

MEMO# 33057

January 20, 2021

LIBOR Update: ICI Submits Responses to the ICE Benchmark Administration and UK Financial Conduct Authority Consultations

[33057]

January 20, 2021 TO: ICI Members

ICI Global Members

LIBOR Transition Working Group SUBJECTS: Compliance
Financial Stability

Operations RE: LIBOR Update: ICI Submits Responses to the ICE Benchmark Administration and UK Financial Conduct Authority Consultations

This week, ICI submitted responses to the ICE Benchmark Administration (IBA)[\[1\]](#) and UK Financial Conduct Authority (FCA)[\[2\]](#) consultations on LIBOR cessation. Our position papers are attached and we provide an overview of their key points below.

ICI Response to the IBA Consultation

The IBA consultation requested feedback on its intention to cease publication of most currency/tenor pairings of LIBOR on December 31, 2021, and for 1, 3, 6, and 12-month USD LIBOR on June 30, 2023. IBA noted that, based on its current information from panel banks, it anticipates there being a representative panel for the continuation of those USD LIBOR settings through June 30, 2023.

ICI's response requests that IBA consider the impact on the timing of its cessation announcements on the ISDA Protocol, which would fix spread adjustments for LIBOR replacement rates at the time of those announcements. We request that IBA be particularly mindful of the timing of any announcement for USD tenors that are not expected to cease publication until June 2023. We also request that IBA prioritize global alignment and consider the impact of a non-representativeness announcement on contracts subject to the proposed EU Benchmark Regulation.

ICI Response to the FCA Consultation on Article 23A

The FCA issued a consultation on the powers that it expects to have in Article 23A of the UK Benchmark Regulation when the UK Financial Services Bill is enacted. Article 23A would grant the FCA the ability to designate a critical benchmark as an Article 23A benchmark if:

- The representativeness of the benchmark cannot reasonably be restored and maintained either by the administrator or by the FCA; or
- There are not good reasons to restore and maintain its representativeness.

Once a benchmark is designated under Article 23A, “all use” is prohibited by UK supervised entities (Article 23B), unless permitted by the FCA (Article 23C). Further, the FCA may require changes to the way that a designated benchmark is determined, including input data and calculation (Article 23D).

The ICI response to the consultation requests that the FCA coordinate with global policymakers and market participants to ensure alignment in tough legacy contract issues. Further, we urge the FCA provide market notice before taking any actions under Article 23A so that any related planning and analysis can be done with as much certainty around the consequences of the exercise of these powers as is possible. We additionally request clarity regarding the factors that the FCA will use in determining whether to designate a rate under Article 23A and the timing between a designation and potential prohibition of use of the rate.

ICI Response to the FCA Consultation on Article 23D

The FCA also issued a consultation on Article 23D of the UK Benchmark Regulation, which would grant powers to the FCA to calculate an alternative methodology for a designated LIBOR tenor/currency (*i.e.*, “synthetic LIBOR”).

Similar to our position paper for the Article 23A consultation, the ICI response to the Article 23D consultation requests that the FCA coordinate with global policymakers and market participants to ensure alignment in tough legacy contract issues.

We recommend that the FCA take the approach of the ARRC proposed legislation in determining which contracts would qualify as tough legacy contracts. We support the ARRC approach in being narrowly tailored to those contracts that are inextricably linked to LIBOR without overriding other agreed-upon contractual language and being self-effectuating.

As for the potential alternative methodology for a designated rate, ICI recommends that the FCA take a holistic approach in ensuring that any synthetic rate would be useable for cash products as well as derivatives.

Bridget Farrell
Assistant General Counsel

[Attachment No. 1](#)

[Attachment No. 2](#)

[Attachment No. 3](#)

endnotes

[1] See ICE Consultation on Potential Cessation (December 2020), *available at* https://www.theice.com/publicdocs/ICE_LIBOR_Consultation_on_Potential_Cessation.pdf.

[2] Consultation on proposed policy with respect to the designation of benchmarks under new Article 23A (November 2020), *available at* <https://www.fca.org.uk/publication/policy/consultation-designation-benchmarks-new-article-23a.pdf>; and Consultation on proposed policy with respect to the exercise of the FCA's powers under new Article 23D (November 2020), *available at* <https://www.fca.org.uk/publication/policy/consultation-exercise-fca-powers-new-article-23d.pdf>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.