

MEMO# 33145

March 2, 2021

LIBOR Update: Draft Response to HM Treasury Consultation on Safe Harbour for Tough Legacy Legislation; Member Feedback Requested by March 10

[33145]

March 2, 2021 TO: ICI Global Regulated Funds Committee
LIBOR Transition Working Group RE: LIBOR Update: Draft Response to HM Treasury Consultation on Safe Harbour for Tough Legacy Legislation; Member Feedback Requested by March 10

The UK HM Treasury recently issued a consultation on whether to add a legal safe harbour as a supplement to the amendments to the Benchmarks Regulation (BMR) that Parliament has been considering through the Financial Services Bill. In general, the amendments to the BMR would enable the Financial Conduct Authority (FCA) to designate a benchmark, such as LIBOR, as unrepresentative and to change that benchmark's calculation methodology in order to facilitate an orderly cessation of the benchmark.^[1] We have drafted a short position paper to respond to the consultation, as attached.

Please provide any written comments to Bridget Farrell at bridget.farrell@ici.org by close of business on March 11. Comments on the proposal are due to HMT on March 15.

ICI's position paper supports a safe harbour as a tool to promote legal certainty and reduce the risk of litigation for tough legacy products. We are cautious, however, that it is difficult to evaluate the benefits or costs without understanding which contracts and financial instruments will be deemed tough legacy and thus subject to the safe harbour. We recommend that HM Treasury conduct its consultation in concert with the expected upcoming FCA consultation on the definition of tough legacy.

As we have urged previously, we also recommend that HM Treasury align any safe harbour, as well as other fundamental tenets of its tough legacy solution, with those of other regulators around the globe. Reducing any gaps and overlaps in application of tough legacy solutions will reduce the risk of regulatory arbitrage.

Bridget Farrell

[Attachment](#)

endnotes

[1] See ICI Memorandum No. 33108, *available at* https://www.ici.org/my_ici/memorandum/memo33108; and HM Treasury, Supporting the wind-down of critical benchmarks (February 2021), *available at* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/961317/HMT_Safe_harbour_Consultation.pdf.

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