
ARTICLE 23A BENCHMARKS REGULATION – NOTICE OF DESIGNATION

To: ICE Benchmark Administration Limited

Reference Number: 608291

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

Date: 29 September 2021

1.. ACTION

- 1.1. For the reasons given in this Notice and pursuant to Article 23A(4) of the Benchmarks Regulation, the Financial Conduct Authority (“the Authority”) has decided to designate the following versions of LIBOR, each being for these purposes treated as a critical benchmark provided by ICE Benchmark Administration Limited (“IBA”), as Article 23A benchmarks:
- (1) 1-month Sterling LIBOR, 3-month Sterling LIBOR and 6-month Sterling LIBOR (“Sterling LIBOR Versions”); and
 - (2) 1-month Yen LIBOR, 3-month Yen LIBOR and 6-month Yen LIBOR (“Yen LIBOR Versions”).
- 1.2. Such designation shall take effect at 00:01 on 1 January 2022.

2.. SUMMARY OF REASONS

- 2.1. The Authority considers that it is appropriate to designate the 6 LIBOR Versions under Article 23A BMR, taking into account the Article 23A [Statement of Policy](#) published under Article 23F(1)(b).
- 2.2. The Authority has decided to designate the 6 LIBOR Versions as it considers the representativeness of each of the 6 LIBOR Versions is at risk and IBA cannot maintain

and the Authority will not restore their representativeness, in each case after 31 December 2021. The Authority considers that there are good reasons to designate the 6 LIBOR Versions under Article 23A, in order to access the Article 23D power to sustain the 6 LIBOR Versions to secure their orderly wind down.

- 2.3. The designation of the 6 LIBOR Versions shall take effect at 00:01 on 1 January 2022. The contributors to the 6 LIBOR Versions will no longer make submissions to IBA after 31 December 2021, and consequently, these 6 LIBOR Versions cannot continue to be published on a representative basis after the contributors' departure.

3.. DEFINITIONS

- 3.1. The definitions below are used in this Notice:

"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;

"LIBOR" means the ICE LIBOR benchmark provided by IBA;

"6 LIBOR Versions" means the 6 versions of LIBOR that the Authority has decided to designate under Article 23A of the BMR. It includes the Sterling LIBOR Versions and the Yen LIBOR Versions;

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);

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

Section 9 and section 23(3) of the Interpretation Act 1978 shall apply to the references to the time of day in paragraphs 1.2, 2.3 and 4.31.

4.. REASONS

Background

- 4.1. As a result of a majority of LIBOR panel banks notifying IBA of their intention to cease contributing to the 6 LIBOR Versions at end-2021, 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, the administrator of LIBOR, to continue publishing the 6 LIBOR Versions on the basis of its panel bank contributions-based methodology after end-2021.

- 4.2. On 4 March 2021, IBA provided the Authority with a formal notification, under Article 21(1) of the BMR, of its intention to cease publishing all LIBOR versions, including the 6 LIBOR Versions. IBA noted that it intended to cease providing the LIBOR versions on the proposed cessation dates, unless the Authority were to exercise its powers to require IBA to continue publishing LIBOR versions using a changed 'synthetic' methodology.
- 4.3. As required by the BMR, IBA and the Authority have assessed how LIBOR is to be ceased to be provided.
- 4.4. The Authority has decided to compel IBA, under Article 21(3) of the BMR, to continue to publish the 1, 3 and 6 month sterling and Japanese yen LIBOR versions. On 10 September 2021, the Authority has given notice under MAR 8.7 (of the FCA Handbook) of [this decision](#) to IBA.
- 4.5. Following the decision to compel publication of the 6 LIBOR Versions under Article 21(3), the Authority has assessed and found that the 1, 3 and 6 month sterling and Japanese yen LIBOR versions would not be able to continue to represent the markets they seek to measure after most panel banks cease their contributions at end-2021 and so the Authority considers that the representativeness of the 6 LIBOR Versions is at risk. Consequently, on 10 September 2021, the Authority served a written notice on IBA under Article 21(3B)(a) of the BMR stating this finding. Consequently, on the basis of this finding, the Authority has decided to designate the 6 LIBOR Versions under Article 23A of the BMR.

Reasons for Designation

- 4.6. The Authority considers that the representativeness of each of the 6 LIBOR Versions is at risk and IBA cannot maintain and the Authority will not restore their representativeness, in each case after 31 December 2021. The 6 LIBOR Versions will therefore, become permanently unrepresentative on 1 January 2022.
- 4.7. The Authority may, if it considers it appropriate to do so, designate a critical benchmark (or any versions of a critical benchmark), under Article 23A of the BMR, if it has given the administrator a notice under Article 21(3B)(a) of the BMR that it considers that the representativeness of the benchmark is at risk, and if the benchmark's representativeness cannot reasonably be restored by the Authority exercising its powers under Article 23(6) of the BMR **or** if the representativeness can

be restored by the exercise of these powers, but there are not good reasons to restore it. The Authority has the option, not the obligation to designate if these circumstances arise.

- 4.8. The Authority has decided to designate the 6 LIBOR Versions as the representativeness of the 6 LIBOR Versions is at risk due to most of the panel banks ceasing their contributions at end-2021 and IBA cannot preserve and the Authority will not maintain their representativeness, in each case after this date. The Authority considers that there is adequate justification to designate the 6 LIBOR Versions under Article 23A of the BMR, in order to access the Article 23D power to sustain the 6 LIBOR Versions to secure their orderly wind down.
- 4.9. The Authority has taken into account the factors in the Article 23A [Statement of Policy](#) as set out below.

Restoration and maintenance of representativeness

- 4.10. IBA confirmed in its 5 March 2021 [Feedback Statement on Consultation on Potential Cessation](#) of LIBOR that it could not produce the 6 LIBOR Versions on a representative basis once panel banks depart and that it would have to cease to publish the 6 LIBOR Versions unless the Authority exercised its powers to compel continued publication under an unrepresentative “synthetic” methodology.
- 4.11. In its 5th March 2021 [announcement on the future cessation and loss of representativeness of LIBOR](#), the Authority confirmed that it will not require any panel banks to continue to submit to LIBOR beyond the dates from which they have notified their departure, or require IBA to continue to publish LIBOR on the basis of panel bank submissions beyond such dates.

Are there good reasons to restore the representativeness?

Would restoration of representativeness advance our consumer protection and / or integrity objectives?

- 4.12. The Authority does not consider that its consumer protection and market integrity objectives would be furthered by seeking to restore representativeness by compelling contributors. Any restoration or maintenance of representativeness would prolong exposure of benchmark users, including consumers, to panel bank LIBOR. Whilst this might give them additional time to transition, the Authority has concerns about the suitability of the rate for continued widespread use. For example, at the start of the Covid crisis, central banks reduced interest rates in order to reduce the impact of the crisis. Converse to these actions, during this period, the spread of LIBOR over risk-free rates spiked. Arguably, consumers should not be exposed to inter-bank credit risk

that they are not well placed to understand or manage. Thus, intervening to compel panel banks may be inconsistent with our consumer protection objective, especially as the Authority has other tools to meet the risk of the cessation of the rate.

- 4.13. The Authority also has concerns about whether compelled, panel-bank based LIBOR would remain sufficiently robust and reliable to protect market integrity.
- 4.14. Given this, the Authority does not think that seeking to restore representativeness through compelling contributors would advance its consumer protection or market integrity objectives.

Market expectations and preparedness

- 4.15. Since July 2017, the Authority's public communications (in multiple speeches and statements) have made it clear that the Authority did not intend to exercise its powers to restore or maintain LIBOR's representativeness after end-2021. The Authority has also been clear to panel banks that it did not, and does not, intend to do so.
- 4.16. On March 5 2021, (in the above-mentioned [announcement](#)) the Authority stated that it will not require any panel banks to continue to submit to LIBOR beyond the dates from which they have notified their departure, or to require IBA to continue to publish LIBOR on the basis of panel bank submissions beyond such dates.
- 4.17. In addition, since July 2017, market participants and authorities have undertaken substantial LIBOR transition activities, including developing new risk free rates ("RFRs") and RFRs-referencing products, communicating with clients to raise awareness of LIBOR transition and inserting into their LIBOR contracts robust fallbacks that operate on a cessation trigger generally and, in some cases, include a loss of representativeness trigger (as is the case with the ISDA Protocol). This has been consistent with the international policy recommendation set by the Financial Stability Board (outlined in its 22 July 2014 [Reforming Major Interest Rate Benchmarks Report](#)) to reduce systemic reliance on IBORs.
- 4.18. Market-led LIBOR transition efforts have prepared the market for the situation in which the 6 LIBOR Versions become unrepresentative (and/or cease). New markets have been established and the majority of legacy derivatives products and some legacy cash products contain robust loss of representativeness triggers and fallbacks.

Sustainability of representativeness

- 4.19. Given the notifications submitted by a majority of contributors to IBA about their intention to cease contributing, it is likely that LIBOR's representativeness could only be restored for the duration of any compulsion period – i.e. the majority of panel

banks would not volunteer to contribute to the 6 LIBOR Versions beyond this period. Therefore, the exercise of the restoration power would only further delay the inevitable.

- 4.20. This means that the representativeness of the 6 LIBOR Versions could only be maintained for a maximum period of 5 years. In addition, the Authority would need to continue to monitor the underlying markets of the 6 LIBOR Versions and whether those markets continued to exist or diminish, and would be required to review any compulsion period every 12 months. Subsequently, if any of the 6 LIBOR Versions' underlying markets ceased to exist, any compulsion would need to cease. Given the fragility and risk of diminution of the underlying markets of the 6 LIBOR Versions, unnecessary uncertainty would be created.

Impact on Contributors

- 4.21. Existing LIBOR contributors have expressed their concern about the legal and reputational risks associated with continuing to contribute to LIBOR.
- 4.22. In addition, the Authority has previously noted in [PS18/5](#) (on Powers in relation to LIBOR contributions) that requiring a new contributor to contribute input data may involve that contributor in material costs and that it could also take time for a new contributor to put in place the systems and controls to allow it to contribute with confidence. This would also require the Authority to undertake substantial and complicated work to identify whether banks are active participants in the relevant underlying market and to engage with banks to understand the feasibility of their contributing input data.
- 4.23. Taking these considerations into account, the Authority does not consider that there are sufficient good reasons to maintain the 6 LIBOR Versions' representativeness after 31 December 2021.

Is there adequate justification to designate?

Does Article 23A designation and exercise of our new powers offer a better route than cessation at end-2021?

- 4.24. The Authority has concluded that none of the 6 LIBOR Versions could be ceased in an orderly fashion at end-2021 due to significant legacy exposures.
- 4.25. IBA has indicated that it cannot determine LIBOR on a representative basis once the panel banks depart and the Authority has decided not to seek to restore representativeness. Consequently, following the exercise of the Article 21(3) power to

compel continued publication, the only remaining way to sustain the 6 LIBOR Versions is for the Authority to exercise its power under Article 23D of the BMR to change the methodology to a 'synthetic' one. The Authority has consulted on its intention to exercise its Article 23D powers under the BMR, in the event that the 6 LIBOR versions are designated as Article 23A benchmarks, to impose requirements on IBA relating to the way in which each of the 6 LIBOR Versions are determined so that they can continue to be published. This solution would prevent the widespread market disruption which would otherwise be caused by the cessation of the 6 LIBOR Versions at end-2021.

- 4.26. The automatic prohibition on use in Article 23B of the BMR prevents new contracts from being written on Article 23A benchmarks. This is a beneficial consequence of designation under Article 23A of the BMR, in that, upon designation becoming effective, the prohibition will curtail increasing exposures to the permanently unrepresentative 6 LIBOR Versions as they continue to be wound-down.
- 4.27. Designating each of the 6 LIBOR Versions under Article 23A of the BMR and accessing powers to permit legacy use and to make changes to the 6 LIBOR Versions, offers a better route to winding them down in an orderly manner.

Contractual Fallbacks

- 4.28. In addition, the Authority has considered whether designation under Article 23A of the BMR would be a helpful part of the 6 LIBOR Versions' orderly wind-down, as it could engage contractual triggers and fallbacks. An Article 23A designation notice may serve as a clear and unambiguous pre-cessation trigger for fallbacks. However, given the Authority's 5th March announcement, the Authority considers the position is clear and this notice would serve mainly to confirm the previously communicated position: that is that the 6 LIBOR Versions will become permanently unrepresentative from 1 January 2022.

Alignment with other authorities

- 4.29. Given the extent of LIBOR's usage globally, the Authority has considered whether its actions are consistent with other authorities' actions and expectations. As the regulator of IBA, the Authority is uniquely placed to intervene in a way that could assist contract counterparties in many jurisdictions find a consistent way of managing legacy LIBOR exposures. The Authority has engaged with international authorities, including the Financial Stability Board's Official Sector Steering Group, IOSCO and the authorities in the 5 LIBOR currency jurisdictions on trying to ensure the orderly cessation of LIBOR.

- 4.30. The Japan Financial Services Agency and the Bank of Japan have been closely involved in the Authority's work and thinking and agree with the Authority's decision to designate the Yen LIBOR Versions. The Bank of England has also been closely involved in LIBOR transition matters and the Authority's endgame strategy in respect of the sterling LIBOR settings. The Bank of England supports the Authority intervening to designate the Sterling LIBOR Versions for a limited time period to support an orderly wind-down of legacy contracts.

Timing of the Designation

- 4.31. The Authority has decided that these designations shall become effective at 00:01 on 1 January 2022. This aligns with the departure of the panel bank contributors and our exercise of the power under Article 21(3) of the BMR to compel the continued publication of the 6 LIBOR Versions. As IBA has indicated that it cannot determine the 6 LIBOR Versions on a representative basis once the panel banks depart and the Authority has decided not to seek to restore the representativeness of the 6 LIBOR Versions, the only remaining way to sustain the 6 LIBOR Versions is to exercise the powers under Article 23D of the BMR to change the methodology to a 'synthetic' one, following the designation of the 6 LIBOR Versions under Article 23A of the BMR, so that IBA is compelled to publish the 6 LIBOR Versions under a "synthetic" methodology.
- 4.32. The Authority will update the Benchmarks Register to inform supervised benchmark users of the change in status of the 6 LIBOR Versions.

Effects of the Designation

- 4.33. Article 23B of the BMR provides that all use (as defined in Article 3.1(7) of the BMR) by supervised entities of an Article 23A benchmark is prohibited when the Article 23A designation takes effect, except where we make exemptions under Article 23C of the BMR. In addition, the Authority may, by issuing a public notice, delay the prohibition for up to four months beginning with the day on which the Article 23A designation takes effect.
- 4.34. The prohibition on use of the 6 LIBOR Versions under Article 23B of the BMR would take effect on 1 January 2022.

5.. PROCEDURAL MATTERS

- 5.1. This Notice is given to IBA under Article 23A(4) of the Benchmarks Regulation and in accordance with The Benchmarks (Provision of Information and Documents) Regulations (SI 2021/812). It is published in accordance with Article 23A(10)(b) of the Benchmarks Regulation 2021.
- 5.2. This Notice is given to the Treasury pursuant to Article 23A(11) of the Benchmarks Regulation.
- 5.3. The following statutory rights are important.

The Tribunal

- 5.4. IBA has the right to refer the matter to which this Notice relates to the Tribunal. Part 9 of the Financial Services and Markets Act 2000 (hearings and appeals) applies in relation to any such reference to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, IBA has 28 days from the date on which this Notice is given to it to refer the matter to the Tribunal.
- 5.5. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by IBA and filed with a copy of this Notice. The Tribunal's contact details are: Upper Tribunal (Tax and Chancery Chamber), 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: financeandtaxappeals@hmcts.gsi.gov.uk).
- 5.6. Further details are contained in "Making a Reference to the Upper Tribunal (Tax and Chancery Chamber)" which is available from the Tribunal website: <http://formfinder.hmctsformfinder.justice.gov.uk/t400-eng.pdf>.
- 5.7. A copy of the reference notice must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to [Christopher Simon] at email: christopher.simon@fca.org.uk and the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN].

AUTHORITY CONTACTS

- 5.8. For more information concerning this matter generally, contact Christopher Simon at the Authority (email: christopher.simon@fca.org.uk).

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CLARE COLE

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