
ARTICLE 21(3) BENCHMARKS REGULATION – NOTICE OF FIRST DECISION

To: **ICE Benchmark Administration Limited**

Reference Number: **608291**

Address: **Milton Gate, 60 Chiswell Street, London EC1Y 4SA, United Kingdom**

Date: **14 March 2023**

1. ACTION

- 1.1. For the reasons given in this Notice and pursuant to Article 21(3) of the Benchmarks Regulation (“BMR”), the Financial Conduct Authority (“the Authority”) has decided to compel ICE Benchmark Administration Limited (“IBA”) to continue publishing the following LIBOR versions:
- (1) 1-month US Dollar LIBOR,
 - (2) 3-month US Dollar LIBOR, and
 - (3) 6-month US Dollar LIBOR.
- (“US Dollar LIBOR Versions”).
- 1.2. The compulsion period shall be for 12 months starting immediately after the publication of the US Dollar LIBOR Versions on 30 June 2023 is concluded and before the US Dollar LIBOR Versions would otherwise cease. Subject to the reviews required by Article 21(3) of the BMR, the Authority intends to use its powers to compel IBA to continue to publish the US Dollar LIBOR Versions for a final period until the end of September 2024, but not beyond that date.
- 1.3. As a result of all of the USD LIBOR panel banks notifying IBA of their intention to

cease contributing input data in respect of the US Dollar LIBOR Versions after 30 June 2023, and in light of the Authority's decision not to exercise its power under Article 23(6) of the BMR) to require the LIBOR panel banks to continue contributing, it will not be possible for IBA to continue publishing the US Dollar LIBOR Versions under IBA's panel bank contributions-based methodology after 30 June 2023. Therefore, the compelled publication of the US Dollar LIBOR Versions will not be on a panel bank basis. The Authority has consulted on its intention to exercise its powers under Article 23D(2) of the BMR, in the event that the US Dollar LIBOR Versions are designated as Article 23A benchmarks (as the Authority intends), to impose requirements on IBA relating to the way in which each of the US Dollar LIBOR Versions are determined so that they can continue to be published. The Authority intends, in line with its consultation, to require IBA to continue to publish the US Dollar LIBOR Versions under a changed, "synthetic" methodology, which will no longer be representative of the underlying market that LIBOR was intended to measure. This is subject to any representations IBA may make in respect of this notice and/or any notice to designate the US Dollar LIBOR Versions under Article 23A of the BMR.

- 1.4. The decision as set out in this notice takes effect on a date determined in accordance with this paragraph 1.4. The decision is subject to review in the event of any written representations made by IBA and shall take effect if:
 - (1) IBA makes no representations within the deadline for making such representations, on the date immediately succeeding that deadline; or
 - (2) IBA does make representations and on review of those representations, the Authority confirms to IBA that it maintains the decision set out in this Notice by means of a Second Decision, on the date of that Second Decision Notice or as otherwise set out in that Second Decision.
- 1.5. Accordingly, in view of the absence of certainty as to whether the decision to compel publication contained within this notice will be maintained, the Authority asks IBA to treat this notice as confidential. The Authority requests that IBA does not disclose it or its contents to a third party (except for the purpose of obtaining legal advice on its contents) or publicise this notice without the Authority's written consent until:
 - (1) the Authority has published the final version of this Notice; or
 - (2) if IBA has made representations, the Authority has confirmed to IBA the decision set out in this Notice by means of a Second Decision.
- 1.6. Please see paragraph 5 of this Notice for important information about procedural rights.

2. SUMMARY OF REASONS

- 2.1. The Authority has decided to exercise its power under Article 21(3) of the BMR to compel the administrator of LIBOR, IBA, to continue publishing each of the US Dollar LIBOR Versions for an initial period of 12 months, in order that the US Dollar LIBOR Versions may be ceased to be provided in an orderly fashion. All of the contributors of input data to the US Dollar LIBOR Versions have notified IBA of their intention to cease contributing to these US Dollar LIBOR Versions after 30 June 2023. The Authority has decided not to exercise its powers under Article 23(6) of the BMR to compel any contributors to continue submitting to LIBOR. Therefore, IBA will not be able to continue the publication of any of the US Dollar LIBOR Versions on the basis of its panel bank contributions-based methodology.
- 2.2. As noted above, the Authority consulted in [June 2022](#) on the extent to which the US Dollar LIBOR Versions could cease at 30 June 2023 in an orderly fashion ("June 2022 Consultation"). The Authority also consulted in [November 2022](#) on its proposal to exercise its powers under Article 23D(2) of the BMR ("November 2022 Consultation"), in the event that the US Dollar LIBOR Versions are designated as Article 23A benchmarks (as the Authority intends), to impose requirements on IBA relating to the way in which each of the US Dollar LIBOR Versions is determined so that they can continue to be published. The Authority intends, in line with its November 2022 Consultation, to require IBA to continue to publish the US Dollar LIBOR Versions under a changed, "synthetic" methodology, which will no longer be representative of the underlying market which LIBOR was intended to measure. This is subject to any representations IBA may make in respect of this notice and/or any notice to designate the US Dollar LIBOR Versions under Article 23A of the BMR.
- 2.3. The Authority considers that there will likely remain a small but material subset of contracts that will not be able to transition away from using US Dollar LIBOR by end-June 2023. The Authority therefore considers that a temporary additional period of publication beyond end-June 2023 on a synthetic basis may help market participants to transition this subset of outstanding contracts and thus avoid a disorderly cessation.
- 2.4. The Authority has decided to exercise the power in respect of the US Dollar LIBOR Versions for the full 12-month period provided for in Article 21(3) of the BMR, because it is expected there will continue to be a risk of disorderly cessation of each of the US Dollar LIBOR Versions up until at least 30 June 2024.
- 2.5. At the same time, the Authority considers it important to provide an intended

cessation date for the US Dollar LIBOR Versions, in part to serve as impetus for a final transition effort, as well as in response to industry and consultation feedback requesting at least 1 year's notice before cessation. Therefore, the Authority is making clear that, subject to the further reviews required by Article 21(3) of the BMR, it intends to use its powers to compel IBA to continue to publish the US Dollar LIBOR Versions for a final period until the end of September 2024, but not beyond that date.

3. DEFINITIONS

3.1. In this Notice, the following definitions apply:

"the Benchmarks Regulation" or "BMR" means the Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, which is part of UK law by virtue of the European Union (Withdrawal) Act 2018, as amended by the Financial Services Act 2021 and the Critical Benchmarks (References and Administrators' Liability) Act 2021;

"LIBOR" means the LIBOR benchmark provided by IBA;

"version" has the meaning in Article 23G(2) of the BMR and is used to refer to LIBOR as provided for a particular currency and tenor, sometimes known as a LIBOR setting.

4. REASONS FOR ACTION

Background

- 4.1. All of the US Dollar LIBOR panel banks communicated to IBA that they intended to cease contributing input data to the US Dollar LIBOR Versions after 30 June 2023. Following this, the Authority decided that it would not exercise its powers under Article 23(6) of the BMR to compel continued panel bank contributions to LIBOR.
- 4.2. IBA concluded that, as a result of IBA not having access to input data necessary to calculate the USD LIBOR Versions on a representative basis beyond 30 June 2023, IBA would have to cease these versions immediately following publication on 30 June 2023 unless the Authority were to exercise its powers to require IBA to continue publishing these LIBOR settings under a changed "synthetic"

methodology.

- 4.3. IBA formally notified the Authority on 4 March 2021 of its intention to cease providing the US Dollar Versions immediately following publication on 30 June 2023, unless the Authority were to exercise its powers to require IBA to continue to publish LIBOR versions using a changed, "synthetic" methodology. As required by the BMR, each of IBA and the Authority have separately assessed how LIBOR is to be ceased to be provided.
- 4.4. Based on all the information available to the Authority regarding the use of each of the US Dollar LIBOR Versions, including feedback from market participants, the Authority considers that there will likely remain a small but material subset of contracts that will not be able to transition away from using US Dollar LIBOR by end-June 2023, and considers that it should exercise its power under Article 21(3) of the BMR to compel IBA to continue publication of each of the US Dollar LIBOR Versions for the maximum, initial 12-month period.
- 4.5. The Authority has decided not to exercise its power under Article 23(6) of the BMR to require contributors to continue contributing to the US Dollar LIBOR Versions. The Authority is aware that, given the number of contributors ceasing, it will not be possible for IBA to continue to publish the US Dollar LIBOR Versions on the basis of IBA's panel bank contributions-based methodology after 30 June 2023, and, therefore, the compelled publication of the US Dollar LIBOR Versions will not be on a panel bank contributions basis.
- 4.6. As noted above, the Authority has consulted on its intention to exercise its powers under Article 23D(2) of the BMR, in the event that (as the Authority intends) the US Dollar LIBOR Versions are designated as Article 23A benchmarks, to impose requirements on IBA relating to the way in which each of the US Dollar LIBOR Versions are determined so that they can continue to be published. The Authority intends, in line with its consultation, to require IBA to continue to publish the US Dollar LIBOR Versions under a changed, "synthetic" methodology, which will no longer be representative of the underlying market that LIBOR was intended to measure. This is subject to any representations IBA may make in respect of this notice and/or any notice to designate the US Dollar LIBOR Versions under Article 23A of the BMR.

Information we used to inform our decision-making

- 4.7. On 30 June 2022, the Authority published a public consultation setting out the expectation that the additional 18 months of panel bank US dollar LIBOR from January 2022 to June 2023 had provided market participants with considerable extra time to transition away to suitable

replacement rates.

- 4.8. While the majority of respondents said that they expect the majority of outstanding contracts to transition away by end-June 2023, there will likely remain a small but material subset of contracts that will not be able to transition away by that date, and they indicated that a short additional period of publication beyond end-June 2023 on a synthetic basis may help market participants to transition this subset of outstanding contracts.
- 4.9. On 23 November 2022, the Authority published a further public consultation, on a proposal to require IBA to continue publication of the US Dollar LIBOR Versions under a changed methodology beyond end-June 2023 for an additional limited period until end-September 2024. The consultation closed on 6 January 2023 and the Authority has taken account of all responses received relating to the US Dollar LIBOR Versions, alongside other available information, in reaching its decision.
- 4.10. The Authority's consultation received almost unanimous support for continued publication of the US Dollar LIBOR Versions beyond end-June 2023. Based on this feedback, and on the data and information available, the Authority has decided to exercise its power under Article 21(3) of the BMR for the maximum, initial period of 12 months.
- 4.11. Whilst half of the responses were broadly aligned with the Authority's proposed duration of compulsion, i.e. until end-September 2024, the Authority received feedback from others that some exposures may prove to be more challenging to transition and might potentially remain outstanding after this date: as such, the compulsion period should continue to be reviewed by the Authority.
- 4.12. The Authority will carry out all reviews required by Article 21(3) of the BMR and its duties under public law - including before the end of the compulsion period, to take account of the prevailing circumstances. However, the Authority must balance the interests of borrowers and lenders without fallbacks against those of borrowers and lenders - and parties to other contracts - whose contracts contain fallbacks that will be triggered by cessation of the US Dollar LIBOR Versions; and also the imposition of requirements on LIBOR's administrator IBA, which is being required to continue to publish LIBOR in an unrepresentative form. The Authority has been clear that it will not require continued publication of LIBOR versions for the convenience of those who could take action to convert their contracts, but have not done so.
- 4.13. The Authority considers that it is possible for cessation to be orderly

even if not every contract has transitioned away or been equipped with a workable fallback, provided there is not sufficient scale of un-remediated contracts to pose a threat to market integrity or to an appropriate degree of protection for consumers.

- 4.14. On the basis of current evidence, the Authority remains of the view that an additional 15 months of continued publication provides sufficient time for market participants with exposures to the US Dollar LIBOR Versions to have transitioned them to an appropriate alternative rate. Any outstanding exposures beyond the end of September 2024 may be due to parties to contracts having made a conscious choice not to transition, or having failed to take steps to transition in a timely manner. The Authority has been clear that it will not require continued publication of LIBOR versions for the convenience of those who could take action to convert their contracts, but have not done so.
- 4.15. Furthermore, the Authority considers that providing the market with a clear intended cessation date, with considerable notice, will provide additional impetus for parties to act and will therefore support the transition.

Conclusion

- 4.16. The Authority considers that it is necessary for it to compel IBA to continue publication of the US Dollar LIBOR Versions immediately after publication of the US Dollar LIBOR Versions on 30 June 2023 is concluded, in order to avoid their disorderly cessation. The Authority has decided to use its powers under Article 21(3) of the BMR for the maximum, initial period of 12 months. Subject to the reviews required by Article 21(3) of the BMR, the Authority intends to use its powers to compel IBA to continue to publish the US Dollar LIBOR Versions for a further period beyond this, until the end of September 2024, but not beyond that date. This gives market participants adequate notice of intended cessation, in order that the US Dollar LIBOR Versions may be ceased to be provided in an orderly fashion.

5. PROCEDURAL MATTERS

- 5.1. This Notice constitutes the Authority's First Decision for the purposes of MAR 8.7.5G and is given to IBA in accordance with MAR 8.7.5G. IBA may make written representations by email to the Authority. The deadline for making written representations is 28 March 2023. The address for doing so is:

Vanessa LeBlanc
Manager, Benchmarks Supervision
Email: vanessa.leblanc@fca.org.uk

- 5.2. MAR 8.7.7G(1) states that where written representations are made to the Authority, the Authority will review its decision and will decide whether to maintain, vary or revoke it. MAR 8.7.7(G)(4) further states that when the Authority has completed the above review, the Authority will issue a written notice which gives details of the decision in response to the review, its reasons for that decision and state the date on which that decision takes effect.

6. AUTHORITY CONTACTS

- 6.1. For more information concerning this matter generally, contact Vanessa LeBlanc at the Authority (email: vanessa.leblanc@fca.org.uk).

JON RELLEEN

Director of Infrastructure and Exchanges (Supervision, Policy and Competition Division), for and on behalf of the Authority

SIMON WALLS

Director of Wholesale Sell-Side (Supervision, Policy and Competition Division), for and on behalf of the Authority