

**MEMO# 33588**

June 15, 2021

## **LIBOR Update: ICI Submits Response to FCA Consultation on Use of Synthetic LIBOR**

[33588]

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TO: ICI Global Regulated Funds Committee  
LIBOR Transition Working Group RE: LIBOR Update: ICI Submits Response to FCA Consultation on Use of Synthetic LIBOR

On June 15, ICI submitted a response to the Financial Conduct Authority (FCA) consultation on how the FCA will use its powers over critical benchmarks, such as LIBOR.[\[1\]](#)

Specifically, the FCA requested comment on its power under Article 21A of the UK Benchmarks Regulation (BMR) to prohibit new use of a benchmark that is in the course of cessation and its power under Article 23C of the BMR to permit some or all legacy use of a benchmark that is designated under Article 23A. Article 23A benchmarks are those rates that have become permanently unrepresentative of the market they are intended to measure. The FCA has stated that most currencies of LIBOR will no longer be representative as of end-2021 and USD LIBOR will no longer be representative after June 2023.[\[2\]](#)

Our response to the FCA consultation provides support for legacy financial contracts and financial instruments to use synthetic LIBOR if the contract or instrument references LIBOR on the date the rate becomes unrepresentative and that it provides no non-LIBOR alternative rates. We believe this objective criterion will properly identify the set of contracts and instruments where use of synthetic LIBOR is the only option for maintaining economic value without unnecessarily substituting the use of synthetic LIBOR where it is not needed. We also recommend this criterion as self-effectuating and promoting international consistency.

Similarly, we recommend that the FCA exercise its powers to permit new uses of a benchmark that will cease publication with those uses consistent with international approaches. Specifically, we recommend the FCA to align any permissions or restrictions on the use of USD LIBOR with those promulgated by US prudential regulators for banks[\[3\]](#) and any guidance or restrictions provided by US capital markets regulators for those products and activities.

Our position paper on the FCA consultation is attached.

Bridget Farrell  
Assistant General Counsel

**endnotes**

[1] See Benchmarks Regulation: how we propose to use our powers over use of critical benchmarks, CP21/15 (May 2021), *available at* <https://www.fca.org.uk/publication/consultation/cp21-15.pdf>. For a summary of the consultation, please see ICI Memorandum No. 33553, *available at* <https://www.ici.org/memo33553>.

[2] See FCA Announcement on future cessation and loss of representativeness of the LIBOR benchmarks (March 2021), *available at* <https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf>.

[3] See Statement on LIBOR Transition (November 2020), *available at* <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf>.

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