

MEMO# 33033

January 11, 2021

LIBOR Update: Draft Comment Letters on ICE Benchmark Administration and UK Financial Conduct Authority Consultations; Member Feedback Requested by January 14

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January 11, 2021 TO: LIBOR Transition Working Group RE: LIBOR Update: Draft Comment Letters on ICE Benchmark Administration and UK Financial Conduct Authority Consultations; Member Feedback Requested by January 14

Recently, the ICE Benchmark Administration (IBA)[\[1\]](#) and UK Financial Conduct Authority (FCA) issued separate consultations regarding the potential cessation of certain LIBOR currencies and tenors and regarding expected powers under the UK Financial Services Bill.[\[2\]](#) We have drafted short comment letters to respond to these consultations, as attached.

Please provide any written comments to Bridget Farrell at bridget.farrell@ici.org by close of business on January 14. Responses to the consultations are due to the IBA on January 25 and to the FCA on January 18.

IBA Consultation Draft Comment Letter

The IBA consultation requests feedback from stakeholders 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 notes 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 draft comment letter 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 that certain announcements are made. 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 the impact of a non-representativeness announcement on contracts subject to the proposed EU Benchmark Regulation.

FCA Consultation on Article 23A Draft Comment Letter

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 draft ICI comment letter in 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 recommend that the FCA provide market notice before taking any actions under Article 23A. 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.

FCA Consultation on Article 23D Draft Comment Letter

The FCA also issued a consultation on the powers that it expects to have under Article 23D of the UK Benchmark Regulation when the UK Financial Services Bill is enacted. Article 23D grants powers to the FCA to calculation alternative methodology for a LIBOR tenor/currency (i.e., “synthetic LIBOR”).

Like the draft comment letter for the Article 23A consultation, the draft ICI comment letter in 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, particularly among the UK, US, and EU approaches. In evaluating the practicality of transition and the scale of tough legacy contracts, we recommend that the FCA maintain close dialogue and cooperation with its counterparts and the efforts by market participants to find contractual solutions as well as track the legislative solutions currently proposed or under consideration by legislators.

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>.

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