6 September 2012

Dear Sirs

Response to The Wheatley review of LIBOR: initial discussion paper ("the Consultation")

The Loan Market Association ("**LMA**") welcomes the opportunity to provide a response to the Consultation and hopes that its comments will be useful in the ongoing review.

The LMA is the trade body for the European syndicated loan market and was founded in December 1996 by banks operating in that market. Its aim is to encourage liquidity in both the primary and secondary loan markets by promoting efficiency and transparency, as well as by developing standards of documentation and codes of market practice, which are widely used and adopted. Membership of the LMA currently stands at 490 and consists of banks, non-bank investors, law firms, rating agencies and service providers. The LMA has gained substantial recognition in the market and has expanded its activities to include all aspects of the primary and secondary syndicated loan markets. It sees its overall mission as acting as the authoritative voice of the European loan market vis à vis lenders, borrowers, regulators and other interested parties.

The following summarises the LMA's initial response to the specific questions raised in the consultation as well providing additional commentary on issues specific to the syndicated loan product.

Overview

Given the short timeframe for responses and the likelihood that many LMA members will submit individual responses, this LMA submission focuses primarily on LIBOR as a benchmark within loan documentation. We are, of course, very aware of the widespread use by syndicated loan borrowers and lenders of derivative products as hedging tools, such as swaps, caps, collars and floors and the importance of LIBOR as a common benchmark for such instruments, but feel commentary on this aspect falls outside our specific area of expertise.

In addition, it should be recognised that, while larger UK syndicated loans are typically benchmarked to LIBOR, many SME loans are likely to be either at fixed rate or benchmarked to base rate. The same may be true in other European jurisdictions.

LMA Documentation Language

The current LMA loan facility template agreements include the following language in the various primary template facility agreements:

Calculation of interest

The rate of interest on each loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

(a) Margin

(b) LIBOR [or in relation to any Loan in euro, EURIBOR]; and

(c) Mandatory Costs if applicable.

The same approach is taken with reference to the calculation of Default Interest.

"LIBOR" is defined as:

(a) the applicable screen rate; or

(b) (if no Screen Rate is available for the currency or interest period of that loan) the Reference Bank Rate,

as of the Specified Time on the Quotation Day for the currency of that Loan and for a comparable period to the Interest Period of that Loan.

"Screen Rate" is defined as:

(a) in relation to LIBOR, the British Bankers Association Interest Settlement Rate for the relevant currency and period; and

(b) in relation to EURIBOR, the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period,

displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Company and Lenders.

While we do not have access to actual loan agreements, we understand that this "standard LMA language" has been typically incorporated into actual loan facility agreements over the course of the past ten years or so.

We have also issued an advisory paper to members with optional wording that can be used if they seek to address situations where LIBOR rates have been negative.

The proposed revised LIBOR definition is:

(a) the applicable screen rate; or

(b) (if no Screen Rate is available for the currency or interest period of that loan) the Reference Bank Rate,

as of the Specified Time on the Quotation Day for the currency of that Loan and for a comparable period to the Interest Period of that Loan and, if any such rate is below zero, LIBOR will be deemed to be zero.

LIBOR is also referenced in other LMA documents such as:

- the LMA Terms and Conditions for trade transactions incorporates the concept of delayed settlement compensation and the calculation methodology includes using average LIBOR rates over the delay period.

- the concept of "breakfunding" arises in the secondary market. This seeks to ensure that neither party to the trade is disadvantaged as a result of movements in the underlying funding rate where the trade settlement date does not coincide with the next rollover date and the calculation is based on the difference between the LIBOR from Settlement Date to the next loan rollover date and the relevant funding rate for the loan during the interest period. Breakfunding is not an LMA standard default position within the Standard Terms and Conditions but we understand it is frequently applied in the market as an "additional term of trade."

Finally, we have been advised that most CLO agreements use a LIBOR benchmark with fallback to Reference Banks. As there is no alternative benchmark and so any new benchmark would require revision to existing contracts. CLO vehicles have been substantial investors in loans over the past few years and this aspect should be borne in mind when considering possible revisions to existing benchmarks.

Given this widespread use of LIBOR in documentation, we are concerned that revising the method of calculation or reference to the "BBA" might introduce legal uncertainty and this must be a key consideration in the review.

The attached Appendix lists the specific questions to which we have provided an LMA response. Given the LMA role, we believe that it is more appropriate for market participants to respond to most of the questions

Yours faithfully

Clare Dawson

Clare Dawson
Managing Director
The Loan Market Association

Appendix - Consultation Questions

Question	LMA Comment
Could the number of maturities and currencies currently covered by the LIBOR benchmark be reduced?	Our research indicates that, while the majority of drawings under syndicated loan agreements are in GBP, USD and EUR, other currencies are drawn. While the latter is a relatively small percentage, it nonetheless is a substantial amount given the very large volume of syndicated loans outstanding. Our research indicates that the vast majority of maturities are for 2-week, 1-month, 3-month and 6-month periods.
Which types of financial contract, if any, would be particularly affected by the risks of a transition from LIBOR?	A great many current loan agreements use LIBOR as a benchmark and we are concerned that a transition from LIBOR would introduce a degree of legal uncertainty. Any transition period would have to lengthy and very carefully managed.
Are there credible alternative benchmarks that could replace LIBOR's role in the financial markets?	It is not clear that credible alternative benchmarks currently exist that replicate all the practical useful features of LIBOR.
Should an alternative benchmark fully replace LIBOR or should it substitute for LIBOR in particular circumstances?	Difficult to envisage this being practicable in the loans context as they are private agreements between borrowers and lenders.
Should particular benchmarks be mandated for specific activities?	Difficult to envisage a "mandatory" benchmark in the loans context.
Over what time period could an alternative to LIBOR be introduced?	The transition period would have to be lengthy, say 5 years, but it should be noted that longer term loan facilities may be seen in certain sectors of the market e.g. project finance.