant consideration in Banco de México's decision. Banco de México, 4th Meeting of the Working Group on Alternative Reference Rates in Mexico (GTTR), Nov. 30, 2021, at 8, available at *https://www.banxico.org.mx/markets/mexican-alternative-reference-rates-working-group/d/%7B53572077-823D-FEA5-6B89-5D4584C21981%7D.pdf*.

[96] Banco de México, "Transition from TIIE with tenors greater than one business day (28, 91, and 182 days) to the Overnight TIIE Funding Rate (TIIE de Fondeo)," Dec. 20, 2022, available at *https://www.banxico.org.mx/markets/mexican-alternative-reference-rates-working-group/d/%7B2D6F5896-CF86-3F28-0C02-98D17B7542B9%7D.pdf*.

F-TIIE from November 2017 to October 2022, compounded by the number of days of the respective term.[97]

On December 6, 2023, Banco de México announced that it would grant a waiver to permit trading in new swaps referencing the legacy MXN TIIE 28-day rate until December 31, 2025, provided the maturity of the transaction did not extend beyond that date.[98]

Banco de México's decision to provide the waiver reflected a process that incorporated the views of affected market participants and the public in general. In September 2020, Banco de México established the Working Group on Alternative Reference Rates in Mexico (Grupo de Trabajo de Tasas de Referencia en México, or GTTR by its Spanish acronym), a private-public working group comprised of banks, brokerage houses, interdealer electronic and voice brokers, stock exchanges, financial authorities, non-banking financial entities, corporates, and others, to encourage the adoption of more robust interest rates in Mexican financial markets.[99] In the fall of 2023, concerns emerged among GTTR members that a basis mismatch could surface as MXN TIIE swaps were converted to MXN F-TIIE OIS.[100] Specifically, some market participants raised concerns that, if a market participant has a bilateral 28-day MXN TIIE interest rate swap contract with a corporate client that does not settle through a clearinghouse, and the risk of that

[97] *Id.* The changes are reflected in Circular 3/2012 (new methodology for calculating MXN TIIE with tenors greater than one business day) and Circular 14/2007 (changes regarding restrictions on the use of MXN TIIE).

[98] Banco de México, 10th Meeting of the Working Group on Alternative Reference Rates in Mexico (GTTR), Dec. 6, 2023, at 10, available at *https://www.banxico.org.mx/markets/mexican-alternative-reference-rates-working-group/d/%7B8AAAB86C-BAD5-AD0F-513C-B465BAFDE75E%7D.pdf*.

[99] Banco de México, "Establishment of the Working Group on Alternative Reference Rates in Mexico," Sept. 30, 2020, available at *https://www.banxico.org.mx/publications-and-press/other-announcements/%7B24C11AC6-7368-9BC4-DCE7-6FAD5103ADAA%7D.pdf*.

[100] Banco de México, 6th Meeting of the Working Subgroup on Derivative Instruments Referenced to the Funding TIIE of the GTTR, Oct. 30, 2023, at 3, available at *https://www.banxico.org.mx/markets/mexican-alternative-reference-rates-working-group/d/%7B77DD82E8-D6CC-D5B4-345B-CEDFE130EEC5%7D.pdf*.

contract is covered with a contract that settles through a clearinghouse, then following a conversion of MXN TIIE swaps to MXN F-TIIE OIS at the clearinghouse, a basis would be generated between the uncleared MXN TIIE swap and the cleared MXN F-TIIE OIS resulting from the conversion of the cleared MXN TIIE swap.[101]

The GTTR engaged in consultations to identify solutions to mitigate the impact of such basis risk.[102] The GTTR found that 44% of the institutions that participated in the consultations indicated that they would be affected by such basis risk following an MXN TIIE swap conversion.[103] The GTTR subsequently identified granting a waiver until the end of 2025 to trade MXN TIIE swaps expiring before that time as a means to address the issue of basis risk (*i.e.*, by providing market participants with additional time to cover their basis risk).[104] On March 5, 2024, Banco de México published a consultation on a proposal to amend its MXN TIIE to MXN F-TIIE transition timeline by granting a waiver for certain limited usage of MXN TIIE through 2025.[105] On June 7, 2024, Banco de México finalized amendments to its transition timeline to account for the waiver period.[106]

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[101] *Id.*

[102] *Id.* at 10-13.

[103] Banco de México, 10th Meeting of the Working Group on Alternative Reference Rates in Mexico (GTTR), Dec. 6, 2023, at 3, 5, available at *https://www.banxico.org.mx/markets/mexican-alternative-reference-rates-working-group/d/%7B8AAAB86C-BAD5-AD0F-513C-B465BAFDE75E%7D.pdf*.

[104] Banco de México, 11th Meeting of the Working Subgroup on Derivative Instruments Referenced to the Funding TIIE of the GTTR, Feb. 1, 2024, at 5, available at *https://www.banxico.org.mx/markets/mexican-alternative-reference-rates-working-group/d/%7BA5419A19-1C19-9ED4-F429-8518FF28516E%7D.pdf*.

[105] Banco de México, "Exceptions to the restrictions on the use of the 28-day TIIE as an underlying in swaps held during 2025," Mar. 5, 2024, available at *https://www.banxico.org.mx/publicaciones-y-prensa/miscelaneos/%7B4098A198-7A37-2F61-B2E4-B23BB099DC35%7D.pdf* (title translated from original Spanish).

[106] Banco de México, Circular 9/2024, June 7, 2024, *available at https://www.banxico.org.mx/marco-normativo/normativa-emitida-por-el-banco-de-mexico/circular-4-2012/%7B416701BC-FBE2-A422-6224-9D9E666ABA6A%7D.pdf*.

Until the end of 2025, two registered DCOs cleared MXN TIIE swaps and MXN F-TIIE OIS. CME and LCH cleared fixed-to-floating interest rate swaps that reference 28-day MXN TIIE for a maximum stated termination date of, respectively, 31 years and 21 years.[107] Both DCOs no longer offer fixed-to-floating interest rate swaps that reference 28-day MXN TIIE for clearing. Now CME and LCH clear OIS that reference MXN F-TIIE for a maximum stated termination date of, respectively, 31 years and 21 years.[108]

Additionally, Asigna, a Mexican clearinghouse that is currently neither a registered DCO nor an exempt DCO, clears MXN F-TIIE OIS with a maximum stated termination date range of 30 years.[109]

In November 2024, CME and LCH launched programs to convert cleared MXN TIIE swaps into market standard MXN TIIE OIS, as did Asigna.[110]

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[107] CME, Cleared OTC Interest Rate Swaps, Download Product Scope, available at *https://www.cmegroup.com/trading/interest-rates/cleared-otc.html*; LCH, Product Specific Contract Terms and Eligibility Criteria Manual, Nov. 2024, available at *https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/rulebooks/lch-ltd/lch-product-specific-contract-terms-eligiblity-for-zar-zaronia-ois-compound-241104.pdf*.

[108] CME, Cleared OTC Interest Rate Swaps, Download Product Scope, available at *https://www.cmegroup.com/trading/interest-rates/cleared-otc.html*; LCH, Product Specific Contract Terms and Eligibility Criteria Manual, Nov. 2024, available at *https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/rulebooks/lch-ltd/lch-product-specific-contract-terms-eligiblity-for-zar-zaronia-ois-compound-241104.pdf.*

[109] MexDer, Terms and Conditions for the Nominal Fixed Interest Rates and Nominal Variable 28-Day Interbank Equilibrium Interest Rates (TIIE28) Swap Contract, available at *http://www.mexder.com.mx/wb3/wb/MEX/MEX_Repositorio/_vtp/MEX/2052_swaps_contracts/_rid/21/_mto/3/20241115ENGLISHCGCS_CONTRATO_SWAP_TIIE28.pdf?repfop=view&reptp=2052_swaps_contracts&repfiddoc=8723&repinline=true*; MexDer, Terms and Conditions for the Nominal Fixed Interest Rates and the Nominal Variable Interest Rates (TIIE de Fondeo) Swap Contract, available at *http://www.mexder.com.mx/wb3/wb/MEX/MEX_Repositorio/_vtp/MEX/2052_swaps_contracts/_rid/21/_mto/3/20241115CGCs_Swaps_de_TIIE_de_Fondeo_EN.pdf?repfop=view&reptp=2052_swaps_contracts&repfiddoc=8722&repinline=true;*.

[110] Asigna, "AVISO A SOCIOS LIQUIDADORES, PLATAFORMAS DE NEGOCIACIÓN, OPERADORES Y PÚBLICO EN GENERAL," Dec. 20, 2024, available at *http://www.asigna.com.mx/wb3/wb/ASG/ASG_repositorio/_vtp/ASG/11a0_2024/_rid/124/_mto/3/20241220_Segunda_Conversion.pdf?repfop=view&reptp=11a0_2024&repfiddoc=21973&repinline=true*; *see also* Asigna, Funding TIIE Swap and Rate Conversion, available at *https://bmv.com.mx/docs-pub/ASSETS/TIIE_Fondeo_Ingles_V5.pdf*;

CME ran a primary conversion event on November 22, 2024, converting 28-day MXN TIIE swaps with scheduled fixings on or after December 3, 2025.[111] In light of Banco de México's waiver, CME continued to clear 28-day MXN TIIE swaps that did not contain fixings on or after December 3, 2025.[112] CME then converted as part of daily conversion cycles new 28-day MXN TIIE swaps submitted to clearing after the primary conversion and that contained fixings on or after December 3, 2025.[113] In publicly available conversion planning materials, CME noted that after its primary conversion, MXN F-TIIE was expected to become the primary pool of liquidity for MXN-denominated interest rate swaps, and trading in new 28-day MXN TIIE swaps would be limited.[114] The methodology and structure of CME's MXN TIIE swap

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Asigna, "AVISO A SOCIOS LIQUIDADORES, PLATAFORMAS DE NEGOCIACIÓN, OPERADORES Y PÚBLICO EN GENERAL," Oct. 16, 2024, available at *http://www.asigna.com.mx/wb3/wb/ASG/ASG_repositorio/_vtp/ASG/2469_banners/_rid/124/_mto/3/TIIE_Fondeo_Espanol_difusion.pdf?repfop=view&reptp=2469_banners&repfiddoc=20752&repinline=true*. Post-conversion, Asigna clears only MXN TIIE swaps that will mature before the end of Banco de México's waiver period. Asigna, "AVISO A SOCIOS LIQUIDADORES, PLATAFORMAS DE NEGOCIACIÓN, OPERADORES Y PÚBLICO EN GENERAL," Oct. 16, 2024, at 3, available at *http://www.asigna.com.mx/wb3/wb/ASG/ASG_repositorio/_vtp/ASG/2469_banners/_rid/124/_mto/3/TIIE_Fondeo_Espanol_difusion.pdf?repfop=view&reptp=2469_banners&repfiddoc=20752&repinline=true*.

[111] CME, Conversion Plan: CME Cleared MXN TIIE Interest Rate Swaps, Mar. 2024, at 2, available at *https://www.cmegroup.com/articles/files/2024/proposal-for-cme-cleared-mxn-tiie-interest-rate-swaps-2024-03.pdf*. CME noted that, due to market conventions for 28-day MXN TIIE fixings, 28-day MXN TIIE swaps with fixings including and after December 3, 2025, would not be covered by Banco de México's waiver. *Id.* at 1.

[112] *Id.* at 2.

[113] *Id.*

[114] *Id.*

conversion was similar to those of other CME conversions.[115] CME's conversion plan entailed the end of support for MXN TIIE swap clearing services as of the end of 2025.[116]

On November 23, 2024, LCH converted in-scope 28-day MXN TIIE swaps to MXN F-TIIE OIS equivalents, with overlay bookings to capture periods on the original trade that rely on a fixing that occurred after December 2, 2025, similar to LCH's process for converting CAD CDOR swaps to CAD CORRA OIS.[117] To account for Banco de México's waiver, any MXN TIIE trades that were fully fixed on or before December 2, 2025, were not subject to conversion.[118] Such swaps remained eligible for clearing at LCH; however, LCH, like CME, removed clearing support for MXN TIIE swaps as of the end of 2025.[119]

[115] CME replaced the MXN TIIE swap being converted with a short-dated MXN TIIE replacement swap and a forward-starting MXN F-TIIE OIS, applying a fixed spread adjustment calculated by Banco de México to the MXN F-TIIE OIS, and applying cash compensation as an upfront fee on the MXN F-TIIE OIS. *Id.*

[116] *Id.* *See also* CME, Product Delisting Summary – MXN 28D TIIE Swap Clearing – Effective January 02, 2026, Jan. 2, 2026, available at *https://www.cmegroup.com/notices/clearing/2026/01/26-001.html* (noting CME was discontinuing clearing support as of January 2, 2026).

[117] LCH, LCH Consultation on Conversion of Outstanding Cleared MXN 28D-TIIE Contracts, Dec. 20, 2023, available at *https://www.lch.com/membership/ltd-membership/ltd-member-updates/lch-consultation-conversion-outstanding-cleared-mxn-0*.

[118] LCH, LCH Conversion of Outstanding Cleared MXN 28D-TIIE Contracts, Feb. 16, 2024, available at *https://www.lch.com/membership/ltd-membership/ltd-member-updates/lch-conversion-outstanding-cleared-mxn-28d-tiie#:~:text=MXN%2028D-TIIE%20trades%20relying%20on%20fixings%20occurring%20after,2025%20will%20not%20be%20subject%20to%20LCH%20conversion*. October 10, 2024, LCH announced that, considering the limited uptake of MXN F-TIIE OIS and continued robust liquidity in MXN TIIE swaps, it would adjust its methodology for calculating cash compensation to incorporate projected MXN F-TIIE rates derived from projected 28-day MXN TIIE rates (as opposed to relying on MXN F-TIIE market data alone). *See* LCH, MXN 28D-TIIE Conversion Update, Oct. 10, 2024, available at *https://www.lch.com/membership/ltd-membership/ltd-member-updates/mxn-28d-tiie-conversion-update*.

[119] *See* LCH, "LCH Limited Self-Certification: Removal of eligibility of MXN TIIE SwapClear transactions," Nov. 28, 2025, available at *https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/proposed-rule-changes/lch-ltd/lch-ltd-self-certification-removal-of-eligibility-of-mxn-tiie-swapclear-transactions.pdf* (noting LCH was discontinuing clearing support as of January 1, 2025).

II. DOMESTIC AND INTERNATIONAL COORDINATION AND OUTREACH

The transitions from CAD CDOR to CAD CORRA and MXN TIIE to MXN F-TIIE are further milestones, following the transition away from LIBOR, in a continuing effort by international standard-setting bodies such as International Organization of Securities Commissions (IOSCO) and the FSB, regulators, cross-jurisdictional working groups, market infrastructure providers, market participants, and others, to move global swap markets toward reliance on more sustainable benchmarks. Due to the cross-border nature of this effort and the size of the affected markets, it is a priority for the Commission to engage with domestic and international regulators as it considers changes to the clearing requirement.

A. Domestic Coordination Efforts

The Commission is committed to working with the FRB, the FRBNY, the Securities and Exchange Commission (SEC), and other domestic authorities to ensure transparency in its efforts and, to the greatest extent possible, consistency in the transition from IBORs to RFRs. To this end, the Commission consults with domestic authorities including the SEC, the FRB, and the FRBNY as part of this rulemaking process.

B. International Coordination Efforts

Section 752(a) of the Dodd-Frank Act directs the Commission to consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards for the regulation of swaps.[120] The Commission accomplished this with respect to the Second Determination by considering the ways in which it could harmonize its clearing requirement with clearing requirements in other jurisdictions.[121] The Commission has long recognized the

[120] Section 752 is not codified in the CEA.

[121] Second Determination, 81 FR at 71203.

interconnectedness of the interest rate swap market, and the importance of consulting and coordinating with its counterparts in other jurisdictions in the adoption of clearing requirements in order to promote regulatory consistency and certainty, and to prevent the evasion of clearing requirements.[122]

As part of this rulemaking process, and consistent with the Third Determination, the Commission is working with its counterparts overseas to ensure a coordinated approach to required clearing of interest rate swaps during the move from use of swaps referencing IBORs to swaps referencing RFRs. As part of the ongoing regulatory dialogue among authorities, Commission staff consulted with counterparts, including those at Banco de México and the Canadian Securities Administrators (CSA). This type of dialogue reflects an effort to ensure consistency in interest rate swap clearing requirements across jurisdictions.

C. Clearing Requirements in Other Jurisdictions

In developing this proposal, the Commission considered relevant changes to clearing requirements in other jurisdictions, ensuring that any changes the Commission proposes are harmonized to the greatest extent possible with those adopted by its international counterparts. This goal is consistent with the Commission's approach in the Second Determination and in the Third Determination.

Both the United States and Canada require clearing of CAD-denominated, CAD CDOR-referenced fixed-to-floating swaps with a stated termination date range of 28 days to 30 years,

[122] *E.g.,* Third Determination, 87 FR at 52189 (discussing comments on the Commission's third proposed clearing requirement determination supporting the Commission's goal of harmonizing its clearing requirement with those of non-U.S. jurisdictions); Second Determination, 81 FR at 71223 (noting that "the interest rate swaps market is global and market participants are interconnected"); First Determination, 77 FR at 74287 ("The Commission is mindful of the benefits of harmonizing its regulatory framework with that of its counterparts in foreign countries. The Commission has therefore monitored global advisory, legislative, and regulatory proposals, and has consulted with foreign regulators in developing the final regulations.").

and CAD-denominated, CAD CORRA-referenced OIS with a stated termination date range of 7 days to 2 years.[123] No other jurisdiction has a CAD-denominated interest rate swap clearing requirement.

On September 19, 2024, the CSA published for public comment proposed amendments to Canada's interest rate swap clearing requirement.[124] Citing the decrease (or cessation) of use of certain swaps referencing IBORs, and the adoption of RFRs and the corresponding increase in the liquidity of RFR swaps and in the systemic importance of RFRs, the CSA proposed to remove certain categories of swaps from Canada's interest rate swap clearing requirement, and add certain other categories of swaps. Specifically, the CSA proposed to remove its clearing requirement in each of the fixed-to-floating, basis swap, OIS, and FRA classes, as applicable, with respect to swaps referencing CAD CDOR, USD LIBOR, GBP LIBOR, and EUR EONIA.[125] The CSA additionally proposed to add a clearing requirement for OIS referencing USD SOFR (7 days to 50 years) and EUR €STR (7 days to 3 years) and to modify the clearing requirement for OIS referencing GBP SONIA to include maturities of 7 days to 50 years.[126] The

[123] 17 CFR 50.4(a); CSA, CSA Notice of Publication – Amendments to National Instrument 94-101 Mandatory Central Counterparty
Clearing of Derivatives and Changes to Companion Policy 94-101 Mandatory Central Counterparty Clearing of Derivatives, Jan. 27, 2022, available at *https://www.osc.ca/sites/default/files/2022-01/csa_20220127_94-101_mandatory-central-counterparty.pdf*.

[124] CSA, B.6.1 CSA Notice of Consultation – Proposed Amendments to National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives, Sept. 19, 2024, available at *https://www.osc.ca/sites/default/files/2024-09/csa_20240919_notice-consultation-amendments-94-101.pdf*. The comment period for the consultation closed on December 19, 2024.

[125] *Id.*

[126] The CSA's proposed removal of the clearing requirement with respect to certain CAD CDOR, USD LIBOR, GBP LIBOR, and EUR EONIA swaps, addition of a clearing requirement with respect to certain USD SOFR and EUR €STR OIS, and modification of its GBP SONIA OIS clearing requirement, would be consistent with the Commission's own interest rate swap clearing requirement with respect to the same categories of swaps. *See* 17 CFR 50.4(a).

CSA also proposed to modify its requirement to clear CAD CORRA OIS to include CAD CORRA OIS to include maturities of 7 days to 30 years.[127]

In proposing modifications to its interest rate swap clearing requirement, the CSA reviewed the suitability of adding certain swaps to its clearing requirement. It considered factors including: (i) the availability of the derivative to be cleared by a regulated clearing agency; (ii) the level of standardization of the derivative; (iii) the effect of central clearing of the derivative on the mitigation of systemic risk, taking into account the size of the market for the derivative and the available resources of the regulated clearing agency to clear the derivative; (iv) whether mandating the derivative or class of derivatives to be cleared would bring undue risk to regulated clearing agencies; (v) the current liquidity in the market for the derivative or class of derivatives; (vi) the existence of capacity, operational expertise, and resources, with respect to a regulated clearing agency; and (vii) international harmonization.[128] The CSA noted that, in developing its proposal, it analyzed data reported by market participants to designated or recognized trade

[127] CSA, B.6.1 CSA Notice of Consultation – Proposed Amendments to National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives, Sept. 19, 2024, available at *https://www.osc.ca/sites/default/files/2024-09/csa_20240919_notice-consultation-amendments-94-101.pdf*. In addition, the CSA proposed to require clearing for fixed-to-float interest rate swaps referencing the Australian dollar (AUD) Bank Bill Swap Rate (BBSW) (28 days to 30 years), and three credit default swap indexes: CDX.NA.IG with tenors of five and ten years (Series 46 and all subsequent Series), CDX.NA.HY with a tenor of 5 years (Series 46 and all subsequent Series), and iTraxx Europe with a tenor of 5 years (Series 45 and all subsequent Series). These proposed modifications are consistent with the Commission's own interest rate swap and credit default swap clearing requirement. *See* 17 CFR 50.4.

[128] CSA, B.6.1 CSA Notice of Consultation – Proposed Amendments to National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives, Sept. 19, 2024, available at *https://www.osc.ca/sites/default/files/2024-09/csa_20240919_notice-consultation-amendments-94-101.pdf*.

repositories in accordance with applicable regulations, and held discussions with recognized central counterparties.[129] On September 25, 2025, the CSA finalized these amendments.[130]

Only the U.S. and Mexico required MXN TIIE swaps to be cleared. Regulation § 50.4 requires clearing of fixed-to-floating swaps denominated in MXN that reference TIIE-BANXICO, for a stated termination date range of 28 days to 21 years.[131] Following a consultation launched on June 2, 2023, Banco de México amended its rules for the execution of derivatives transactions to replace its requirement to clear MXN TIIE fixed-to-floating swaps with a stated termination date range of 56 days to 30 years with a requirement to clear MXN F-TIIE OIS with a stated termination date range of 28 days to 30 years, with the modifications entering into force on January 1, 2025.[132] In amending its clearing requirement, Banco de México considered: (i) the degree of standardization of the terms and conditions of the

[129] The CSA noted that as part of its analysis, for a review period of April 2023 to September 2023, and using data reported by market participants, the CSA analyzed monthly volume by assessing the number of transactions and the gross notional amount outstanding for certain OTC derivatives, including the gross notional by maturity, and the percentage of outstanding notional cleared each month of the reference period. *Id.*

[130] CSA, "CSA adopts amendments to mandatory central counterparty clearing of derivatives," Sept. 25, 2025, available at *https://www.securities-administrators.ca/news/csa-adopts-amendments-to-mandatory-central-counterparty-clearing-of-derivatives/*; *see also* Ontario Securities Commission, National Instrument 94-101, available at *https://www.osc.ca/sites/default/files/2026-01/ni_20260119_94-101_unofficial-consolidation.pdf* (unofficial consolidation).

[131] 17 CFR 50.4(a).

[132] Spanish-language versions of the consultation, draft provisions, comments, and comment summary are available at *https://www.banxico.org.mx/ConsultaRegulacionWeb/* (see, under "Históricas," "PROYECTO DE DISPOSICIONES PARA MODIFICAR LA CIRCULAR 4/2012 DEL BANCO DE MÉXICO, CON OBJETO DE ESTABLECER LAS FECHAS A PARTIR DE LAS CUALES SE RESTRINGIRÁ EL USO DE LAS TIIE A PLAZOS MAYORES A UN DÍA HÁBIL BANCARIO COMO REFERENCIA PARA NUEVAS OPERACIONES"). The modifications are reflected in Banco de México Circular 7/2023, Sept. 8, 2023, available at *https://www.banxico.org.mx/marco-normativo/normativa-emitida-por-el-banco-de-mexico/circular-4-2012/%7B7D759428-892F-AD66-CF4F-B3D768ABD59A%7D.pdf* and in Banco de México Circular 4/2012, available at *https://www.banxico.org.mx/marco-normativo/normativa-emitida-por-el-banco-de-mexico/circular-4-2012/%7B97C62974-1C94-19AE-AB5A-D0D949A36247%7D.pdf*. *See also* Banco de México, 9th Meeting of the Working Group on Alternative Reference Rates in Mexico (GTTR), Aug. 15, 2023, at 4-6, available at *https://www.banxico.org.mx/markets/mexican-alternative-reference-rates-working-group/d/%7B0048779F-A14D-C07F-90F7-24E5E604E1D4%7D.pdf* (summarizing the consultation and results).

derivatives transactions; (ii) the liquidity, depth, traded volume, and size of the derivatives transactions in the Mexican market; (iii) the number and type of entities that can trade and clear the derivatives transactions; (iv) the availability of pricing sources that are reasonable, reliable, and generally accepted; (v) the systemic risk associated with the execution of the derivatives transactions, and its impact on the stability of the Mexican financial system; (vi) the existence of companies that manage systems to facilitate trading of the products authorized by the National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores or CNBV by its Spanish acronym), or foreign institutions that perform functions similar to those carried out by such companies that are recognized by the CNBV on which the derivatives transactions are traded; (vii) the existence of a clearinghouse or foreign institution that acts as a central counterparty, recognized by Banco de México, at which the derivatives transactions are cleared and settled; and (viii) the effect on competition, considering the fees associated with trading and clearing.[133]

III. PROPOSED AMENDMENTS TO REGULATION § 50.4(a)

As described above, the global swap marketplace has made tremendous progress in transitioning from reliance on swaps that reference IBORs to clearing and trading swaps that reference RFRs. Although this transition has occurred with respect to LIBOR and certain other IBORs, it is ongoing with respect to other benchmarks. The Commission intends to facilitate the transition from IBORs to RFRs further by modifying its interest rate swap clearing requirement

[133] Banco de México Circular 7/2023, Sept. 8, 2023, available at *https://www.banxico.org.mx/marco-normativo/normativa-emitida-por-el-banco-de-mexico/circular-4-2012/%7B7D759428-892F-AD66-CF4F-B3D768ABD59A%7D.pdf*.

to reflect the unavailability of CAD CDOR and MXN TIIE and the market adoption of CAD CORRA and MXN F-TIIE.

A. Overview of the Proposed Regulation

The Commission is proposing to amend regulation § 50.4(a) to (i) modify its CAD CORRA OIS clearing requirement; (ii) add a requirement to clear MXN F-TIIE OIS; and (iii) remove its requirement to clear CAD CDOR and MXN TIIE fixed-to-floating interest rate swaps.[134]

Consistent with the Third Determination, in many respects, this proposal is an update rather than expansion of the existing clearing requirement, as it reflects the market transition away from the use of IBOR interest rate benchmarks to RFR interest rate benchmarks in the interest rate swaps market. With respect to the transition from CAD CDOR to CAD CORRA, the Commission's proposal would expand the stated termination date range for CAD CORRA OIS subject to the clearing requirement and remove the requirement to clear fixed-to-floating swaps referencing CAD CDOR to reflect that CAD CDOR has ceased publication and liquidity has shifted into corresponding CAD CORRA OIS. With respect to the transition from MXN TIIE to MXN F-TIIE, the Commission's proposal would add a requirement to clear MXN F-TIIE OIS and remove the requirement to clear fixed-to-floating swaps referencing MXN TIIE.

As discussed further below, the Commission is proposing that these amendments to part 50 to require clearing for CAD CORRA and MXN F-TIIE OIS become effective 30 days after publication of the final rule in the Federal Register.

Specifically, the Commission is proposing to amend regulation § 50.4(a) as follows:

1. Effective 30 days after publication of the final rule in the Federal Register:

[134] The Commission does not require clearing of basis swaps or FRAs that reference CAD CDOR or MXN TIIE.

a. Change the stated termination date range for swaps denominated in CAD that reference CAD CORRA as a floating rate index in the OIS class to be seven days to 30 years.

b. Add to the OIS class swaps denominated in MXN that reference MXN F-TIIE as a floating rate index with a stated termination date range of 28 days to 21 years.

c. Remove swaps denominated in CAD that reference CAD CDOR as a floating rate index from the fixed-to-floating swap class.

d. Remove swaps denominated in MXN that reference MXN TIIE as a floating rate index from the fixed-to-floating swap class.

These proposed amendments to regulation § 50.4(a) are shown below in tabular form for illustrative purposes. Text that the Commission proposes to remove is stricken through; text that the Commission proposes to add is bolded.

§ 50.4 Classes of swaps required to be cleared.

(a) *Interest rate swaps.* Swaps that have the following specifications are required to be cleared under section 2(h)(1) of the Act, and shall be cleared pursuant to the rules of any derivatives clearing organization eligible to clear such swaps under § 39.5(a) of this chapter.

Table 1 a Specification	Fixed-to-floating swap class					
1. Currency	Australian Dollar (AUD)	~~Canadian Dollar (CAD)~~	Euro (EUR)	Hong Kong Dollar (HKD)	~~Mexican Peso (MXN)~~	Norwegian Krone (NOK)
2. Floating Rate Indexes	BBSW	~~CDOR~~	EURIBOR	HIBOR	~~TIIE-BANXICO~~	NIBOR

Table 1 a Specification	Fixed-to-floating swap class					
3. Stated Termination Date Range	28 days to 30 years	~~28 days to 30 years~~	28 days to 50 years	28 days to 10 years	~~28 days to 21 years~~	28 days to 10 years
4. Optionality	No	~~No~~	No	No	~~No~~	No
5. Dual Currencies	No	~~No~~	No	No	~~No~~	No
6. Conditional Notional Amounts	No	~~No~~	No	No	~~No~~	No

Table 1 b Specification	Fixed-to-floating swap class	
1. Currency	Polish Zloty (PLN)	Swedish Krona (SEK).
2. Floating Rate Indexes	WIBOR	STIBOR.
3. Stated Termination Date Range	28 days to 10 years	28 days to 15 years.
4. Optionality	No	No.
5. Dual Currencies	No	No.

Table 1 b Specification	Fixed-to-floating swap class	
6. Conditional Notional Amounts	No	No.

Table 2 Specification	Basis swap class	
1. Currency	Australian Dollar (AUD)	Euro (EUR).
2. Floating Rate Indexes	BBSW	EURIBOR.
3. Stated Termination Date Range	28 days to 30 years	28 days to 50 years.
4. Optionality	No	No.
5. Dual Currencies	No	No.
6. Conditional Notional Amounts	No	No.

Table 3 Specification	Forward rate agreement class			
1. Currency	Euro (EUR)	Polish Zloty (PLN)	Norwegian Krone (NOK)	Swedish Krona (SEK).

Table 3 Specification	Forward rate agreement class			
2. Floating Rate Indexes	EURIBOR	WIBOR	NIBOR	STIBOR.
3. Stated Termination Date Range	3 days to 3 years	3 days to 2 years	3 days to 2 years	3 days to 3 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.

Table 4 a Specification	Overnight index swap class					
1. Currency	Australian Dollar (AUD)	Canadian Dollar (CAD)	Euro (EUR)	**Mexican Peso (MXN)**	Singapore Dollar (SGD)	Sterling (GBP)

Table 4 a Specification	Overnight index swap class					
2. Floating Rate Indexes	AONIA-OIS	CORRA-OIS	€STR	**MXN-TIIE ON-OIS Compound**[135]	SORA	SONIA
3. Stated Termination Date Range	7 days to 2 years	7 days to ~~2~~**30** years	7 days to 3 years	**28 days to 21 years**	7 days to 10 years	7 days to 50 years
4. Optionality	No	No	No	**No**	No	No
5. Dual Currencies	No	No	No	**No**	No	No
6. Conditional Notional Amounts	No	No	No	**No**	No	No

[135] Regulation § 50.4(a) would be amended to specify the "MXN-TIIE ON-OIS Compound" rate rather than "F-TIIE," as described in CME's and LCH's regulation § 39.5(b) submissions. For the avoidance of doubt, the Commission observes that "MXN-TIIE ON-OIS Compound" and "F-TIIE" refer to the same rate. This approach is consistent with the approach taken in designating the floating rate index with respect to the Commission's clearing requirement for MXN-denominated fixed-to-floating swaps in regulation § 50.4(a). *See* Second Determination, 81 FR 71226 & n.165. This footnote is for explanatory purposes only and will not appear in the regulatory text of the proposed rule.

Table 4 b Specification	Overnight index swap class			
1. Currency	Swiss Franc (CHF)	U.S. Dollar (USD)	U.S. Dollar (USD)	Yen (JPY).
2. Floating Rate Indexes	SARON	FedFunds	SOFR	TONA.
3. Stated Termination Date Range	7 days to 30 years	7 days to 3 years	7 days to 50 years	7 days to 30 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.

Request for Comment

The Commission requests comment on the proposed modifications to regulation § 50.4(a). In particular, the Commission requests comment on whether it should adopt a clearing requirement determination for MXN F-TIIE OIS that includes OIS with maturities beyond 21 years.

B. Modifications to the Clearing Requirement

In addition to modifying the clearing requirement for CAD CORRA OIS and adding a clearing requirement for MXN F-TIIE OIS, this proposal would modify the existing clearing

requirement to reflect the unavailability of CAD CDOR and MXN TIIE. CAD CDOR ceased publication, and MXN TIIE was prohibited for use in new swaps effective January 1, 2025. As explained above, CME and LCH converted cleared CAD CDOR swaps into CAD CORRA OIS, and CAD CDOR swaps are no longer offered for clearing. The Commission has preliminarily determined to update the clearing requirement for CAD-denominated interest rate swaps, where CAD CDOR swaps are no longer offered for clearing and have been replaced by CAD CORRA OIS. The Commission also has preliminarily determined to update the clearing requirement for MXN-denominated interest rate swaps where MXN TIIE is generally unavailable as a benchmark interest rate for use in new swaps, DCOs clearing MXN TIIE swaps have converted those swaps to MXN F-TIIE OIS, and liquidity in MXN TIIE swaps has shifted into MXN F-TIIE OIS. Both CME and LCH ceased offering clearing services for MXN TIIE swaps by January 1, 2025.

Request for Comment

The Commission requests comment regarding implementing changes to the existing interest rate swap clearing requirement, including any concern about the removal of the MXN TIIE interest rate swap clearing requirement.

IV. PROPOSED DETERMINATION ANALYSIS FOR CAD CORRA AND MXN F-TIIE OIS

The Commission is proposing to modify its interest rate swap clearing requirement to include additional OIS referencing CAD CORRA and OIS referencing MXN F-TIIE by adopting a new clearing requirement determination. The Commission completed a review of the current CAD CORRA and MXN F-TIIE OIS offered for clearing in order to consider the specific statutory factors required to make a preliminary clearing requirement determination.

A. General Description of Information Considered

CME and LCH provided the Commission with submissions pursuant to regulation § 39.5(b) relating to CAD CORRA and MXN F-TIIE OIS.[136] In addition to CME's and LCH's submissions, the Commission considers the ability of each DCO to clear CAD CORRA and MXN F-TIIE OIS, DCO swap data, swap data repository (SDR) data, publicly available data, and the rule frameworks and risk management policies of each DCO.

As with the Third Determination, this proposed clearing requirement determination responds to public and private sector, consensus-driven market events that have resulted, or are expected to result, in liquidity shifting to alternative reference rates from rates that have become, or will soon become, unavailable. Accordingly, because markets for RFR OIS, such as CAD CORRA and MXN F-TIIE OIS, rely on benchmark rates that are less susceptible to manipulation, central clearing in these markets may offer unique benefits that prior interest rate swap market clearing did not.[137] As a result of this, and in light of the actual market adoption of CAD CORRA and MXN F-TIIE OIS and DCOs' willingness to provide clearing for these, among other, RFR swaps, the Commission preliminarily finds that the CAD CORRA and MXN F-TIIE swap markets should be prepared for this proposed clearing requirement determination.

B. Consistency with DCO Core Principles

Section 2(h)(2)(D)(i) of the CEA requires the Commission to determine, with respect to reviews initiated by public submissions, whether the submission is consistent with core principles for DCOs set forth in section 5b(c)(2) of the CEA.[138] CME and LCH are registered

[136] Regulation § 39.5(b) submissions from DCOs are available on the Commission's website, *www.cftc.gov*, under DCO Swaps Submissions.

[137] A discussion of the costs and benefits of this proposed rulemaking appears below.

[138] 7 U.S.C. 2(h)(2)(D)(i). The core principles address numerous issues, including financial resources, participant and product eligibility, risk management, settlement procedures, default management, system safeguards, reporting,

DCOs, and currently clear CAD CORRA and MXN F-TIIE OIS. CME and LCH are required to comply with the DCO core principles and applicable Commission regulations with respect to CAD CORRA and MXN F-TIIE OIS and are subject to the Commission's DCO examination and risk surveillance programs.

CME and LCH should be able to maintain compliance with the DCO core principles and applicable Commission regulations if the Commission adopts a clearing requirement determination for CAD CORRA and MXN F-TIIE OIS. For the reasons discussed below, the Commission has preliminarily determined that subjecting MXN F-TIIE OIS and additional CAD CORRA OIS to a clearing requirement is unlikely to impair CME's and LCH's ability to comply with the DCO core principles, along with applicable Commission regulations.

Request for Comment

The Commission requests comment as to whether the proposed determination would adversely affect any DCO's ability to comply with the DCO core principles.

C. Consideration of the Five Statutory Factors

Set forth below is the Commission's consideration of the five factors set forth in section 2(h)(2)(D)(ii) of the CEA as they relate to OIS (i) denominated in CAD and referencing CAD CORRA and (ii) denominated in MXN and referencing MXN F-TIIE.[139]

recordkeeping, public information, and legal risk, among other subjects. 7 U.S.C. 7a-1(c)(2). The Commission implemented the core principles through regulations that are applicable to registered DCOs. 17 CFR part 39.

[139] The Commission is conducting this analysis only with respect to the swaps that would be added to the clearing requirement under this proposed determination. Modifications to the clearing requirement, such as removing swaps that are no longer offered for clearing from regulation § 50.4, are not considered in this analysis.

1. Factor (I)—Outstanding notional exposures and trading liquidity.

The first of the five factors under section 2(h)(2)(D)(ii) of the CEA requires the Commission to consider "the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data" related to "a submission made [by a DCO]."[140] The Commission reviewed data from multiple sources, including, but not limited to, data from SDRs, data from DCOs, and other, publicly available data. For purposes of this proposed rulemaking, the Commission principally presents notional exposure and trading liquidity information based on the Commission's own collected data, as described below.

a. Outstanding notional exposures and trading liquidity

In assessing outstanding notional exposures and trading liquidity for a swap, the Commission reviews data to determine whether there is an active market for the swap, including whether there is a measurable amount of notional exposure and whether the swap is traded regularly as reflected by trade count, such that a DCO can adequately risk manage the swap. With respect to CAD CORRA and MXN F-TIIE OIS, the data indicates that there is sufficient outstanding notional exposure and trading liquidity to support a clearing requirement determination. Specifically, the data presented below generally demonstrates that there is significant and steady activity in new CAD CORRA and MXN F-TIIE OIS trading, with little to no notional still being transacted in CAD CDOR and MXN TIIE fixed-to-floating swaps.[141] The

[140] 7 U.S.C. 2(h)(2)(D)(ii).

[141] *See* Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps To Account for the Transition From LIBOR and Other IBORs to Alternative Reference Rates, 87 FR 32898, 32917 (May 31, 2022). In proposing a clearing requirement determination for USD SOFR OIS, the Commission noted that, while the transition of liquidity from USD LIBOR fixed-to-floating swaps to USD SOFR OIS was well underway, it was not yet complete, with the amount of notional transacted in January 2022 in USD SOFR OIS still less than half that of the amount of notional transacted during the same month in USD LIBOR fixed-to-floating swaps.

Commission compiled the data used in tables 1-4 below from transaction data collected under part 45 of the Commission's regulations.[142]

In Table 1 below, the Commission provides estimates of notional amounts transacted by month for CAD CORRA and MXN F-TIIE OIS and CAD CDOR and MXN TIIE fixed-to-floating swaps, for the period beginning January 1, 2026 and ending March 31, 2026.

TABLE 1—ESTIMATED NOTIONAL TRANSACTED (USD BILLIONS)[143]

Product	January 2026	February 2026	March 2026
CAD CDOR Fixed-to-Floating Swaps	$0	$0	$0
CAD CORRA OIS	2,735	1,520	1,666

[142] The data presented in these tables is the same as the data used to create the Commission's Weekly Swaps Report. This data represents only those swaps that are reported to the CFTC's registered SDRs by swap market participants. The Commission's weekly swaps report currently incorporates data from three SDRs (CME Group SDR, DTCC Data Repository, and ICE Trade Vault). The raw SDR data has been filtered to represent, as accurately as possible, the market-facing trades that occur and excludes certain inter-affiliate transactions. For more information about the data components in the weekly swaps report, please visit the CFTC's webpage available at: *https://www.cftc.gov/MarketReports/SwapsReports/index.htm*.

[143] The data in Table 1 is based on the Commission's weekly swaps report data. In this table, a notional figure of $0 billion indicates that the notional transacted during a given period was less than $1 billion. Additionally, in this table, notional figures are rounded to the nearest whole billion.

MXN TIIE Fixed-to-Floating Swaps	0	0	0
MXN F-TIIE OIS	428	620	1,004

Table 2 below provides estimates of trade counts for the same categories of swaps during the same three-month period. The data in Table 2 indicates that, with respect to CAD CORRA OIS, monthly trade count was relatively consistent between January 2026 and March 2026. Conversely, trade counts for CAD CDOR fixed-to-floating swaps stand at zero. With respect to MXN-denominated interest rate swaps, from January 2026 through March 2026, there was a significant number of transactions in MXN F-TIIE OIS alongside comparatively few transactions in MXN TIIE fixed-to-floating swaps.

TABLE 2—ESTIMATED TRADE COUNT[144]

Product	January 2026	February 2026	March 2026

[144] The data in Table 2 is based on the Commission's weekly swaps report data.

CAD CDOR Fixed-to-Floating Swaps	0	0	0
CAD CORRA OIS	8,475	5,584	8,879
MXN TIIE Fixed-to-Floating Swaps	3	14	5
MXN F-TIIE OIS	7,246	8,051	15,206

Table 3 below presents estimates of the percentage of notional cleared for CAD CORRA and MXN F-TIIE OIS, based on notional transacted by month during the period beginning January 1, 2026 and ending March 31, 2026. The data in Table 3 illustrates that, with respect to both CAD CORRA and MXN F-TIIE OIS, a majority of the notional traded month-to-month is already being cleared voluntarily.

TABLE 3—ESTIMATED PERCENTAGE OF NOTIONAL CLEARED (BASED ON NOTIONAL TRANSACTED BY MONTH)[145]

OIS	Percentage Notional Cleared – January 2026	Percentage Notional Cleared – February 2026	Percentage Notional Cleared – March 2026
CAD CORRA	99%	96%	98%
MXN F-TIIE	87%	90%	90%

Table 4 below presents a breakdown of notional transacted and trade count for the period beginning March 1, 2026 and ending March 31, 2026, by tenor, for cleared CAD CORRA and MXN F-TIIE OIS. With respect to CAD CORRA and MXN F-TIIE OIS, Table 4 illustrates that these OIS are being cleared across a wide range of maturities, with most clearing activity by notional and trade count occurring in CAD CORRA and MXN F-TIIE OIS dated 15 years or shorter. Table 4 illustrates that there is a more limited amount of activity in CAD CORRA and MXN F-TIIE OIS dated longer than 15 years, with greater activity in CAD CORRA OIS dated longer than 15 years than in MXN F-TIIE OIS dated longer than 15 years. The Commission

[145] The data in Table 3 is based on the Commission's weekly swaps report data. The estimated percentages of notional cleared in this table are rounded to the nearest whole percentage. Thus, a clearing rate of 100 percent indicates a clearing rate of 99.5 percent or greater.

anticipates that the allocation of activity across tenors may change as the markets for these swaps evolve.

TABLE 4—ESTIMATED CLEARED NOTIONAL AND TRADE COUNT BY TENOR (MARCH 2026 TRANSACTION DATA) [146]

OIS	Tenor	Notional Cleared (USD Billions)	Trade Count
CAD CORRA	7 days-3 months	$922	510
	3-6 months	26	49
	6 months-1 year	118	690
	1-5 years	463	4,772
	5-15 years	103	2,360
	>15 years	12	494
MXN F-TIIE	7 days-3 months	205	571
	3-6 months	148	793
	6 months-1 year	332	3,094
	1-5 years	294	8,262
	5-15 years	26	2,475
	>15 years	0	11

In addition to this transaction-level data, Table 5 below presents open swaps data illustrating outstanding notional in CAD CORRA and MXN F-TIIE OIS.

[146] The data in Table 4 is based on the Commission's weekly swaps report data. Tenor length is approximate. In Table 4, a notional figure of $0 billion USD indicates that the notional transacted during a given period was less than $1 billion. Additionally, in this table, notional figures are rounded to the nearest whole billion.

TABLE 5—OUTSTANDING NOTIONAL AS OF APRIL 24, 2026[147]

OIS	Outstanding Notional (USD Billions)
CAD CORRA	$24,824
MXN F-TIIE	$7,603

Request for Comment

The Commission requests comment and any relevant market analysis regarding the sufficiency of outstanding notional exposures and trading liquidity in CAD CORRA and MXN F-TIIE OIS, including for the proposed stated termination date ranges, to support a clearing requirement.

The Commission invites commenters to submit additional data from any available data sources. In particular, the Commission invites commenters to provide any additional information or data regarding the expiration of Banco de México's waiver for the trading of certain new MXN TIIE swaps.

b. Pricing data

The Commission regularly reviews pricing data for the RFR OIS subject to this proposed determination and has found that these OIS are capable of being priced from deep and liquid markets. Commission staff regularly receives and reviews margin model information from DCOs that includes particular procedures that they follow to ensure that market liquidity exists in order to close out a position in a stressed market, including the time required to determine a

[147] The data in Table 5 represents swaps that have been cleared at CME and LCH and reported to the CFTC under part 39 of the Commission's regulations. The data includes payer/receiver values and as well as outstanding notional associated with swaps generated from conversion processes.

price.[148] Because of the stability of access to pricing data from these markets, the pricing data for the OIS that are the subject of this proposed determination is generally viewed as being reliable. Based on this information, the Commission has preliminarily determined that there is adequate pricing data to support required clearing of MXN F-TIIE OIS and additional CAD CORRA OIS.

In addition, based on DCO regulation § 39.5(b) submissions, the Commission preliminarily finds that there exists adequate pricing data to justify a clearing requirement determination, including information regarding transaction volumes and how the DCOs consider pricing information in determining eligibility of a swap for clearing.[149]

Request for Comment

The Commission requests comment and any relevant market analysis regarding whether there is adequate pricing data for DCO risk and default management of the products subject to this proposal, including regarding the proposed stated termination date ranges.

The Commission also requests comment regarding whether DCOs offering clearing for CAD CORRA and MXN F-TIIE OIS markets would be able to risk manage these products during stressed market conditions.

[148] As discussed further below, Commission staff receives and reviews margin model information from the registered DCOs that clear these swaps, including information regarding how those DCOs would ensure that liquidity exists to exit a position in a stressed market. For purposes of the first statutory factor, the Commission considers possible periods of market stress, particularly when assessing whether there is sufficient liquidity and pricing data. Second Determination, 81 FR at 71210 (noting that the Commission considered "the effect a new clearing mandate will have on a DCO's ability to withstand stressed market conditions" as part of its analysis in connection with the Second Determination).

[149] For instance, CME's § 39.5(b) submission addressed both cleared volumes and valuation curve methodologies for CAD CORRA OIS and MXN F-TIIE OIS. LCH's § 39.5(b) submissions related to CAD CORRA OIS how LCH considers pricing information in determining swap eligibility for clearing, and LCH's submission for MXN F-TIIE OIS noted that LCH has several brokers to serve as pricing sources for MXN F-TIIE OIS.

2. Factor (II)—Availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure.

Section 2(h)(2)(D)(ii)(II) of the CEA requires the Commission to take into account the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the proposed classes of swaps on terms that are consistent with the material terms and trading conventions on which they are now traded. Based on their regulation § 39.5(b) submissions, as well as ongoing oversight, the Commission preliminarily finds that each of the registered DCOs has developed rule frameworks, capacity, operational expertise and resources, and credit support infrastructure to clear the interest rate swaps they currently clear, including CAD CORRA and MXN F-TIIE OIS subject to this proposal, on terms that are consistent with the material terms and trading conventions on which those swaps are being traded.[150] The Commission subjects each of the registered DCOs to ongoing review, risk surveillance, and examination to ensure compliance with the CEA's core principles and Commission regulations, including with respect to the submitted swaps.[151]

Each of the registered DCOs has procedures pursuant to which they regularly review their clearing of CAD CORRA and MXN F-TIIE OIS to confirm or adjust margin and other risk management tools. When reviewing each of the registered DCOs' risk management tools, the Commission considers whether the DCO can manage risk during stressed market conditions to be one of the most significant considerations. Each of the registered DCOs has developed

[150] With respect to the DCOs that clear CAD CORRA and MXN F-TIIE OIS, DCO rules governing the DCOs' risk management of other cleared products apply equally with respect to cleared CAD CORRA and MXN F-TIIE OIS.

[151] In order to be registered with the Commission, a DCO must comply with the DCO core principles under section 5b of the CEA and applicable Commission regulations. Once a DCO is registered with the Commission, Commission staff periodically examine each DCO to determine whether the DCO is maintaining compliance with the CEA and Commission regulations. In addition, Commission staff monitors the risks posed to and by DCOs, clearing members, and market participants, and conducts independent stress testing.

detailed risk management practices, including a description of risk factors considered when establishing margin levels.[152] The Commission reviews and oversees each of the registered DCOs' risk management practices and development of margin models. Margin models are further refined by stress testing and daily back testing. The Commission also considers stress testing and back testing when assessing whether each of the registered DCOs can clear swaps safely during stressed market conditions.

The registered DCOs clearing CAD CORRA and MXN F-TIIE OIS design and conduct stress tests, and Commission staff monitors development of these stress tests. Each of the registered DCOs also conducts reverse stress tests to ensure that their default funds are sized appropriately and to ascertain whether any changes to their financial resources or margin models are necessary.[153] Commission staff monitors markets in real-time and performs stress tests against the DCOs' margin models and may recommend changes to a margin model. The registered DCOs conduct back testing daily to ensure that the margin models capture market movements for member portfolios.[154]

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[152] *E.g.*, historical volatility, intraday volatility, seasonal volatility, liquidity, open interest, market concentration, and potential moves to default. For additional information, each of CME and LCH has published a document outlining its compliance with the Principles for Financial Market Infrastructures published by the Committee on Payments and Market Infrastructures (CPMI; formerly, CPSS) and IOSCO. CPSS-IOSCO Principles for Financial Market Infrastructure (PFMI), Apr. 16, 2012, available at *https://www.bis.org/cpmi/publ/d101.htm*. *See* CME, CME Clearing: Principles for Financial Market Infrastructures Disclosure, Nov. 1, 2023, available at *https://www.cmegroup.com/clearing/risk-management/files/cme-clearing-principles-for-financial-market-infrastructures-disclosure.pdf*; LCH, CPMI-IOSCO Self-Assessment 2022, available at *https://www.lch.com/system/files/media_root/LCH%20LTD%20-%20CPMI%20IOSCO%20Self%20Qualitative%20Assessment%20PFMI%20of%20LCH%20LTD%20Q32022.pdf*.

[153] Reverse stress testing uses plausible market movements that could deplete guaranty funds and cause large losses for top clearing members. For example, CME and LCH may use scenarios for stress testing and reverse stress testing that capture, among other things, historical price volatilities, shifts in price determinants and yield curves, multiple defaults over various time horizons, and simultaneous pressures in funding and asset markets.

[154] Back testing tests margin models to determine whether they are performing as intended, and checks whether margin models produce margin coverage levels that meet the DCO's established standards. Back testing helps CME and LCH determine whether their clearing members satisfy the required margin coverage levels and liquidation timeframe.

Before offering a new product for clearing, each of the DCOs considers stress tests and back testing results in determining whether it has sufficient financial resources to offer new clearing services. The Commission also reviews initial margin models and default resources to ensure that the DCOs can risk manage their portfolio of products offered for clearing. This combination of stress testing and back testing in anticipation of offering new products for clearing provides the registered DCOs with greater certainty that new product offerings will be risk-managed appropriately. The process of stress testing and back testing also gives the DCOs practice incorporating the new product into their models. In addition to the Commission's surveillance and oversight, each of the registered DCOs continues to monitor and test their margin models over time so that they can operate effectively in stressed and non-stressed market environments. Registered DCOs review and validate their margin models regularly.[155]

Each registered DCO monitors and manages credit risk exposure by asset class, clearing member, account, or individual customer. DCOs manage credit risk by establishing position and concentration limits based on product type or counterparty. These limits reduce potential market risks so that DCOs are better able to withstand stressed market conditions. Each of the registered DCOs monitors exposure concentrations and may require additional margin deposits for clearing members with weak credit scores, with large or concentrated positions, with positions that are illiquid or exhibit correlation with the member itself, and/or where the member has particularly large exposures under stress scenarios. Registered DCOs also can call for additional margin, on

[155] For the avoidance of doubt, exempt DCOs are subject to oversight by their home country regulators, along with regulations regarding risk management.

top of collecting initial and variation margin, to meet the current DCO exposure and protect against stressed market conditions.[156]

In support of its ability to clear CAD CORRA and MXN F-TIIE OIS, CME's regulation § 39.5(b) submissions cite to its rulebook to demonstrate the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear interest rate swap contracts on terms that are consistent with the material terms and trading conventions on which the contracts are traded. LCH's submissions state that LCH's clearing model allows bilaterally traded interest rate swaps to be cleared on identical terms and that LCH has developed sophisticated operational models, controls, and risk algorithms to ensure that LCH can process trades rapidly, safely, and with an understanding of the risk to clearing members and customers. LCH's submissions provide, among other information, data regarding the portion of the interest rate swap market cleared by LCH, LCH's portfolio compression capacity, and daily clearing volumes.

For all these reasons, the Commission preliminarily has determined that the application of DCO risk management practices to CAD CORRA and MXN F-TIIE OIS should ensure that the swaps subject to this proposal can be cleared safely, even during times of market stress. For additional information related to this factor, please see public disclosures made CME and LCH.[157]

Request for Comment

[156] As a general matter, any DCO offering CAD CORRA and MXN F-TIIE OIS for clearing, including exempt DCOs, would follow this risk management approach regarding offering these products for clearing.

[157] CME, CME Clearing: Principles for Financial Market Infrastructures Disclosure, Nov. 1, 2023, available at *https://www.cmegroup.com/clearing/risk-management/files/cme-clearing-principles-for-financial-market-infrastructures-disclosure.pdf*; LCH, CPMI-IOSCO PFMI Self-Assessment 2024, available at *https://www.lseg.com/content/dam/post-trade/en_us/documents/lch/ccp-disclosures/cpmi-iosco-qualitative-assessment-of-lch-limited.pdf*.

The Commission requests comments concerning all aspects of this factor, including whether commenters agree that CME and LCH can satisfy the factor's requirements.

3. Factor (III)—Effect on the mitigation of systemic risk.

Section 2(h)(2)(D)(ii)(III) of the CEA requires the Commission to consider the effect of the clearing requirement on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCO available to clear the contract. As presented in the data and discussion above, the Commission has preliminarily determined that the market for CAD CORRA OIS is significant, and the market for MXN F-TIIE OIS is growing as the shift away from MXN TIIE swaps progresses. Mitigating counterparty credit risk through clearing likely would reduce systemic risk in the interest rate swap market generally and, while not every individual RFR OIS market has large outstanding notional exposures, these markets are globally important, and continuity of clearing with respect to RFR OIS serves to reduce systemic risk as liquidity shifts from IBOR swaps to RFR OIS.

In its regulation § 39.5(b) submissions, CME explains the benefits of centralized clearing, including freer counterparty credit lines, enhanced risk management, operational efficiencies, and ease of offsetting risk exposures. LCH's submissions note that clearing avoids complex bilateral relationships that lead to systemic risk, and that requiring swaps to be cleared leads to a less disparate marketplace from a systemic risk perspective with respect to that swap.

Centrally clearing MXN F-TIIE OIS and additional CAD CORRA OIS through a registered or exempt DCO should reduce systemic risk by providing counterparties with daily mark-to-market valuations upon which to exchange variation margin pursuant to the DCO's risk management framework and requiring posting of initial margin to cover potential future exposures in the event of a default. In addition, swaps transacted through a DCO are secured by

the DCO's guaranty fund and other available financial resources, which are intended to cover extraordinary losses that would not be covered by initial margin.

Central clearing was developed and designed to handle significant concentration of risk. Each of the DCOs that clears CAD CORRA and MXN F-TIIE OIS has a procedure for closing out and/or transferring a defaulting clearing member's positions and collateral.[158] Transferring customer positions to solvent clearing members in the event of a default is critical to reducing systemic risk. DCOs are designed to withstand defaulting positions and to prevent a defaulting clearing member's loss from spreading further and triggering additional defaults. To the extent that updating a clearing requirement with respect to MXN F-TIIE OIS and additional CAD CORRA OIS increases the number of clearing members and market participants in the interest rate swap market, then DCOs may find it easier to transfer positions from defaulting clearing members if there is a larger pool of potential clearing members to receive the positions.[159]

CME and LCH have experience risk managing interest rate swaps and, based on the DCOs' submissions and the Commission's ongoing supervision, these DCOs should have the necessary financial resources available to clear MXN F-TIIE OIS and additional CAD CORRA OIS. Accordingly, the Commission preliminarily finds that these DCOs would be able to manage the risk posed by clearing MXN F-TIIE OIS and additional CAD CORRA OIS.

In addition, the central clearing of MXN F-TIIE OIS and additional CAD CORRA OIS should serve to mitigate counterparty credit risk, thereby potentially reducing systemic risk. Having considered the likely effect on the mitigation of systemic risk, the Commission is

[158] For further discussion of treatment of customer and swap counterparty positions, funds, and property in the event of the insolvency of a DCO or one or more of its clearing members, please see Factor (V)—Legal certainty in the event of insolvency, section IV.C.5 below.

[159] The Commission recognizes that with high rates of voluntary clearing CAD CORRA and MXN F-TIIE OIS at this time, the prospect of adding additional clearing members and market participants in these swaps may be limited.

proposing to add MXN F-TIIE OIS and additional CAD CORRA OIS to the clearing requirement.

Request for Comment

The Commission requests comments concerning the proposal to add MXN F-TIIE OIS and additional CAD CORRA OIS to the clearing requirement, regarding the possible reduction of systemic risk.

4. Factor (IV)—Effect on competition.

Section 2(h)(2)(D)(ii)(IV) of the CEA requires the Commission to take into account the effect on competition, including appropriate fees and charges applied to clearing. Of particular concern to the Commission is whether this proposed determination would harm competition by creating, enhancing, or entrenching market power in an affected product or service market, or facilitating the exercise of market power.[160] Market power is viewed as the ability to raise prices, including clearing fees and charges, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives.[161]

The Commission has identified one putative service market as potentially affected by this proposed clearing requirement determination: a DCO service market encompassing those clearinghouses that currently clear CAD CORRA and MXN F-TIIE OIS.[162] The Commission

[160] First Determination, 77 FR at 74313; Second Determination, 81 FR at 71220; Third Determination, 87 FR at 52201.

[161] First Determination, 77 FR at 74313 (discussing market power as described under U.S. Department of Justice guidelines). *See generally* U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines (Horizontal Merger Guidelines) at section 1 (Aug. 19, 2010), available at *https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf*.

[162] First Determination, 77 FR at 74298; Second Determination, 81 FR at 71220; Third Determination, 87 FR at 52201. The DCO service market includes the registered DCOs that currently offer CAD CORRA and MXN F-TIIE OIS for clearing. To the extent an exempt DCO decides to offer for clearing the RFR OIS subject to this proposed determination, such exempt DCO would also be part of the DCO service market. No exempt DCOs currently offer CAD CORRA and MXN F-TIIE OIS for clearing.

recognizes that this proposed clearing requirement potentially could impact competition within the affected market. Of particular importance to whether any such impact is positive or negative, is: (1) whether the demand for these clearing services and swaps is sufficiently elastic that a small but significant price increase above competitive levels would prove unprofitable because users of the interest rate swap products and DCO clearing services would substitute other clearing services coexisting in the same market(s); and (2) the potential for new entry into this market. The availability of substitute clearing services to compete with those encompassed by this proposed determination, and the likelihood of timely, sufficient new entry in the event prices do increase above competitive levels, each operate independently to constrain anticompetitive behavior.

Any competitive import likely would stem from the fact that the proposed determination and regulations would remove the alternative of not clearing for the CAD CORRA and MXN F-TIIE OIS subject to the proposed determination. The proposed determination would not specify which DCO may or may not compete to provide clearing services for CAD CORRA and MXN F-TIIE OIS, as well as those not required to be cleared.

Removing the choice to enter a swap without submitting it for clearing under this proposed rulemaking is not determinative of negative competitive impact. Other factors, including the availability of other substitutes within the market or potential for new entry into the market, may constrain market power. The Commission does not foresee that the proposed determination constructs barriers that would deter or impede new entry into a clearing services market,[163] and the Commission anticipates that a determination to modify the clearing

[163] That said, the Commission recognizes that (1) to the extent the clearing services market for the interest rate swaps identified in this proposal, after foreclosing uncleared swaps, would be limited to a concentrated few participants with highly aligned incentives, and (2) the clearing services market is insulated from new competitive entry through

requirement for interest rate swaps could foster an environment conducive to new entry. For example, the proposed clearing requirement determination is likely to reinforce, if not encourage, growth in demand for clearing services. Demand growth, in turn, can enhance the sales opportunity, a condition hospitable to new entry.[164] Moreover, to the extent that there are high rates of voluntary clearing in the CAD CORRA and MXN F-TIIE OIS subject to this proposed determination already, a regulatory requirement to clear such swaps would provide additional certainty that those high rates of clearing would remain constant.

Request for Comment

The Commission requests comment on the extent to which: (1) entry barriers currently do or do not exist with respect to a clearing services market for CAD CORRA and MXN F-TIIE OIS; (2) the proposed determination may lessen or increase these barriers; and (3) the proposed determination otherwise may encourage, discourage, facilitate, and/or dampen new entry into the market. In addition to what is noted above, the Commission requests comment, and quantifiable data, on whether the required clearing of either of MXN F-TIIE OIS or additional CAD CORRA OIS will generate conditions that create, increase, or facilitate an exercise of: (1) clearing services market power in CME, LCH, and/or any other clearing service market participant, including conditions that would dampen competition for clearing services and/or increase the cost of clearing services, and/or (2) market power in any product markets for interest rate swaps, including conditions that would dampen competition for these product markets and/or increase

barriers (*e.g.*, high sunk capital cost requirements, high switching costs to transition from embedded incumbents, and access restrictions), the proposed determination could have a negative competitive impact by increasing market concentration.

[164] *See, e.g.*, Horizontal Merger Guidelines, section 9.2 (entry likely if it would be profitable which is in part a function of "the output level the entrant is likely to obtain").

the cost of CAD CORRA and MXN F-TIIE OIS. The Commission seeks comment, and quantifiable data, on the likely cost increases associated with clearing, particularly those fees and charges imposed by DCOs, and the effects of such increases on counterparties currently participating in the market.

The Commission also requests comment regarding whether commenters have any concerns regarding access to clearing services in the markets for CAD CORRA or MXN F-TIIE OIS.

5. Factor (V)—Legal certainty in the event of insolvency.

Section 2(h)(2)(D)(ii)(V) of the CEA requires the Commission to take into account the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property. The Commission is proposing this clearing requirement determination based on its preliminary finding that there is reasonable legal certainty with regard to the treatment of customer and swap counterparty positions, funds, and property in connection with cleared swaps, including CAD CORRA and MXN F-TIIE OIS, in the event of the insolvency of the relevant DCO or one or more of the DCO's clearing members.

In the case of a clearing member insolvency at CME, where the clearing member is the subject of a proceeding under the U.S. Bankruptcy Code, subchapter IV of Chapter 7 of the U.S. Bankruptcy Code (11 U.S.C. 761-767) along with parts 22 and 190 of the Commission's regulations would govern the treatment of customer positions.[165] Pursuant to section 4d(f) of the

[165] An FCM or DCO also may be subject to resolution under Title II of the Dodd-Frank Act to the extent it would qualify as a covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Act). Under Title II, different rules would apply to the resolution of an FCM or DCO. Discussion in this section relating to what might occur in the event an FCM or DCO defaults or becomes insolvent describes procedures and powers that exist in the absence of a Title II receivership.

CEA, 7 U.S.C. 4d(f), a clearing member accepting funds from a customer to margin a cleared swap must be a registered futures commission merchant (FCM). Pursuant to 11 U.S.C. 761-767 and part 190 of the Commission's regulations, the customer's interest rate swap positions, carried by an insolvent FCM, would be deemed "commodity contracts."[166] As a result, neither a clearing member's bankruptcy nor any order of a bankruptcy court could prevent CME from closing out/liquidating such positions. However, customers of clearing members would have priority over all other claimants with respect to customer funds that had been held by the defaulting clearing member to margin swaps, such as the RFR OIS subject to this proposal.[167] Thus, customer claims would have priority over proprietary claims and general creditor claims. Customer funds would be distributed to swap customers, including interest rate swap customers, in accordance with Commission regulations and section 766(h) of the Bankruptcy Code. Moreover, the Bankruptcy Code and the Commission's rules thereunder (in particular 11 U.S.C. 764(b) and 17 CFR 190.07) permit the transfer of customer positions and collateral to solvent clearing members.

Similarly, 11 U.S.C. 761-767 and part 190 would govern the bankruptcy of CME since the DCO would be the subject of a proceeding under the U.S. Bankruptcy Code, in conjunction with the DCO rules providing for the termination of outstanding contracts and/or return of remaining clearing member and customer property to clearing members.

With regard to LCH, in general, the default of an LCH clearing member would be addressed by LCH's rules, and LCH would be permitted to close out and/or transfer positions of a defaulting clearing member. Further, under applicable law, LCH's rules governing a clearing

[166] If an FCM is registered as a broker-dealer, certain issues related to its insolvency proceeding would be governed by the Securities Investor Protection Act, as well.

[167] Claims seeking payment for the administration of customer property would share this priority.

member default would supersede insolvency laws in the clearing member's jurisdiction. For an FCM based in the United States and clearing at LCH, the applicable law as a general matter, would be the U.S. Bankruptcy Code and part 190 of the Commission's regulations. According to LCH's regulation § 39.5(b) submissions, the insolvency of LCH itself would be governed by English insolvency law, which protects the enforceability of the default-related provisions of LCH's rulebook, including in respect of compliance with applicable provisions of the U.S. Bankruptcy Code and part 190 of the Commission's regulations. LCH has obtained, and made available to the Commission, legal opinions that support the existence of such legal certainty in relation to the protection of customer and swap counterparty positions, funds, and property in the event of the insolvency of one or more of its clearing members.[168]

Request for Comment

The Commission requests comment regarding all aspects of this factor, including whether there is reasonable legal certainty, in the event of an insolvency of CME or LCH, or one or more of any of these DCOs' clearing members, with regard to the treatment of customer and swap counterparty positions, funds, and property.

The Commission requests comment on whether U.S. swap counterparties have concerns about the applicability of any non-U.S. jurisdiction's law to U.S. persons clearing swaps at DCOs located outside of the United States.

V. PROPOSED IMPLEMENTATION SCHEDULE AND COMPLIANCE DATES

[168] Letters of counsel on file with the Commission.

The Commission phased in compliance with respect to the First Determination according to the schedule contained in regulation § 50.25.[169] Under this schedule, compliance was phased in by the type of market participant entering a swap subject to the First Determination. The phase-in occurred over a 270-day period following publication of the final rule in the Federal Register.

The Commission also phased in compliance with respect to the Second Determination according to the schedule contained in regulation § 50.26. However, the Commission decided to adopt one compliance date for all market participant types, because many market participants were already clearing the products subject to the determination and the Commission had already adopted a clearing requirement determination for the interest rate swap class.[170] The Commission decided to tie the compliance date for each product to the first compliance date for a market participant in a non-U.S. jurisdiction.[171]

With respect to the Third Determination, the Commission adopted two implementation dates: October 31, 2022, for the requirement to clear OIS referencing USD SOFR and SGD SORA; and September 23, 2022 (30 days after publication of the final rulemaking in the Federal Register) for the requirement to clear the other RFR OIS that were the subject of the Third Determination.[172] The Commission also adopted two dates for the removal of the requirement to clear certain IBOR swaps: July 1, 2023 with respect to the requirement to clear USD LIBOR and SGD SOR-VWAP swaps (with respect to which the reference indexes would not become fully

[169] Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the CEA, 77 FR 44441 (July 30, 2012).

[170] Second Determination, 81 FR at 71227.

[171] *Id.* at 71227-71228.

[172] Third Determination, 87 FR at 52204-52205.

unavailable until the end of June 2023), and September 23, 2022 for all other IBOR swaps for which the Commission determined to remove the clearing requirement.[173] The Commission also adopted technical amendments to remove from regulation § 50.26 those IBOR swaps for which the Commission determined to remove the clearing requirement.[174]

In arriving at an implementation schedule, the Commission considered, among other factors, that EUR EONIA and non-USD LIBOR rates had become unavailable, DCOs had largely completed IBOR swap conversions, and many market participants were already clearing the vast majority of RFR OIS subject to the rulemaking.[175] The Commission also considered the fact that USD LIBOR and SGD SOR-VWAP would not become entirely unavailable until the end of June 2023 and there remained activity in markets for swaps referencing these benchmarks. The Commission additionally considered input from commenters suggesting that the Commission align its implementation date for required clearing of USD SOFR and SGD SORA OIS with the Bank of England's proposed implementation date for mandatory clearing of USD SOFR OIS under UK law.[176]

With respect to its proposal to add a clearing requirement for MXN F-TIIE OIS and additional CAD CORRA OIS, the Commission proposes to adopt one compliance date for all market participants and amend regulation § 50.26 to reflect that the compliance date shall be 30

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[173] *Id.* at 52205-52206.

[174] *Id.* at 52206. The Commission also adopted technical revisions related to the formatting of the table of compliance dates for required clearing of credit default swaps in regulation § 50.26. *Id.*

[175] *Id.* at 52204.

[176] The Bank of England adopted as proposed the implementation date of October 31, 2022 for required clearing of USD SOFR OIS. Bank of England, "Derivatives clearing obligation – modifications to reflect USD interest rate benchmark reform: Amendment to BTS 2015/2205," Aug. 24, 2022, available at *https://www.bankofengland.co.uk/paper/2022/derivatives-clearing-obligation-modifications-to-reflect-usd-interest-rate-benchmark-reform*.

days after publication of the final rule in the Federal Register. If the clearing requirement compliance date falls on a Saturday, Sunday, or U.S. federal public holiday, the compliance date will be the next available business day. No compliance date will be set on a day when markets are not open in the United States.

In proposing compliance dates with respect to this proposed clearing requirement determination, the Commission observes that, generally, the disposition of markets with respect to both CAD CORRA and MXN F-TIIE OIS is similar to that of markets with respect to the RFR OIS that were the subject of the Third Determination, at the time the Commission proposed that determination. DCOs have undertaken conversions of CAD CDOR and MXN TIIE swaps to, respectively, CAD CORRA OIS and MXN F-TIIE OIS. Market participants are now clearing CAD CORRA and MXN F-TIIE OIS. Additionally, Banco de México updated its clearing requirement for MXN-denominated interest rate swaps to account for the transition from MXN TIIE to MXN F-TIIE, and the CSA issued amendments to Canada's clearing requirement to, among other changes, address the transition from CAD CDOR to CAD CORRA.

As a technical amendment, because the Commission is proposing to remove CAD CDOR and MXN TIIE swaps from regulation § 50.4, it is also proposing to remove those same swaps from regulation § 50.26. The Commission is proposing this change for consistency with regulation § 50.4(a) and the Third Determination, and to eliminate any confusion that might arise if different swap products are included in 50.4 and 50.26. Consistent with the proposed timeline for the removal of the clearing requirement for CAD CDOR and MXN TIIE swaps from regulation § 50.4, the Commission proposes to remove these swaps from regulation § 50.26, 30 days after publication of the final rule in the Federal Register.

Request for Comment

The Commission requests comment on whether setting a compliance date 30 days after publication of the final rule in the Federal Register provides market participants with sufficient notice and opportunity to comply with this proposed determination.

VI. COST BENEFIT CONSIDERATIONS

A. Statutory and Regulatory Background

Proposed revised regulation § 50.4(a) identifies certain swaps that would be required to be cleared under section 2(h)(1)(A) of the CEA in addition to those currently required to be cleared by existing regulations §§ 50.2 and 50.4(a), and removes certain other swaps currently required to be cleared from the clearing requirement. The proposed clearing requirement amendments are designed to update the Commission's regulations to address the transition from CAD CDOR to CAD CORRA as a benchmark reference rate for CAD-denominated interest rate swaps, and the transition from MXN TIIE to MXN F-TIIE as a benchmark reference rate for MXN-denominated interest rate swaps. Currently, most CAD CORRA and MXN F-TIIE OIS are being cleared voluntarily. Accordingly, the proposed regulation largely serves to ensure that the swap market under the Commission's jurisdiction continues to clear the CAD CORRA and MXN F-TIIE OIS subject to this proposal. The continued central clearing of these OIS may limit the counterparty risk associated with such swaps, thereby mitigating the possibility of such risks having a systemic impact, which might cause or exacerbate instability in the financial system. In addition, required clearing of MXN F-TIIE OIS and additional CAD CORRA OIS would reflect the global effort to rely on benchmark rates that are less susceptible to manipulation.

The Commission preliminarily finds that this proposal is consistent with the principle that the use of central clearing can reduce systemic risk, which was one of the fundamental premises

of the Dodd-Frank Act and the 2009 commitments by the G20 nations. The following discussion is a consideration of the costs and benefits of the Commission's proposed actions pursuant to the regulatory requirements discussed above.

B. Overview of Swap Clearing

1. How Clearing Reduces Risk.

When a bilateral swap is cleared, the DCO becomes the counterparty to each original swap counterparty. This arrangement mitigates counterparty risk to the extent that the DCO may be a more creditworthy counterparty than the original swap counterparties. Central clearing reduces the interconnectedness of market participants' swap positions because the DCO, an independent third party that takes no market risk, guarantees the collateralization of swap counterparties' exposures. DCOs have demonstrated resilience in the face of past market stress.[177]

The Commission anticipates that DCOs will continue to be some of the most creditworthy swap counterparties because, among other things, they are able to monitor and manage counterparty risk effectively through (1) collection of initial and variation margin associated with outstanding swap positions; (2) marking positions to market regularly, usually multiple times per day, and issuing margin calls when the margin in a customer's account has dropped below predetermined levels that the DCO sets; (3) adjusting the amount of margin that is required to be held against swap positions in light of changing market circumstances, such as

[177] Umar Faruqui, et al., "Clearing risks in OTC derivatives markets: the CCP-bank nexus," at 75 (2018), available at *https://www.bis.org/publ/qtrpdf/r_qt1812h.pdf* (Clearing risks in OTC derivatives markets: the CCP-bank nexus) (noting that central counterparties "proved resilient during the [2008 financial] crisis, continuing to clear contracts even when bilateral markets dried up").

increased volatility in the underlying product; and (4) closing out swap positions if margin calls are not met within a specified period of time.

2. The Clearing Requirement and Role of the Commission.

With the passage of the Dodd-Frank Act, Congress gave the Commission the responsibility for determining which swaps would be required to be cleared pursuant to section 2(h)(1)(A) of the CEA. Since 2012, there is ample evidence that the interest rate swap market has been moving toward increased use of central clearing in response to both market incentives and clearing requirements.[178] Now with the transition from CAD CDOR to CAD CORRA and from MXN TIIE to MXN F-TIIE effectively complete, and with most CAD CORRA and MXN F-TIIE OIS already being voluntarily cleared, as discussed further below, it is possible that the effect of this proposal will be limited to ensuring that market participants continue to clear the CAD CORRA and MXN F-TIIE OIS subject to the proposal.[179] The Commission has preliminarily determined that the costs and benefits related to the required clearing of the CAD CORRA and MXN F-TIIE OIS to be added under this proposal are attributable, in part to (1) Congress's stated goal of reducing systemic risk by, among other things, requiring clearing of swaps; and (2) the Commission's exercise of its discretion in selecting swaps or classes of swaps to achieve those ends.

C. Consideration of the Costs and Benefits of the Commission's Action

1. CEA Section 15(a).

[178] Third Determination, 87 FR at 52206 & n.76; OTC derivatives statistics at end-June 2024, at 8 & Graph A.8 (showing that, as of the end of June 2024, nearly 80% (as a percentage of notional amounts outstanding against all counterparties) of interest rate swaps are cleared).

[179] It is possible that some market participants would respond to the requirement that the CAD CDOR and MXN F-TIIE OIS subject to this proposal be cleared by decreasing their use of such swaps, particularly if the cost of clearing increases in the future relative to the cost of not clearing. Thus, there is some uncertainty regarding how the proposed rule will affect the quantity of swaps that are cleared.

Section 15(a) of the CEA requires the Commission to "consider the costs and benefits" of its actions before promulgating a regulation under the CEA or issuing certain orders.[180] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness and financial integrity; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations (collectively referred to herein as the Section 15(a) Factors). Accordingly, the Commission considers the costs and benefits associated with the proposed determination in light of the Section 15(a) Factors. In the sections that follow, the Commission considers: (1) The costs and benefits of required clearing for the CAD CORRA and MXN F-TIIE OIS to be added under this proposed rule as well as the costs and benefits of removing certain CAD CDOR and MXN TIIE swaps from required clearing; (2) the alternatives contemplated by the Commission and their costs and benefits; and (3) the impact of required clearing for the proposed swaps on the Section 15(a) Factors.

The Commission is considering these costs and benefits against a baseline of the current set of interest rates swaps subject to the clearing requirement adopted under regulation § 50.4. This proposed determination would add certain CAD CORRA and MXN F-TIIE OIS to the clearing requirement, and it would remove certain swaps referencing CAD CDOR and MXN TIIE from the clearing requirement. As seen in Table 3 above, most transactions in interest rate swaps that would be subject to the proposed clearing requirement are cleared voluntarily, so that the percentage of such swaps that would be cleared following implementation of the rule is unlikely to increase materially. The Commission's analysis below compares amendments in this

[180] 7 U.S.C. 19(a).

proposed determination to the clearing requirement in effect. The costs discussed recognize the current industry practice of high levels of CAD CORRA and MXN F-TIIE OIS clearing.

The swap market functions internationally with (i) transactions that involve U.S. firms and DCOs occurring across different international jurisdictions; (ii) some entities organized outside of the United States that are, or may become, Commission registrants or registered entities; and (iii) some entities that typically operate both within and outside the United States and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, this discussion of costs and benefits refers to the effects of the proposed regulations on all relevant swaps activity, whether based on their actual occurrence in the United States or on their connection with activities in, or effect on, commerce of the United States, pursuant to section 2(i) of the CEA.[181]

2. Costs and Benefits of Required Clearing Under the Proposed Determination.

Market participants may incur certain costs to clear the CAD CORRA and MXN F-TIIE OIS to be added to the clearing requirement in the proposed rule. For example, to the extent that there are market participants entering into CAD CORRA and MXN F-TIIE OIS that are not already clearing interest rate swaps voluntarily or pursuant to the Commission's prior clearing requirement determinations, such market participants may incur certain startup and ongoing costs related to developing technology and infrastructure, updating or creating new legal agreements,

[181] Pursuant to section 2(i) of the CEA, activities outside of the United States are not subject to the swap provisions of the CEA, including any rules prescribed or regulations promulgated thereunder, unless those activities either "have a direct and significant connection with activities in, or effect on, commerce of the United States"; or contravene any rule or regulation established to prevent evasion of a CEA provision enacted under the Dodd-Frank Act. 7 U.S.C. 2(i).

service provider fees, and collateralization of the cleared positions.[182] The costs of collateralization, on the other hand, are likely to vary depending on whether an entity is subject to the margin requirements for uncleared swaps[183] and capital requirements, and the differential between the cost of capital for the assets they use as collateral and the returns realized on those assets.

As noted in Table 3 above, most CAD CORRA and MXN F-TIIE OIS subject to this proposed determination are already cleared voluntarily, and market participants currently clearing these OIS already realize the benefits of clearing. Adoption of the proposed determination would ensure that the percentage of CAD CORRA and MXN F-TIIE OIS that are cleared would remain high in the future and that these benefits would continue to be realized. These benefits include reduced and standardized counterparty credit risk, increased transparency, and easier swap market access for market participants that are required to clear. Together, these benefits contribute significantly to the stability and efficiency of the financial system, but they are difficult to quantify with any degree of precision.

While there may be a benefit to removing certain swaps from required clearing, such as fewer costs to market participants that no longer have to submit such swaps to clearinghouses, in this instance, the reason the Commission is removing certain swaps referencing CAD CDOR and MXN TIIE from the clearing requirement is because they are (or will be, at the time they are proposed to be removed) no longer offered for clearing. As discussed above, CAD CDOR is no

[182] These per-entity costs would vary widely depending on the needs of such market participants. Costs likely would be lower for market participants that already clear interest rate swaps covered by the Commission's prior clearing requirement determinations. The opposite would be true for market participants that start clearing because of the proposed determination. However, given the high rates of voluntary clearing, there are likely to be few, if any, new participants.

[183] The Commission's margin requirements for uncleared swaps are codified in subpart E of part 23 of the Commission's regulations, 17 CFR 23.

longer available for use in swaps by market participants, and MXN TIIE is generally unavailable as well. Therefore, the Commission preliminarily finds that removing from the clearing requirement interest rate swaps referencing CAD CDOR and MXN TIIE should not impose additional costs on market participants and would result in the benefit of market and regulatory certainty. There may be no meaningful benefit to market participants from this removal because market participants cannot clear CAD CDOR swaps and are now unable to clear MXN TIIE swaps following the expiration of Banco de México's waiver period. However, there may be benefits associated with the effort to reach broad consensus around the transition away from CAD CDOR and MXN TIIE, as has occurred with respect to LIBOR; specifically, providing certainty and finality with respect to the transition to more robust and transaction-based benchmark interest rates by amending the Commission's interest rate swap clearing requirement to reflect current market realities.[184]

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[184] *See, e.g.*, CFTC, Opening Statement of Commissioner Brian D. Quintenz before the CFTC Market Risk Advisory Committee Meeting, July 12, 2018, available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement071218* ("[G]iven the decline in activity in the unsecured bank funding market, and the absence of an FCA mandate for LIBOR submissions post-2021, firms should seriously consider the long-term sustainability of solely relying on LIBOR. . . . [I]f participation continues to decline, questions may arise as to whether the rate continues to accurately reflect market conditions. The development of alternative RFRs that are based on actual transactional data from robust, underlying markets will provide a transparent, viable alternative to LIBOR for market participants."); CFTC, Concurring Statement of Commissioner Caroline D. Pham Regarding LIBOR Transition Clearing Requirement Determination for Certain Interest Rate Swaps, Aug. 12, 2022, available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement081222* ("[The Third Determination] updates [the] set of interest rate swaps required to be cleared in light of the global transition from reliance on certain interbank offered rates . . . to alternative reference rates . . . . This rulemaking is an essential part of that transition."); CFTC, Statement of Commissioner Christy Goldsmith Romero Regarding the Clearing Requirement for Swaps Referencing Rates Less Susceptible to Manipulation Than LIBOR, Aug. 12, 2022, available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/romerostatement081222* ("[The Third Determination] . . . amends the CFTC's swap clearing requirement to account for the continuing shift in liquidity to . . . more reliable rates. . . . We aim to bolster and accelerate this shift and ensure the risk-mitigating benefits of clearing continue to be realized in the evolving interest-rate swaps markets."); CFTC, Statement of Commissioner Kristin N. Johnson Regarding the Final Rule to Modify Interest Rate Swap Clearing Requirements for the Transition from LIBOR and Other IBORs to Alternative Reference Rates, Aug. 12, 2022, available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/johsonstatement081222b* ("[The Third Determination] represents the culmination of years of work by the Commission as well as its counterparts across the globe to ensure a more reliable, more transparent set of interest rate benchmarks. In collaboration with our international colleagues'

Any potential costs associated with the proposed determination should be viewed in light of the fact that each new swap that would be required to be cleared would effectively stand in the place of a swap that is already subject to required clearing and that a significant majority of these swaps are cleared voluntarily. Liquidity tied to CAD CDOR has shifted to CAD CORRA and liquidity tied to MXN TIIE has largely shifted into MXN F-TIIE.[185] That shift has occurred with respect to CAD-denominated interest rate swaps and continues to occur with respect to MXN-denominated interest rate swaps, as a result of numerous market events, including DCO conversions, the cessation of CAD CDOR and prohibition on use with respect to MXN TIIE, the operation of contractual fallbacks, and new use of RFRs in parallel with declining liquidity in IBOR swaps. The CAD CORRA and MXN F-TIIE OIS subject to this proposal are already widely cleared so that the costs associated with clearing these swaps are already being incurred.[186] Accordingly, the Commission anticipates that the additional cost of compliance for market participants would be *de minimis*.

Request for Comment

efforts in jurisdictions around the world, the Commission's efforts to adopt and implement this final rule serves to preserve the stability and integrity of our markets and to reduce the systemic risks that precipitated the financial crisis."); CFTC, Statement of Chairman Heath P. Tarbert Regarding the Transition Away from IBORs, Nov. 24, 2020, available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement112420* (discussing the importance of a timely and orderly transition away from LIBOR, including steps taken by the Commission to support the transition); CFTC, Statement of CFTC Chairman J. Christopher Giancarlo Regarding the Financial Stability Board Industry Roundtable on Reforming Major Interest Rate Benchmarks, Washington, DC, Apr. 10, 2019, available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlostatement041019* ("At the end of the day, markets exist to serve the need of end users . . . . These users are exposed to the greatest risk if we do not fix this market vulnerability – reliance on an index which has clearly outlived its economic relevance as a benchmark."); Gov. Jerome H. Powell, Reforming U.S. Dollar LIBOR: The Path Forward, Sept. 4, 2014, available at *https://www.federalreserve.gov/newsevents/speech/powell20140904a.htm* (discussing the importance of the development and adoption of alternative reference rates to LIBOR).

[185] *See* Tables 1-2 above.

[186] *See* section IV.C.1 above.

The Commission requests comment concerning the costs of clearing described above for various market participants.

a. Technology, Infrastructure, and Legal Costs

Market participants already clearing swaps may incur costs in making necessary changes to technology systems to support the clearing required by the proposed rule if they are not yet clearing CAD CORRA or MXN F-TIIE OIS. To the extent that there are market participants that are not currently clearing CAD CORRA or MXN F-TIIE OIS, such market participants may incur costs if they need to implement technology to connect to FCMs that will clear their transactions. The costs are likely to depend on the specific business needs of each entity and therefore would vary widely among market participants. As a general matter, because most market participants already will have undertaken the steps necessary to move away from the use of CAD CDOR and/or MXN TIIE swaps in the cleared interest rate swap market, the burden associated with required clearing of CAD CORRA and MXN F-TIIE OIS should be minimal.

Market participants that do not currently have established clearing relationships with an FCM will have to establish and maintain such a relationship to clear swaps that are required to be cleared. Market participants that transact a limited number of swaps per year likely will be required to pay monthly or annual fees that FCMs charge to maintain both the relationship and outstanding swap positions belonging to the customer. In addition, the FCM is likely to pass along fees charged by the DCO for establishing and maintaining open positions. It is likely that most market participants already will have had experience complying with prior clearing requirements and that the incremental burdens associated with clearing MXN F-TIIE OIS or additional CAD CORRA OIS should be minimal, especially given that these products are intended to replace products that were already widely cleared. Given the high rates of clearing

for CAD CORRA and MXN F-TIIE OIS, the Commission anticipates that few, if any, market participants will need to establish a new clearing relationship with an FCM to clear the CAD CORRA and MXN F-TIIE OIS subject to this proposed determination. However, the Commission requests comment concerning how many market participants, if any, may have to establish new relationships with FCMs, or significantly upgrade those relationships based on the inclusion of these new products in the clearing requirement.

The Commission estimates the range of costs for smaller financial institutions to review and negotiate legal agreements to establish a new business relationship with an FCM to be between $3,433 and $34,325. In proposing and adopting the First Determination, the Commission noted that it had been estimated that it would cost smaller financial institutions between $2,500 and $25,000 to review and negotiate legal agreements to establish a new business relationship with an FCM.[187] The Commission based those estimates on comment letters from Chatham Financial and Webster Bank, submitted to the Commission in 2012 in response to the Commission's request for comment concerning the cost benefit analysis regarding a potential clearing exception for certain small financial institutions under the end-user exception.[188] The Commission also discussed these estimates in proposing and adopting the Second Determination.[189] With respect to the First Determination and the Second Determination, the Commission sought but did not receive new information from commenters

[187] Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 47170, 47211 (Aug. 7, 2012) (First Determination Proposal); First Determination, 77 FR at 74324.

[188] The comment letter from Chatham Financial is available at *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58077* and the comment letter from Webster Bank is available at *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58076*.

[189] Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps, 81 FR 39506, 39529 n.118 (June 16, 2016) (Second Determination Proposal); Second Determination, 81 FR 71232 n.184.

regarding the costs of establishing a clearing relationship.[190] With respect to this proposed determination, the Commission has adjusted its 2012 estimates for inflation.[191]

In adopting the First Determination, the Commission noted that commenters did not provide data that would enable the Commission to determine to what degree its estimates would apply to larger entities establishing a relationship with an FCM or to determine costs associated with entities that already have established relationships with one or more FCMs but need to revise those agreements.[192] The Commission further noted that, even accepting the data provided for smaller financial institutions, the Commission lacked sufficient data to calculate a reasonable estimate of the potential costs that are likely to depend significantly on the specific business needs of each entity and therefore are expected to vary widely among market participants.[193] Additionally, with respect to the inflation-adjusted estimates above, the Commission notes that increases in the costs to establish a new business relationship with an FCM may not track inflation directly. Because the Commission does not have current information regarding the costs associated with entities that need to establish relationships with one or more FCMs and the costs associated with entities that already have relationships with one or more FCMs but need to revise their agreements, the Commission seeks comment, including quantitative information, regarding such costs.

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[190] First Determination, 77 FR at 74324; Second Determination, 81 FR 71232 n.184.

[191] These estimates are derived by multiplying the 2012 estimates by 1.373 to account for the 37.3% change in the Consumer Price Index for Urban Wage Earners and Clerical Workers between May 2012 (when Chatham Financial and Webster Bank submitted the referenced comment letters) and January 2025 (226.600 to 311.172) and rounding to the nearest whole number. BLS, CPI for Urban Wage Earners and Clerical Workers (CPI-W), U.S. City Average, All Items – CWUR0000SA0, available at *https://www.bls.gov/data/#prices*.

[192] First Determination, 77 FR at 74324.

[193] *Id.*

Request for Comment

The Commission requests comment, including any quantifiable data and analysis, on the changes that market participants will have to make to their technological and legal infrastructures to clear the CAD CORRA or MXN F-TIIE OIS that are subject to the proposed determination.

b. Ongoing Costs Related to FCMs and Other Service Providers

In addition to costs associated with technological and legal infrastructures, market participants transacting in the CAD CORRA or MXN F-TIIE OIS subject to the proposed determination will face ongoing costs associated with fees charged by FCMs. DCOs typically charge FCMs an initial transaction fee for each cleared interest rate swap its customers enter, as well as an annual maintenance fee for each open position. Customers that occasionally transact in swaps are typically required to pay a monthly or annual fee to each FCM. As noted, most CAD CORRA and MXN F-TIIE OIS transactions are currently cleared, so that these costs are largely being incurred by market participants already.[194]

The Commission estimates the range of costs for monthly or annual fees paid to each FCM by FCM customers that transact in swaps only occasionally to be between $102,975 and $171,625. In proposing and adopting the First Determination, the Commission noted that it had been estimated that FCM customers that transact in swaps only occasionally are typically required to pay a monthly or annual fee to each FCM that ranges from $75,000 to $125,000 per year.[195] These estimates are based on the comment letters, discussed above, from Chatham

[194] In monitoring data related to the transition from MXN TIIE to MXN F-TIIE, the Commission observed that the significant majority of MXN TIIE fixed-to-floating swaps were cleared.

[195] First Determination Proposal, 77 FR at 47212; First Determination, 77 FR at 74325.

Financial and Webster Bank.[196] The Commission also discussed these estimates in proposing and adopting the Second Determination.[197] With respect to the First Determination and the Second Determination, the Commission sought but did not receive new information from commenters regarding these clearing fees.[198] With respect to this proposed determination, the Commission has adjusted its 2012 estimates for inflation.[199]

In adopting the First Determination, the Commission noted that while it expected that some market participants that previously did not use clearing would be subject to the requirements of the First Determination, it is difficult to predict precisely how many FCM customers would be subject to such fees based on the clearing requirement adopted in the First Determination.[200] Furthermore, as noted above, with respect to the inflation-adjusted estimates included in this proposed determination, the Commission notes that increases in the costs related to occasional swap transactions may not track inflation directly. Because the Commission does not have current information regarding fees paid to FCMs in relation to occasional swap transactions, commenters are requested to provide the necessary data where available.

As discussed above, it is difficult to predict precisely how the proposed requirement to clear certain CAD CORRA and MXN F-TIIE OIS will promote the use of swap clearing, as

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[196] The comment letter from Chatham Financial is available at *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58077* and the comment letter from Webster Bank is available at *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58076*.

[197] Second Determination Proposal, 81 FR at 39529 n.119; Second Determination, 81 FR 71233 n.189.

[198] First Determination, 77 FR at 74325; Second Determination, 81 FR 71233 n.189.

[199] These estimates are derived by multiplying the 2012 estimates by 1.373 to account for the 37.3% change in the Consumer Price Index for Urban Wage Earners and Clerical Workers between May 2012 (when Chatham Financial and Webster Bank submitted the referenced comment letters) and January 2025 (226.600 to 311.172) and rounding to the nearest whole number. BLS, CPI for Urban Wage Earners and Clerical Workers (CPI-W), U.S. City Average, All Items – CWUR0000SA0, available at *https://www.bls.gov/data/#prices*.

[200] First Determination, 77 FR at 74325.

compared to the use of clearing that would occur in the absence of the requirement. However, as presented in the data above, the use of voluntary clearing appears to be sufficiently high that the percentage of swaps that would be cleared following adoption of the rule is unlikely to increase materially. Some CAD CORRA and MXN F-TIIE OIS will continue to be uncleared pursuant the exceptions and exemptions set out in subpart C of part 50 of the Commission's regulations. Any increase in the use of clearing due to the proposed determination would lead in most cases to an incremental increase in the transaction costs noted above. However, because most market participants already will have undertaken the steps necessary to accommodate the clearing of swaps subject to required clearing, the Commission anticipates that the burden associated with clearing the CAD CORRA and MXN F-TIIE OIS subject to this proposed determination should be minimal.

Request for Comment

The Commission requests comment regarding the fee structures of FCMs in general, and in particular as they relate to the clearing of the CAD CORRA and MXN F-TIIE OIS covered by the proposed rule.

c. Costs Related to Collateralization of Cleared Swap Positions

Market participants that enter the CAD CORRA and MXN F-TIIE OIS subject to the proposed rule will be required to post initial margin at a DCO. The CAD CORRA and MXN F-TIIE OIS subject to this proposal are already being widely cleared on a voluntary basis, and so any additional amounts of initial margin that market participants would be required to post to a DCO as a result of the proposed determination likely would be relatively small. In reaching this preliminary finding, the Commission considered situations where (1) uncleared CAD CORRA or

MXN F-TIIE OIS may be otherwise collateralized;[201] (2) uncleared CAD CORRA or MXN F-TIIE OIS between certain swap dealers and "financial end-users" are, or will be, subject to initial and variation margin requirements under the Commission's margin regulations for uncleared swaps;[202] (3) the pricing of certain uncleared swaps may account for implicit contingent liabilities and counterparty risk; (4) not all CAD CORRA and MXN F-TIIE OIS will necessarily be eligible for clearing if they have terms that prevent them from being cleared;[203] and (5) certain entities may elect an exception or exemption from the clearing requirement.[204]

Market participants that are not clearing voluntarily and not otherwise required to post margin or collateral may incur costs related to funding collateral once they are required to clear. The greater the funding cost relative to the rate of return on the asset used as initial margin, the greater the cost of procuring collateral.[205] Quantifying this cost with any precision is challenging because different entities may have different funding costs and may choose assets with different rates of return.

Request for Comment

The Commission requests comments on all aspects of quantifying the cost of funding initial margin that would be required to be posted to a DCO pursuant to this proposed rule. In particular, the Commission requests comment on funding costs that market participants may face

[201] *E.g.*, under the terms of a credit support annex.

[202] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016); Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 FR 71246 (Nov. 9, 2020).

[203] For example, swaps that do not meet the specifications set forth in proposed revised regulation § 50.4(a) may not be eligible for clearing.

[204] See subpart C of part 50 (Exceptions and Exemptions to the Clearing Requirement).

[205] Certain entities, such as pension funds and asset managers, may use as initial margin assets that they already own. In such cases, market participants would not incur funding costs to post initial margin.

due to interest rates on bonds issued by a sovereign nation that also issues the currency in which the CAD CORRA and MXN F-TIIE OIS subject to this proposed determination is denominated. CME and LCH accept as initial margin bonds issued by several sovereigns, and market participants may post such bonds as initial margin if the Commission adopts this proposed rule.

Further, the new initial margin amounts that would be required to be posted to DCOs for cleared CAD CORRA and MXN F-TIIE OIS will, for entities required to post initial margin under the uncleared swap margin regulations, replace the initial margin amount that has been, or will be, required to be posted to their swap counterparties, pursuant to the uncleared swap margin regulations. The uncleared swap margin regulations require swap dealers and certain "financial end-users" to post and collect initial and variation margin for uncleared swaps, subject to various conditions and limitations.[206]

The Commission anticipates that the initial margin that would be required to be posted for a cleared swap to be added under this proposed determination would typically be less than the initial margin that would be required to be posted for uncleared swaps pursuant to the uncleared swap margin regulations. Whereas the initial margin requirement for cleared swaps must be established according to a margin period of risk of at least five days,[207] under the uncleared swap margin regulations, the minimum initial margin requirement is set with a margin period of risk of 10 days or, under certain circumstances, less or no initial margin for inter-affiliate

[206] *See generally* subpart E of part 23 of the Commission's regulations. Swap clearing requirements under part 50 of the Commission's regulations apply to a broader scope of market participants than the uncleared swap margin regulations. For example, under subpart E of part 23, a "financial end-user" that does not have "material swaps exposure" (as defined by regulation § 23.151) is not required to post initial margin, but such an entity may be subject to the swap clearing requirement. 17 CFR 23.151.

[207] Regulation § 39.13(g)(2)(ii)(c), 17 CFR 39.13(g)(2)(ii)(c).

transactions.[208] Phase-in of the initial margin requirements for uncleared swaps began on September 1, 2016, and was fully implemented by September 1, 2022. The requirement for entities subject to uncleared swap margin regulations to exchange variation margin was fully implemented on March 1, 2017.

With respect to swaps that would be added to the clearing requirement under this proposed determination, but not subject to the uncleared swap margin regulations, the Commission preliminarily believes that the new initial margin amounts to be deposited would displace costs that are currently embedded in the prices and fees for transacting the swaps on an uncleared and uncollateralized basis, rather than add a new cost. Entering a swap is costly for any market participant because of the default risk posed by its counterparty. When a market participant faces a DCO, the DCO accounts for that counterparty credit risk by requiring the market participant to post collateral, and the cost of capital for the collateral is part of the cost that is necessary to maintain the swap position. When a market participant faces a swap dealer or other counterparty in an uncleared swap, however, the uncleared swap contains an implicit line of credit upon which the market participant effectively draws when its swap position is out of the money. Typically, counterparties charge for this implicit line of credit in the spread they offer on uncollateralized, uncleared swaps.[209] Additionally, because the counterparty credit risk that the implicit line of credit creates is the same as the counterparty risk that would result from an explicit line of credit provided to the same market participant, to a first order approximation,

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[208] Regulations §§ 23.154(b)(2)(i) and 23.159. *See generally* Margin and Capital Requirements for Covered Swap Entities, 80 FR 77840 (Nov. 3, 2015).

[209] It has been argued that the cash flows of an uncollateralized swap (*i.e.*, a swap with an implicit line of credit) are over time substantially equivalent to the cash flows of a collateralized swap with an explicit line of credit. *See generally* Antonio S. Mello & John E. Parsons, Margins, Liquidity, and the Cost of Hedging, MIT Center for Energy and Environmental Policy Research, May 2012, available at *http://dspace.mit.edu/bitstream/handle/1721.1/70896/2012-005.pdf?sequence=1*.

the charge for each should be the same as well.[210] This means that the cost of capital for additional collateral posted as a consequence of requiring uncollateralized swaps to be cleared takes a cost that is implicit in an uncleared, uncollateralized swap and makes it explicit.[211] This observation applies to capital costs associated with both initial margin and variation margin.

The proposed rule also may result in added operational costs for those few market participants that are not already clearing these swaps voluntarily. With uncleared swaps, counterparties may agree not to collect variation margin until certain thresholds of material swaps exposure are reached, thus reducing or eliminating the need to exchange variation margin as exposure changes.[212] However, DCOs collect and pay variation margin daily, and sometimes more frequently. Increased mandatory clearing therefore may increase certain operational costs associated with paying variation margin to the DCO.[213]

The proposed rule may result in slight additional costs for clearing members in the form of guaranty fund contributions that are held by the DCO. However, it also could decrease guaranty fund contributions for certain clearing members. Once the proposed determination takes effect, there may be market participants that currently transact swaps bilaterally that would have to either become clearing members of a DCO or submit such swaps for clearing through an existing clearing member. A market participant that becomes a direct clearing member must

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[210] *Id.* Mello and Parsons state, "[h]edging is costly. But the real source of the cost is not the margin posted, but the underlying credit risk that motivates counterparties to demand that margin be posted." *Id.* at 12. They also note that, "[t]o a first approximation, the cost charged for the non-margined swap must be equal to the cost of funding the margin account. This follows from the fact that the non-margined swap just includes funding of the margin account as an embedded feature of the package." *Id.* at 15-16.

[211] The cost may be greater for uncleared swaps as the initial margin is computed on a counterparty-by-counterparty basis, whereas in the clearing context, there is most likely greater opportunity for netting exposures at the DCO.

[212] Among other things, the Commission's part 23 regulations set forth material swap exposure thresholds above which the exchange of variation margin is no longer voluntary. 17 CFR 23.151 and 153.

[213] However, exchange of variation margin will lower the build-up of current exposure.

make a guaranty fund contribution, while a market participant that clears its swaps through a clearing member may pay higher fees if the clearing member passes the costs of the guaranty fund contribution to its customers. While the addition of new clearing members and new customers for existing clearing members may result in an increase in guaranty fund requirements, if (1) new clearing members are not among the two clearing members used to calculate the guaranty fund and (2) any new customers trading through a clearing member do not increase the size of uncollateralized risks at either of the two clearing members used to calculate the guaranty fund, all else held constant, existing clearing members may experience a decrease in their guaranty fund requirement.

Request for Comment

The Commission requests comment regarding the total amount of additional collateral that would be posted due to required clearing of the CAD CORRA and MXN F-TIIE OIS covered by this proposed determination. The Commission also invites comment regarding (1) the cost of capital and returns on capital for that collateral, (2) the effects of required clearing on the capital requirements for financial institutions, and (3) the costs and benefits associated with operational differences related to the collateralization of uncleared versus cleared swaps. Please supply quantifiable data and analysis regarding these subjects, if possible.

3. Benefits of Clearing.

As discussed above, there are significant benefits to central clearing of swaps. These benefits include reducing and standardizing counterparty credit risk, improving market transparency, and promoting access to clearing services. Specifically, there are important risk mitigation benefits of clearing the RFR OIS that replace IBOR swaps (which in the case of CAD CDOR and MXN TIIE fixed-to-floating swaps would be removed from the clearing requirement

under the proposal). In addition, requiring the central clearing of RFR OIS would promote regulatory continuity and cross-border harmonization of clearing requirements.

While the requirement to margin uncleared swaps should mitigate counterparty credit risk, such risk is mitigated further for swaps that are cleared through a central counterparty. Moreover, the proposed determination would apply to a larger set of market participants than the uncleared swaps margin requirements. Thus, to the extent that the proposed determination to add certain CAD CORRA and MXN F-TIIE OIS to the clearing requirement leads to increased clearing overall, these benefits are likely to result. As is the case for the costs noted above, it is likely that the use of clearing will not increase materially as a result of the proposed rule, but implementing a clearing requirement would help ensure the benefits of the proposed rule would continue to be realized as market participants continue to clear CAD CORRA and MXN F-TIIE OIS.

The proposed rule's requirement that certain swaps be cleared is intended to ensure that market participants will face a DCO, and therefore, will face a highly creditworthy counterparty. As discussed above, DCOs are some of the most creditworthy counterparties in the swap market because of the risk management tools they have available. The beneficial value of the proposal to add certain CAD CORRA and MXN F-TIIE OIS to the clearing requirement may be lessened, in part, because the swap volumes that will be subject to a new clearing requirement will presumably shift from one set of swaps to another rather than a straightforward addition of new swap products to the clearing requirement.[214] Moreover, as noted, these benefits are already being realized for the large majority of these swaps that are cleared voluntarily.

Request for Comment

[214] As discussed in section III.A above.

The Commission requests comment on whether benefits will result from the proposed rule, and, if so, the anticipated magnitude of such benefits. The Commission also requests comment on whether the proposed rule would provide benefits by furthering international harmonization of clearing requirements.

D. Costs and Benefits of the Proposed Amendments as Compared to Alternatives

The proposed rule is a function of both the market importance of CAD CORRA and MXN F-TIIE OIS and the fact that these OIS already are widely cleared. These interest rate swaps should be required to be cleared because (i) CAD CORRA OIS are widely used; (ii) the Commission anticipates that the use of MXN F-TIIE OIS will continue to increase as the transition away from MXN TIIE has concluded; and (iii) infrastructure for clearing, and risk management of CAD CORRA and MXN F-TIIE OIS already exists.

Given the Commission's prior clearing requirement determinations, and the widespread use of clearing for the CAD CORRA and MXN F-TIIE OIS to be added under this proposal, DCOs, FCMs, and market participants already have experience clearing the types of swaps proposed for required clearing. Because of the increasingly wide use of these RFR OIS and their importance to the market (including as alternatives to IBOR swaps that are subject to the Commission's interest rate swap clearing requirement and for which the relevant interest rate benchmark has or is expected to become unavailable), and because these swaps are already successfully being cleared, the Commission is proposing to include these swaps in the interest rate swap clearing requirement.

The Commission preliminarily finds that the CAD CORRA and MXN F-TIIE OIS subject to this proposal should be added to the swap clearing requirement after analyzing the

factors under section 2(h)(2)(D) of the CEA, in order to promote consistency with its regulatory counterparts in other jurisdictions and to ensure that the benefits of required clearing accrue to the CAD CORRA and MXN F-TIIE OIS that replace CAD CDOR and MXN TIIE swaps no longer offered for clearing.

The Commission could consider alternative implementation scenarios for its proposed CAD CORRA and MXN F-TIIE OIS clearing requirements, as discussed above. The Commission requests comment on any implementation alternatives or any other plausible alternatives that the Commission should consider.

Finally, the Commission may consider an alternative scenario in which it does not adopt any new clearing requirement for CAD CORRA or MXN F-TIIE OIS. Under that alternative, the cost to the market would be an increased risk of uncleared swaps (and the associated financial stability risks) should market participants decide to clear less in the future. The cost may be significant in this instance because of the potential effect on the market-wide effort to replace CAD CDOR swaps with CAD CORRA OIS and to replace MXN TIIE swaps with MXN F-TIIE OIS, but may be mitigated given the current high level of clearing. The benefit of not adopting any new clearing requirements would be savings experienced by market participants that would not be required to clear new CAD CDOR or MXN F-TIIE OIS and did not otherwise find it beneficial to do so. However, given the high rate of voluntary clearing, any cost savings may be *de minimis*. The Commission may be less likely to pursue this alternative without some type of significant change in the interest rate swap markets.

E. Section 15(a) Factors

The Commission anticipates that the proposed amendments to add and remove certain swaps from the clearing requirement will result in a slight increase in the already high use of

clearing, although it is impossible to accurately predict the size of that increase.[215] This section discusses the anticipated results from an overall increase, or maintenance at high levels, in the use of swap clearing in terms of the factors set forth in section 15(a) of the CEA.

1. Protection of Market Participants and the Public.

The required clearing of the RFR OIS to be added under this proposed rule should ensure the reduction of counterparty risk for market participants that clear those swaps, because they will be required to face the DCO rather than another market participant that lacks the full set of risk management tools that the DCO possesses. This also should reduce uncertainty in times of market stress because, for cleared trades, market participants facing a DCO would not be concerned with the impact of such stress on the solvency of their original counterparty. By proposing to require clearing of MXN F-TIIE OIS and additional CAD CORRA OIS, both of which are already available for clearing and predominantly cleared voluntarily, the Commission aims to modify its interest rate swap clearing requirement to reflect the market transitions from CAD CDOR to CAD CORRA and from MXN TIIE to MXN F-TIIE. More specifically, the registered DCOs currently clearing these RFR OIS would clear a slightly increased volume of swaps that they already understand and have experience managing. Similarly, FCMs may realize slightly increased customer and transaction volume as the result of the requirement but would not have to simultaneously learn how to operationalize clearing for the covered interest rate swaps.

In addition, uncleared swaps subject to collateral agreements can be the subject of valuation disputes, which sometimes require several months or longer to resolve. Potential future exposures can grow significantly and even beyond the amount of initial margin posted

[215] It is possible that the level of clearing overall may remain the same as the use of swaps referencing RFRs replaces the use of swaps referencing IBORs.

during that time, leaving one of the two counterparties exposed to counterparty credit risk. DCOs virtually eliminate valuation disputes for cleared swaps, as well as the risk that uncollateralized exposure can develop and accumulate during the time when such a dispute would have otherwise occurred, thus providing additional protection to market participants that transact in cleared swaps. Because most CAD CORRA and MXN F-TIIE OIS are cleared voluntarily, these benefits are currently being realized. Requiring clearing under part 50 of the Commission's regulations would ensure that these benefits continue to be realized.

2. Efficiency, Competitiveness, and Financial Integrity of Swap Markets.

Swap clearing, in general, reduces uncertainty regarding counterparty risk in times of market stress and promotes liquidity and efficiency during those times. Increased liquidity promotes the ability of market participants to limit losses by exiting positions effectively and efficiently when necessary to manage risk during market stress. In addition, to the extent that positions move from facing multiple counterparties in the bilateral market to being cleared through a smaller number of clearinghouses, clearing facilitates increased netting. This reduces the amount of collateral that a party must post in margin accounts. As discussed above, in formulating this proposed determination, the Commission considered a number of specific factors that relate to the financial integrity of the swap markets. Specifically, the Commission assessed whether the registered DCOs that clear the CAD CORRA and MXN F-TIIE OIS that are the subject of this proposal have the rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear these swaps on terms that are consistent with the material terms and trading conventions on which the contract is then traded.[216] The Commission also considered DCOs' resources to handle additional clearing during stressed and

[216] *See* section IV above.

non-stressed market conditions, as well as the existence of reasonable legal certainty in the event of a clearing member or DCO insolvency.

Also, as discussed above, bilateral swaps create counterparty risk that may lead market participants to discriminate among potential counterparties based on their creditworthiness. Such discrimination is expensive and time consuming insofar as market participants must conduct due diligence to evaluate a potential counterparty's creditworthiness. Requiring certain types of swaps to be cleared reduces the number of transactions for which such due diligence is necessary, thereby contributing to the efficiency of the swap markets. In proposing a clearing requirement for MXN F-TIIE OIS, and in proposing to modify the existing clearing requirement for CAD CORRA OIS, the Commission must consider the effect on competition, including appropriate fees and charges applied to clearing. There are a number of potential outcomes that may result from required clearing. Some of these outcomes may impose costs, such as if a DCO possessed market power and exercised that power in an anticompetitive manner, and some of the outcomes would be positive, such as if the clearing requirement facilitated a stronger entry opportunity for competitors.[217] Because most of these swaps are cleared voluntarily, these benefits related to efficiency, competitiveness, and financial integrity are, to a large degree, currently being realized. Requiring clearing would help to ensure that these benefits continue to be realized.

3. Price Discovery.

Clearing, in general, encourages better price discovery because it eliminates the importance of counterparty creditworthiness in pricing swaps cleared through a given DCO. By making the counterparty creditworthiness of all swaps of a certain type essentially the same,

[217] Issues related to competition also are considered in sections IV and VIII.

prices should reflect factors related to the terms of the swap, rather than the idiosyncratic risk posed by the entities trading it. Because most of these swaps are cleared voluntarily, these benefits related to price discovery are currently being realized. Requiring clearing would ensure that these benefits continue to be realized.

4. Sound Risk Management Practices.

If a firm enters into uncleared and uncollateralized swaps to hedge certain positions and then the counterparty to those swaps defaults unexpectedly, the firm could be left with large outstanding exposures. Even for uncleared swaps that are subject to the Commission's uncleared swap margin regulations, some counterparty credit risk remains.[218] As stated above, when a swap is cleared, the DCO becomes the counterparty facing each of the two original participants in the swap. This standardizes and reduces counterparty risk for each of the two original participants. To the extent that a market participant's hedges comprise swaps that are required to be cleared and would not be cleared voluntarily, the requirement benefits their risk management practices by reducing their counterparty risk.

In addition, to the extent that required clearing reduces or deters a potential increase in bilateral trading, it reduces the complexity of unwinding or transferring swap positions from large entities that default. Procedures for transfer of swap positions and mutualization of losses among DCO members are already in place, and the Commission anticipates that they are much more likely to function in a manner that enables the benefit of a rapid transfer of defaulted

[218] For example, there is a small risk of a sudden price move so large that a counterparty would be unable to pay sufficient variation margin to cover the loss, which may exceed the amount of initial margin posted, and could be forced into default.

positions than as legal processes that would surround the enforcement of bilateral contracts for uncleared swaps.[219]

Central clearing has evolved since the 2009 G20 Pittsburgh Summit, when G20 leaders committed to central clearing of all standardized swaps.[220] The percentage of the swap market that is centrally cleared has increased significantly, clearinghouses have expanded their offerings, and the range of banks and other financial institutions that submit swaps to clearinghouses has broadened. At the same time, the numbers of swap clearinghouses and swap clearing members has remained highly concentrated. This has created concerns about a concentration of credit and liquidity risk at clearinghouses that could have negative systemic implications.[221]

However, DCOs should be capable of risk managing the swaps that are the subject of this proposed determination. Moreover, because most of the CAD CORRA and MXN F-TIIE OIS to be added to the clearing requirement under this proposed determination are already cleared voluntarily, the Commission anticipates that the extent to which this proposed determination

[219] Sound risk management practices are critical for all DCOs, especially those offering clearing for interest rate swaps given the size and interconnectedness of the global interest rate swap market, as presented throughout this proposal. The Commission considered whether each regulation § 39.5(b) submission under review was consistent with the DCO core principles. In particular, the Commission considered the DCO submissions in light of Core Principle D, which relates to risk management. *See also* section IV.C.3 above for a discussion of the effect on the mitigation of systemic risk in the interest rate swap market, as well as the protection of market participants during insolvency events at either the clearing member or DCO level.

[220] The G20 Leaders Statement made in Pittsburgh is available at *http://www.g20.utoronto.ca/2009/2009communique0925.html*.

[221] *See* Dietrich Domanski, et al., "Central clearing: Trends and current issues," BIS Quarterly Review, Dec. 2015, available at *https://www.bis.org/publ/qtrpdf/r_qt1512g.pdf*; U.S. Department of the Treasury, Office of Financial Research, Financial Stability Report, at 35 (Nov. 2018), available at *https://www.federalreserve.gov/publications/files/financial-stability-report-201811.pdf*; Clearing risks in OTC derivatives markets: the CCP-bank nexus, at 77-79.

would increase the credit risk and liquidity risk that is concentrated at DCOs would be relatively small. The Commission requests comments on this issue.

5. Other Public Interest Considerations.

In September 2009, G20 nations met in Pittsburgh and committed to a program of action that includes, among other things, central clearing of all standardized swaps.[222] The Commission preliminarily finds that this clearing requirement proposal is consistent with the G20's commitment and would reflect the Commission's ongoing confidence in central clearing for swaps and other derivatives. As discussed throughout this proposal, central clearing of derivatives by DCOs can serve the public interest in numerous ways.

VII. RELATED MATTERS

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis with respect to such impact.[223] This proposed determination will not affect any small entities, as the RFA uses that term. Only eligible contract participants (ECPs) may enter into swaps, unless the swap is listed on a designated contract market (DCM),[224] and the Commission has determined that ECPs are not small entities for purposes of the RFA.[225] This proposed determination would affect only ECPs because all persons that are not ECPs are required to execute their swaps on a DCM, and all contracts

[222] The G20 Leaders Statement made in Pittsburgh is available at *http://www.g20.utoronto.ca/2009/2009communique0925.html*.

[223] 5 U.S.C. 601 *et seq*.

[224] Section 2(e) of the CEA, 7 U.S.C. 2(e).

[225] Opting Out of Segregation, 66 FR 20740, 20743 (Apr. 25, 2001).

executed on a DCM must be cleared by a DCO, as required by statute and regulation, not the operation of any clearing requirement determination. Therefore, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[226] imposes certain requirements on federal agencies, including the Commission, in connection with conducting or sponsoring any collection of information. The Commission may not conduct or sponsor, and a respondent is not required to respond to, a request for collection of information unless the information collection request displays a currently valid control number issued by the Office of Management and Budget. This rulemaking does not contain a "collection of information," as defined in the PRA. Accordingly, the requirements imposed by the PRA are not applicable to this rule.

C. Antitrust Considerations

Section 15(b) of the Act requires the Commission to "take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act."[227] The Commission believes that the public interest to be protected by the antitrust laws is generally to protect

[226] 44 U.S.C. 3507(d).

[227] Section 15(b) of the CEA, 7 U.S.C. 15(b).

competition. The Commission requests comment on whether the proposal implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered the proposal to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether the proposal is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the proposal is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the Act. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the Act.

D. Executive Orders 12866, 13563, and 14192

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President's priorities.

The Office of Management and Budget has determined that this action is not a significant regulatory action as defined in Executive Order 12866, as amended, and therefore it was not subject to Executive Order 12866 review.

This Proposal, if finalized as proposed, is not expected to be an Executive Order 14192 regulatory action, because the proposed rule is not a significant regulatory action under E.O. 12866.

List of Subjects in 17 CFR Part 50

Business and industry, Clearing, Swaps.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 50 as follows:

PART 50—CLEARING REQUIREMENT AND RELATED RULES

- 1. The authority citation for part 50 continues to read as follows:

Authority: 7 U.S.C. 2(h), 6(c), and 7a-1, as amended by Pub. L. 111-203, 124 Stat. 1376.

[The following amendments would be effective 30 days after publication of the final rule.]

- 2. In § 50.4, revise paragraph (a) to read as follows:

§ 50.4 Classes of swaps required to be cleared.

(a) *Interest rate swaps.* Swaps that have the following specifications are required to be cleared under section 2(h)(1) of the Act, and shall be cleared pursuant to the rules of any derivatives clearing organization eligible to clear such swaps under § 39.5(a) of this chapter.

Table 1 to Paragraph (a)	
Specification	Fixed-to-floating swap class

1. Currency	Australian Dollar (AUD)	Euro (EUR)	Hong Kong Dollar (HKD)	Norwegian Krone (NOK)	Polish Zloty (PLN)	Swedish Krona (SEK).
2. Floating Rate Indexes	BBSW	EURIBOR	HIBOR	NIBOR	WIBOR	STIBOR.
3. Stated Termination Date Range	28 days to 30 years	28 days to 50 years	28 days to 10 years	28 days to 10 years	28 days to 10 years	28 days to 15 years.
4. Optionality	No	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No	No	No.

Table 2		
Specification	Basis swap class	
1. Currency	Australian Dollar (AUD)	Euro (EUR).
2. Floating Rate Indexes	BBSW	EURIBOR.
3. Stated Termination Date Range	28 days to 30 years	28 days to 50 years.
4. Optionality	No	No.
5. Dual Currencies	No	No.
6. Conditional Notional Amounts	No	No.

Table 3				
Specification	Forward rate agreement class			
1. Currency	Euro (EUR)	Polish Zloty (PLN)	Norwegian Krone (NOK)	Swedish Krona (SEK).
2. Floating Rate Indexes	EURIBOR	WIBOR	NIBOR	STIBOR.
3. Stated Termination Date Range	3 days to 3 years	3 days to 2 years	3 days to 2 years	3 days to 3 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.

Table 4									
Specification	Overnight index swap class								
1. Currency	Australian Dollar (AUD)	Canadian Dollar (CAD)	Euro (EUR)	Mexican Peso (MXN)	Singapore Dollar (SGD)	Sterling (GBP)	Swiss Franc (CHF)	U.S. Dollar (USD)	U.S. Dollar (USD)
2. Floating Rate Indexes	AONIA-OIS	CORRA-OIS	€STR	MXN-TIIE ON-OIS Compound	SORA	SONIA	SARON	FedFunds	SOFR
3. Stated Termination Date Range	7 days to 2 years	7 days to 30 years	7 days to 3 years	28 days to 21 years	7 days to 10 years	7 days to 50 years	7 days to 30 years	7 days to 3 years	7 days to 50 years
4. Optionality	No	No	No	No	No	No	No	No	No

5. Dual Currencies	No	No	No	No	No	No	No	No	No
6. Conditional Notional Amounts	No	No	No	No	No	No	No	No	No

Table 4	
Specification	Overnight index swap class
1. Currency	Yen (JPY).
2. Floating Rate Indexes	TONA.
3. Stated Termination Date Range	7 days to 30 years.
4. Optionality	No.
5. Dual Currencies	No.
6. Conditional Notional Amounts	No.

* * * * *

- 3. In § 50.26, revise paragraph (a) to read as follows:

§ 50.26 Swap clearing requirement compliance dates.

(a) *Compliance dates for interest rate swap classes.* The compliance dates for swaps that are required to be cleared under § 50.4(a) are specified in the following table.

Table 1 to Paragraph (a)

Swap asset class	Swap class subtype	Currency and floating rate index	Stated termination date range	Clearing requirement compliance date
Interest Rate Swap	Fixed-to-Floating	Euro (EUR) EURIBOR	28 days to 50 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Fixed-to-Floating	Australian Dollar (AUD) BBSW	28 days to 30 years	All entities December 13, 2016.
Interest Rate Swap	Fixed-to-Floating	Hong Kong Dollar (HKD) HIBOR	28 days to 10 years	All entities August 30, 2017.
Interest Rate Swap	Fixed-to-Floating	Mexican Peso (MXN) TIIE-BANXICO	28 days to 21 years	All entities December 13, 2016.
Interest Rate Swap	Fixed-to-Floating	Norwegian Krone (NOK) NIBOR	28 days to 10 years	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Polish Zloty (PLN) WIBOR	28 days to 10 years	All entities April 10, 2017.
Interest Rate Swap	Fixed-to-Floating	Swedish Krona (SEK) STIBOR	28 days to 15 years	All entities April 10, 2017.
Interest Rate Swap	Basis	Euro (EUR) EURIBOR	28 days to 50 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
Interest Rate Swap	Basis	Australian Dollar (AUD) BBSW	28 days to 30 years	All entities December 13, 2016.
Interest Rate Swap	Forward Rate Agreement	Euro (EUR) EURIBOR	3 days to 3 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.

Interest Rate Swap	Forward Rate Agreement	Polish Zloty (PLN) WIBOR	3 days to 2 years	All entities April 10, 2017.
Interest Rate Swap	Forward Rate Agreement	Norwegian Krone (NOK) NIBOR	3 days to 2 years	All entities April 10, 2017.
Interest Rate Swap	Forward Rate Agreement	Swedish Krona (SEK) STIBOR	3 days to 3 years	All entities April 10, 2017.
Interest Rate Swap	Overnight Index Swap	Euro (EUR) €STR	7 days to 3 years	All entities September 23, 2022.
Interest Rate Swap	Overnight Index Swap	Singapore Dollar (SGD) SORA	7 days to 10 years	All entities October 31, 2022.
Interest Rate Swap	Overnight Index Swap	Sterling (GBP) SONIA	7 days to 2 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
			2 years + 1 day to 3 years	All entities December 13, 2016.
			3 years + 1 day to 50 years	All entities September 23, 2022.
Interest Rate Swap	Overnight Index Swap	Swiss Franc (CHF) SARON	7 days to 30 years	All entities September 23, 2022.
Interest Rate Swap	Overnight Index Swap	U.S. Dollar (USD) FedFunds	7 days to 2 years	Category 1 entities March 11, 2013. All non-Category 2 entities June 10, 2013. Category 2 entities September 9, 2013.
			2 years + 1 day to 3 years	All entities December 13, 2016.
Interest Rate Swap	Overnight Index Swap	U.S. Dollar (USD) SOFR	7 days to 50 years	All entities October 31, 2022.

Interest Rate Swap	Overnight Index Swap	Australian Dollar (AUD) AONIA-OIS	7 days to 2 years	All entities December 13, 2016.
Interest Rate Swap	Overnight Index Swap	Canadian Dollar (CAD) CORRA-OIS	7 days to 2 years	All entities July 10, 2017.
			2 years + 1 day to 30 years	All entities [DATE 30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER.]
Interest Rate Swap	Overnight Index Swap	Yen (JPY) TONA	7 days to 30 years	All entities September 23, 2022.
Interest Rate Swap	Overnight Index Swap	Mexican Peso (MXN) MXN-TIIE ON-OIS Compound	28 days to 21 years	All entities [DATE 30 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER.]

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Issued in Washington, DC, on [DATE], by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission