INVESTMENT COMPANY INSTITUTE

MEMO# 32177

January 27, 2020

LIBOR Update: UK Financial Conduct Authority Publishes Letter on Pre-Cessation LIBOR; Reminder to Nominate Representative to ICI's LIBOR Transition Working Group

[32177]

January 27, 2020 TO: Chief Compliance Officer Committee
Chief Risk Officer Committee
Derivatives Markets Advisory Committee
Equity Markets Advisory Committee
Fixed-Income Advisory Committee
Money Market Funds Advisory Committee
Operations Committee
Risk Advisory Committee
SEC Rules Committee
Securities Operations Advisory Committee RE: LIBOR Update: UK Financial Conduct Authority Publishes Letter on Pre-Cessation LIBOR; Reminder to Nominate Representative to ICI's LIBOR Transition Working Group

I. Updates on Pre-Cessation LIBOR

The LIBOR regulator, the UK Financial Conduct Authority (FCA), and administrator, ICE Benchmark Administration (IBA), have provided information to ISDA regarding the expected "pre-cessation" period for LIBOR.[1] The pre-cessation period is a potential time period in which IBA may continue to publish LIBOR, but because fewer panel banks are submitting rates, LIBOR would no longer be considered representative.[2] The FCA clarifies that should any pre-cessation period occur, it expects that period to last months, not years.

The FCA expects that panel banks have a limited willingness to contribute to a non-representative LIBOR for anything longer than the minimum required period. If enough panel banks decline to report so that IBA as LIBOR administrator considers the rate to be non-representative, the UK Benchmarks Regulation[3] requires that IBA cease publishing LIBOR after four weeks' notice.[4] In its letter, IBA also notes that it "would not be comfortable with publishing an unrepresentative benchmark."

ISDA announced that it welcomes the letters from FCA and IBA as additional information to inform market participants about the expected pre-cessation period.[5] ISDA notes that in 2019, it conducted a consultation on potential fallback language for derivatives contracts regarding the pre-cessation period.[6] Responses to the consultation indicated that a majority of market participants generally would not want to continue referencing LIBOR (or other IBORs) in existing or new derivatives contracts following a statement that those rates were no longer representative. Respondents, however, did not reach a consensus on how to respond to such a statement in fallback language.

II. Reminder to Nominate Representatives to ICI's LIBOR Transition Working Group

As discussed in a recent memo, ICI is constituting a LIBOR Transition Working Group for members to discuss the challenges, concerns, and issues related to LIBOR discontinuation.[7]

If you have not done so already, please nominate one individual from your firm, likely the individual who is leading your firm's overall LIBOR transition effort, to serve as the representative to the working group. We expect this group will address, on an ongoing basis, issues including, but not limited to, the effects of the transition on compliance, operations, communications, and fund holdings. Depending on the subject of particular calls, working group representatives should include other relevant firm staff to participate in the discussion.

Working group calls will initially be on monthly basis, with additional ad hoc calls as needed. We will be looking to working group members to suggest topics and agenda items for working group calls. We look forward to working with members on the working group and hearing your feedback. Please contact Bridget Farrell at bridget.farrell@ici.org or 202-218-3573 with the name of the nominated working group representative for your firm or any questions about the LIBOR Transition Working Group.

Bridget Farrell
Assistant General Counsel

Sarah A. Bessin
Associate General Counsel

endnotes

[1] *See* Letter from Richard Fox, FCA, to Scott O'Malia, ISDA (Jan. 20, 2020), *available at* https://www.isda.org/a/E1LTE/FCA-letter-to-ISDA-on-Non-representative-LIBOR-January-2020.pdf; letter from Timothy J. Bowler, IBA, to Scott O'Malia, ISDA (Jan. 24, 2020), *available at* https://www.isda.org/a/M1LTE/IBA-Letter-to-ISDA.pdf.

[2] The FCA gives an example of a pre-cessation period occurring after LIBOR discontinuation post-2021, if some, but not all, panel banks withdraw from the LIBOR panel, leaving too few submitting banks sufficiently active in the relevant underlying markets for the rate to be capable of being representative of those markets.

[3] The law governing LIBOR has been the EU Benchmarks Regulation (EU BMR), however, the UK Government "on-shored" the EU BMR in the UK Benchmarks Regulation (UK BMR). The EU BMR will continue to apply in the UK until the end of the expected Brexit implementation period, and the UK BMR will come into force at the end of this period (expected to be December 31, 2020).

[4] Alternatively, IBA could take steps to make the rate representative again, a step that the FCA believes is unlikely.

[5] *See* Scott O'Malia, ISDA, New Letters on Pre-cessation Issues Welcome, *available at* https://www.isda.org/2020/01/24/new-letters-on-pre-cessation-issues-welcome/.

[6] *See* Anonymized Narrative Summary of Responses to the ISDA Pre-Cessation Consultation (Oct. 21, 2019), *available at* http://assets.isda.org/media/e0b1bac2/04397355-pdf/.

[7] *See* https://www.ici.org/my_ici/memorandum/memo32166?WT.mc_id=daily200123.
