

MEMO# 26570

October 9, 2012

UK Treasury Publishes Final Report and Recommendations on LIBOR

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 55-12
ICI GLOBAL MEMBERS
INTERNATIONAL MEMBERS No. 43-12
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 50-12
SEC RULES MEMBERS No. 91-12 RE: UK TREASURY PUBLISHES FINAL REPORT AND
RECOMMENDATIONS ON LIBOR

As you know, the UK government recently established an independent review into a number of aspects of the setting and usage of the London Inter-Bank Offered Rate (LIBOR), called the "Wheatley Review." [\[1\]](#) ICI and ICI Global submitted a joint comment letter to the Wheatley Review in early September. [\[2\]](#)

On September 28, the Wheatley Review presented its final policy recommendations. The Wheatley Review's conclusions, which are largely consistent with ICI and ICI Global's positions, are summarized briefly below. [\[3\]](#)

Key Conclusions

The Wheatley Review reaches three key conclusions. First, it is preferable to comprehensively reform LIBOR, rather than replacing it. With an estimated \$300 trillion dollars in contracts and other financial instruments referencing LIBOR, attempting to replace it "would impose an unacceptably high risk of significant financial instability, and risk large-scale litigation between parties holding contracts that reference LIBOR." In reaching this conclusion, the report notes that "there has been no noticeable decline in the use of LIBOR by market participants," and that "there is clearly a large role that LIBOR plays in financial markets for which there is no immediate obvious alternative."

Second, the Review concluded that transaction data should be explicitly used to support LIBOR submissions. Several of the report's recommendations (described below) are meant to establish strict and detailed processes for verifying submissions against transaction data and limiting publication of LIBOR to only those currencies and tenors that are supported by sufficient data.

Third, the Review concluded that market participants should continue to play a significant role in the production and oversight of LIBOR. Since LIBOR exists primarily for the benefit of market participants, the Review concluded that it would be inappropriate for authorities to completely take over the process.

Ten-Point Plan For Comprehensive Reform of LIBOR

Drawing on these three fundamental conclusions, the Wheatley Review set out the following ten point plan, within five categories, for the comprehensive reform of LIBOR:

Regulation of LIBOR

1. The Review recommends that authorities introduce statutory regulations governing the administration of, and submission to, LIBOR. Specifically, the report recommends that:
 - Administering LIBOR and submitting to LIBOR become regulated activities under the UK's Financial Services and Markets Act (the "FSMA");
 - Controlled functions [\[4\]](#) are created in connection with both of these activities;
 - The UK support efforts in the EU to proceed swiftly with developing and implementing a new civil market abuse regime and open and transparent access to benchmarks; and
 - Section 397 of the FSMA is amended to enable the FSA to prosecute manipulation or attempted manipulation of LIBOR.

Institutional Reform

2. The Review recommends that the British Bankers' Association ("BBA") transfer responsibility for LIBOR to a new administrator. The report recommends that the new administrator be chosen through a tender process to be run by an independent committee convened by the UK regulatory authorities.
3. As part of its governance and oversight of the rate, the new administrator should ensure transparency and fair and non-discriminatory access to the benchmark. The administrator also should fulfill specific obligations, including surveillance and scrutiny of submissions, publication of a statistical digest of rate submissions, and periodic reviews.

Rules Governing LIBOR

4. The Review recommends that participating banks should look to immediately comply with the submission guidelines offered in the report.
5. The new administrator should, as a priority, introduce a code of conduct for submitters that establishes guidelines for the explicit use of transaction data to determine their submissions, systems and controls for submitting firms, transaction record keeping responsibilities for submitting banks, and a requirement for a regular external audit of submitting firms.

Immediate Improvements to LIBOR

6. The Review recommends that the BBA cease the compilation and publication of LIBOR for those currencies and tenors for which there is insufficient trade data to corroborate submissions. The Review recommends immediately engaging in consultations with users and submitters to plan and implement a phased removal of these rates.

7. The Review recommends that the BBA publish LIBOR submissions publicly, three months after they are submitted.
8. Banks, including those not currently submitting to LIBOR, should be encouraged to participate as widely as possible to the LIBOR compilation process, including, if necessary, through new powers of regulatory compulsion.
9. Market participants using LIBOR should be encouraged to consider and evaluate their use of LIBOR, including whether LIBOR is the most appropriate benchmark for the transactions they undertake, and whether standard contracts contain adequate contingency provisions covering the event of LIBOR not being produced.

International Coordination

10. Finally, the Review urges UK authorities to work closely with the European and international community and contribute fully to the debate on the long-term future of LIBOR and other global benchmarks, establishing clear principles for their use and effectiveness.

Next Steps

The UK government has indicated that it “is examining the Wheatley Review recommendations in detail, including the costs and benefits of what has been proposed, and the design and implementation options,” and that “it is the Government’s intention to respond to the review when Parliament returns, and introduce any necessary legislation in the Financial Services Bill that is currently being considered by the House of Lords.” [5]

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endnotes

[1] See The Wheatley Review of LIBOR: initial discussion paper (Aug. 2012), available at http://hm-treasury.gov.uk/d/condoc_wheatley_review.pdf.

[2] See [Memorandum](#) No. 26495, dated September 10, 2012.

[3] The final report and other materials are available at http://www.hm-treasury.gov.uk/wheatley_review.htm.

[4] Under the “Approved Persons” regime in the FSMA, certain activities can be designated as “controlled functions” by the FSA.

[5] See http://www.hm-treasury.gov.uk/wheatley_review.htm.