Commodity Futures Trading Commission
Office of Public Affairs
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
www.cftc.gov

February 22, 2024

Q & A – Market Participants Division (MPD) No-Action Position for Swap Dealers and Major Swap Participants Regarding the Obligation to Provide a Pre-Trade Mid-Market Mark (PTMMM) for Certain Transactions Referencing the Secured Overnight Financing Rate (SOFR)

Background: MPD is providing a no-action position that it will not recommend that the Commission take an enforcement action against a registered swap dealer or major swap participant (swap entity) for its failure to disclose the PTMMM to a counterparty, as required pursuant to Commission regulation 23.431(a)(3)(i), in certain interest rate swaps referencing SOFR described below, provided that: (1) real-time tradeable bid and offer prices for the swap are available electronically, in the marketplace, to the counterparty; and (2) the counterparty to the swap agrees in advance, in writing, that the swap entity need not disclose a PTMMM for the swap. As discussed below, the letter is being issued to further support the transition from the London Interbank Offered Rate (LIBOR) to SOFR through consistent treatment of the subject swaps.[1]

What swaps are covered by MPD's no-action position?

The no-action position applies only to interest rate swaps: (1) in the "overnight index swap class" (as such term is used in Commission regulation 50.4(a)) (OIS) denominated in USD; (2) referencing the SOFR floating rate index; (3) for which the remaining term to the scheduled termination date is no more than 50 years; and (4) that have the specifications set out in Commission regulation 50.4 (Covered SOFR OIS) entered into by a registered swap entity.

Further, the no-action position only applies where (1) real-time tradeable bid and offer prices for the swap are available electronically, in the marketplace, to the counterparty; and (2) the counterparty to the swap agrees in advance, in writing, that the swap entity need not disclose a PTMMM for the swap. MPD believes that these conditions appropriately limit its no-action position to where pricing information for Covered SOFR OIS is readily available to swap counterparties and to where the counterparty is aware of the swap entity's obligation to provide a PTMMM under Commission regulation 23.431(a)(3)(i) and has expressly consented to not receiving it.

The no-action position is applicable only with respect to Covered SOFR OIS and does not apply to any obligations of a swap entity to disclose PTMMMs for contracts other than the Covered SOFR OIS or to any other Commission regulation, including, without limitation, the requirement to provide a daily mark pursuant to Commission regulation 23.431(d).

Is MPD's no-action position similar to a previous no-action position for swaps referencing LIBOR?

Yes. The no-action letter provides a similar no-action position as that in Letter 12-58, which MPD's predecessor, the Division of Swap Dealer and Intermediary Oversight, issued in 2012, that covered certain interest rate swaps referencing LIBOR. Letter 12-58 was issued in response to a request from the International Swaps and Derivatives Association, Inc. (ISDA). In support of its request, ISDA stated that such LIBOR swaps are highly-liquid, exhibit

[1] As discussed in the no-action letter, the Commission has previously supported the transition from LIBOR to SOFR in other actions, including pursuant to a series of no-action letters that have generally provided no-action positions for SOFR-referencing swaps related to uncleared margin and external business conduct standards, trade execution, clearing, and trade reporting requirements.

narrow bid-ask spreads, and are widely quoted by swap entities in the marketplace. ISDA further noted that in light of these and other factors, compliance with the PTMMM requirement does not provide any significant informational value and would require adding further operational capabilities that may add significant costs for swap entities while delaying trade times for their counterparties.

How are SOFR and LIBOR related?

In response to significant concerns regarding the reliability and robustness of LIBOR and other interbank offered rates (IBORs), the Financial Stability Board (FSB) called for the identification of alternative benchmarks to the IBORs and transition plans to support implementation. The U.S. Financial Stability Oversight Council (FSOC) made repeated calls for member agencies to work closely with market participants to identify and mitigate risks that may arise during an IBOR transition process.

In 2014, the Federal Reserve Bank of New York convened the Alternative Reference Rate Committee (ARRC) in order to identify best practices for U.S. alternative reference rates, identify best practices for contract robustness, develop an adoption plan, and create an implementation plan with metrics of success and a timeline. In June 2017, ARRC identified a broad Treasuries repo financing rate, SOFR, as the preferred alternative benchmark to U.S. Dollar LIBOR (USD LIBOR) for certain new U.S. Dollar derivatives and other financial contracts. It also published an updated "Paced Transition Plan" outlining the steps that ARRC, central counterparties, and other market participants would take in order to help build the liquidity required to support the issuance of, and transition to, contracts referencing SOFR. In accordance with ARRC's Paced Transition Plan, trading of SOFR-based derivatives and other financial contracts linked to alternative benchmarks commenced in 2018 and has since expanded in scope.

Based on data and representations from ARRC, SOFR has now replaced USD LIBOR as the prevailing interest rate derivatives benchmark.

Why is MPD issuing this letter now?

This letter is being issued in response to a request from the ARRC's regulatory working group subcommittee and its member firms ("ARRC RWG") and to further support the transition from USD LIBOR to SOFR. ARRC RWG argues that the rationale underlying Letter No. 12-58 for subject LIBOR swaps—that the benefits of a PTMMM are minimal for liquid swaps with publicly-available price information, and that providing a PTMMM is costly and may adversely affect counterparties—is equally applicable to Covered SOFR OIS. In support of its request, ARRC RWG notes that the SOFR OIS market continues to serve as the prevailing benchmark of the interest rate swaps market and is widely quoted by dealers on- and off-facility, with real-time tradable bid and offer prices made available electronically via trading facilities, including via multiple swap execution facilities. In addition, ARRC RWG notes that the implementation and familiarity of market participants with the Commission's part 43 real-time reporting requirements provides an additional source for readily available pricing data to market participants.