

# Derivatives Alert

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## CFTC Proposes to Apply Clearing Requirement to Additional Interest Rate Swaps

On June 9, 2016, the Commodity Futures Trading Commission (CFTC) proposed to require additional interest rate swaps to be centrally cleared.<sup>1</sup> Since December 2012, the CFTC has required four classes of interest rate swaps (*i.e.*, fixed-to-floating swaps, basis swaps, overnight index swaps and forward rate agreements) and two classes of index credit default swaps (*i.e.*, North American and European corporate indices) meeting certain specifications to be cleared through a registered derivatives clearing organization (DCO) or an exempt DCO.<sup>2</sup>

The CFTC's proposal would expand the number of swaps required to be cleared to include interest rate swaps denominated in nine additional currencies: the Australian dollar (AUD), Canadian dollar (CAD), Hong Kong dollar (HKD), Mexican peso (MXN), Norwegian krone (NOK), Polish zloty (PLN), Singapore dollar (SGD), Swedish krona (SEK) and Swiss franc (CHF). The CFTC stated that the proposed rule is intended to make the CFTC's clearing requirement consistent with those proposed, or already adopted, by regulators in the European Union, Australia, Canada, Hong Kong, Mexico and Singapore.<sup>3</sup> Consistent with current law, the clearing requirement would apply to all parties seeking to enter into any of the newly proposed covered swaps unless an exception or exemption applies (*e.g.*, the end-user exception<sup>4</sup> or the inter-affiliate exemption<sup>5</sup>). The proposed rule is open for public comment until July 18, 2016.<sup>6</sup>

The following charts identify the universe of swaps that would be required to be cleared if the proposed rule is adopted. The new interest rate swaps proposed to be covered are marked in *italics and underlined*.

<sup>1</sup> 81 Fed. Reg. 39506 (June 16, 2016).

<sup>2</sup> 77 Fed. Reg. 74284 (December 13, 2012). The clearing requirement was initially adopted in Part 39 of the CFTC regulations, but subsequently restated as CFTC Regulation 50.4(a). For additional information regarding the CFTC's initial clearing requirement, see Skadden client alert "[CFTC Takes Steps to Implement the Clearing Regime for Swaps and Finalizes the Exception From Clearing for Commercial End-Users](#)" (August 15, 2012).

<sup>3</sup> 81 Fed. Reg. at 39507-39509.

<sup>4</sup> 77 Fed. Reg. 42560 (July 19, 2012). For more information regarding how to qualify for and claim the commercial end-user exception, see Skadden client alert "[New CFTC Swap Clearing Rules to Require Board Review and Approval of the Election to Rely on the 'Commercial End-User Exception'](#)" (March 13, 2013).

<sup>5</sup> 78 Fed. Reg. 21750 (April 11, 2013).

<sup>6</sup> 81 Fed. Reg. at 39506.

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Specification	Fixed-to-Floating Swap Class					
Currency	<u>Australian Dollar (AUD)</u>	<u>Canadian Dollar (CAD)</u>	Euro (EUR)	<u>Hong Kong Dollar (HKD)</u>	<u>Mexican Peso (MXN)</u>	<u>Norwegian Krone (NOK)</u>
Floating Rate Indexes	<u>BBSW</u>	<u>CDOR</u>	EURIBOR	<u>HIBOR</u>	<u>TIIE</u>	<u>NIBOR</u>
Stated Termination Date Range	<u>28 days to 30 years</u>	<u>28 days to 30 years</u>	28 days to 50 years	<u>28 days to 10 years</u>	<u>28 days to 21 years</u>	<u>28 days to 10 years</u>
Optionality	<u>No</u>	<u>No</u>	No	<u>No</u>	<u>No</u>	<u>No</u>
Dual Currencies	<u>No</u>	<u>No</u>	No	<u>No</u>	<u>No</u>	<u>No</u>
Conditional Notional Amounts	<u>No</u>	<u>No</u>	No	<u>No</u>	<u>No</u>	<u>No</u>

Specification	Fixed-to-Floating Swap Class						
Currency	<u>Polish Zloty (PLN)</u>	<u>Singapore Dollar (SGD)</u>	<u>Swedish Krona (SEK)</u>	<u>Swiss Franc (CHF)</u>	Sterling (GBP)	U.S. Dollar (USD)	Yen (JPY)
Floating Rate Indexes	<u>WIBOR</u>	<u>SOR-VWAP</u>	<u>STIBOR</u>	<u>LIBOR</u>	LIBOR	LIBOR	LIBOR
Stated Termination Date Range	<u>28 days to 10 years</u>	<u>28 days to 10 years</u>	<u>28 days to 15 years</u>	<u>28 days to 30 years</u>	28 days to 50 years	28 days to 50 years	28 days to 30 years
Optionality	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>	No	No	No
Dual Currencies	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>	No	No	No
Conditional Notional Amounts	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>	No	No	No

Specification	Basis Swap Class				
Currency	<u>Australian Dollar (AUD)</u>	Euro (EUR)	Sterling (GBP)	U.S. Dollar (USD)	Yen (JPY)
Floating Rate Indexes	<u>BBSW</u>	EURIBOR	LIBOR	LIBOR	LIBOR
Stated Termination Date Range	<u>28 days to 30 years</u>	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years
Optionality	<u>No</u>	No	No	No	No
Dual Currencies	<u>No</u>	No	No	No	No
Conditional Notional Amounts	<u>No</u>	No	No	No	No

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Specification	Forward Rate Agreement Class			
Currency	<i>Australian Dollar (AUD)</i>	Euro (EUR)	<i>Polish Zloty (PLN)</i>	<i>Norwegian Krone (NOK)</i>
Floating Rate Indexes	<i>BBSW</i>	EURIBOR	<i>WIBOR</i>	<i>NIBOR</i>
Stated Termination Date Range	<i>3 days to 3 years</i>	3 days to 3 years	<i>3 days to 2 years</i>	<i>3 days to 2 years</i>
Optionality	<i>No</i>	No	<i>No</i>	<i>No</i>
Dual Currencies	<i>No</i>	No	<i>No</i>	<i>No</i>
Conditional Notional Amounts	<i>No</i>	No	<i>No</i>	<i>No</i>

Specification	Forward Rate Agreement Class			
Currency	<i>Swedish Krona (SEK)</i>	Sterling (GBP)	U.S. Dollar (USD)	Yen (JPY)
Floating Rate Indexes	<i>STIBOR</i>	LIBOR	LIBOR	LIBOR
Stated Termination Date Range	<i>3 days to 3 years</i>	3 days to 3 years	3 days to 3 years	3 days to 3 years
Optionality	<i>No</i>	No	No	No
Dual Currencies	<i>No</i>	No	No	No
Conditional Notional Amounts	<i>No</i>	No	No	No

Specification	Overnight Index Swap Class				
Currency	<i>Australian Dollar (AUD)</i>	<i>Canadian Dollar (CAD)</i>	Euro (EUR)	Sterling (GBP)	U.S. Dollar (USD)
Floating Rate Indexes	<i>AONIA-OIS</i>	<i>CORRA-OIS</i>	EONIA	SONIA	FedFunds
Stated Termination Date Range	<i>7 days to 2 years</i>	<i>7 days to 2 years</i>	<i>7 days to 3 years</i>	<i>7 days to 3 years</i>	<i>7 days to 3 years</i>
Optionality	<i>No</i>	<i>No</i>	No	No	No
Dual Currencies	<i>No</i>	<i>No</i>	No	No	No
Conditional Notional Amounts	<i>No</i>	<i>No</i>	No	No	No