

MEMO# 33194

March 15, 2021

LIBOR Update: ICI Submits Response to UK Treasury Consultation on Safe Harbours

[33194]

March 15, 2021 TO: ICI Members

ICI Global Members

LIBOR Transition Working Group SUBJECTS: Compliance

Financial Stability

Operations RE: LIBOR Update: ICI Submits Response to UK Treasury Consultation on Safe Harbours

This week, ICI submitted a response to the HM Treasury (HMT) on their consultation on adding a legal safe harbor to supplement to the amendments to the UK Benchmark Regulation (BMR) that the UK Parliament has been considering in the Financial Services Bill.[\[1\]](#)

In general, the amendments to the BMR would enable the Financial Conduct Authority (FCA) to designate a benchmark, such as LIBOR, as non-representative and to change that benchmark's calculation methodology in order to facilitate an orderly cessation of the benchmark. Those changes are colloquially known as providing "synthetic" LIBOR. The HMT requested feedback on whether to add a safe harbour to prevent contractual counterparties from having grounds for litigation on the basis of the FCA's provision of synthetic LIBOR to replace a non-representative LIBOR rate in certain UK-law governed contracts.[\[2\]](#)

Our response to the HMT consultation provides support for a safe harbour to increase legal certainty and reduce litigation over the use of synthetic LIBOR. However, we urge the HMT to align the safe harbour, and the UK's overall approach to LIBOR transition, with the approaches being taken by regulators globally. Doing so will reduce the risk of regulatory arbitrage and ensure generally equivalent outcomes for contracts under each jurisdiction. We also recommend that the HMT align its safe harbour consultation with expected upcoming FCA consultations regarding LIBOR so that ICI and other market participants can provide feedback on the UK's holistic approach to LIBOR transition.

Our position paper on the HMT consultation is attached.

Bridget Farrell
Assistant General Counsel

[Attachment](#)

endnotes

[1] See ICI Memorandum No. 33108 (Feb. 16, 2021), *available at* https://www.ici.org/my_ici/memorandum/memo33108.

[2] The FCA is expected to issue a consultation in Q2 2021 on which “tough legacy” contracts would be permitted to use synthetic LIBOR in the UK.

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