Minutes of LIBOR Trade Association Working Party Meeting

held on 29 July 2020

Present:

AFME
APLMA
GFMA
ICMA
ICMSA
ISDA
JSLA
LMA
LSTA
TACT
UK Finance

1. Introduction

The purpose of the meeting was for the trade associations to provide updates on any developments in respect of LIBOR transition since the last meeting.

2. AFME update

AFME continues to focus on securitisation issues.

As mentioned at the last meeting of the Sterling Bond Sub-Group, some AFME members expressed interest in following-up on the remarks made by the Bank of England Governor, Andrew Bailey, in his speech on 13 July 2020. In particular, AFME members are keen to prepare a call for action to progress with solving for some of the transition issues in respect of deals which are difficult to transition, but not impossible in the sense of 'tough legacy'. As a result, AFME and ICMSA are expecting to discuss further how to help members identify the deals that could transition by way of active transition ahead of end-2021, whilst continuing to work through the constraints that securitisation market participants face when engaging in active transition by way of consent solicitation.

On 23 June 2020, UK HM Treasury published a written ministerial statement announcing that it intends to bring forward legislation to amend the UK Benchmarks Regulation to give the UK Financial Conduct Authority ("**FCA"**) enhanced powers to help manage and direct an orderly wind-down of critical benchmarks such as LIBOR, and, in particular, help deal with the problem identified by the Working Group on Sterling Risk-Free Reference Rates ("**Sterling RFR Working Group**") of 'tough legacy' contracts. The FCA also published a statement and a Q&A webpage on the proposed legislation and what the changes to its powers are intended to achieve. On 23 July 2020, HM Treasury, FCA and Bank of England announced an online roundtable, which is being held at 10:00 (BST) on 6 August 2020, as an opportunity to put forward questions in relation to the statement and associated FCA Q&A webpage. AFME is collating feedback from its wider membership and is planning to submit questions.

3. APLMA update

The APLMA continues to focus on market outreach and education. In particular, on 8 July 2020, the APLMA and Bloomberg co-hosted a LIBOR transition roundtable which focused on the practical and logistical challenges facing lenders and borrowers ahead of end-2021, as well as APAC's state of readiness for the transition. The roundtable was attended by over 800 people. On 23 July 2020, APLMA participated in a virtual event hosted by ASIFMA that was also joined by ICMA, ISDA and the Hong Kong Monetary Authority ("**HKMA**"), and which discussed IBOR transition in APAC. This event was attended by more than 700 people.

On 13 July 2020, ASIFMA published an *'IBOR Transition Guide for Asia'*, which was co-produced by the APLMA, ICMA and ISDA. The guide provides an overview of key implementation issues Asian financial institutions should consider in preparing to transition from LIBOR to risk-free reference rates ("**RFRs**") by end-2021. The guide also provides a practical implementation checklist.

On 10 July 2020, the HKMA published a letter addressed to the chief executives of all authorised institutions. The letter provides an update on the latest results of the Survey on Reform of Interest Rate Benchmarks in Hong Kong and the key milestones that authorised institutions should endeavour to achieve in the transition to RFRs. The transition milestones are broadly in line with those in the US and UK markets.

On 16 July, the APLMA published an overlay on the LMA's Exposure Drafts, which provided a significant leap forward in terms of creating a basis for RFR-based template documentation and importantly have been instrumental in identifying critical structuring issues which arise when adopting RFR's in loan contracts. It was noted that in some APAC countries, there may be various additional local considerations at hand, including legal, regulatory or market practice issues which need to be taken into account when contemplating the introduction of RFR based loan products and documentation. The APLMA therefore produced a high level survey of various APAC jurisdictions which focuses on conventions for interest calculations, the observation period, the length of the lag period and availability of primary screen rates, in order to ascertain if there are any additional impediments to the adoption of RFR's. The country by country report indicates that there are indeed some challenges in certain jurisdictions.

4. GFMA update

GFMA continues to regularly circulate its monthly newsletter focused on regional and global updates to help its members keep abreast of the developments with respect to the transition.

On 1 July 2020, the Financial Stability Board ("**FSB**") reiterated its view that financial and non-financial sector firms across all jurisdictions should continue their efforts to make wider use of RFRs to reduce reliance on IBORs where appropriate and, in particular, to remove remaining dependencies on LIBOR by the end of 2021. On 9 July 2020, the FSB and the BCBS published a report to the G20 on supervisory issues associated with benchmark transition. The report sets out three recommendations around: (i) the identification of transition risks and challenges; (ii) facilitation of LIBOR transition; and (iii) coordination - for authorities to support financial institutions' and their clients' progress in transitioning away from LIBOR. On 18 July 2020, the importance of the end-2021 deadline for the transition away from LIBOR was also reinforced in the G20 communique.

GFMA attended the recent meeting between trade associations and the FSB Official Sector Steering Group ("**OSSG**"), where it was clear that there is willingness on the part of the public sector in the different currency jurisdictions to work with the private sector to support meeting the interim deadlines and milestones set out by the different currency working groups. Going forward, it will be crucial to identify the key blockers and dependencies in respect of the transition and communicate these internationally so as to facilitate multi-jurisdictional coordination and alignment between products to the extent possible.

5. ICMA update

Following on from the publication by the Bank of England of a summary of the feedback received on the Discussion Paper entitled ***"Supporting Risk-Free Rate transition through the provision of compounded SONIA"*** and its response to that feedback, on 6 July 2020, the Bank confirmed that it will publish a daily SONIA Compounded Index for the first time on 3 August 2020. This is a key milestone from the perspective of the sterling bond market.

Following the publication of the results of the consultation on credit adjustment spreads for fallbacks in cash products referencing GBP LIBOR, ICMA and LMA had been working on a proposed statement containing a recommendation following the results of the consultation. The draft statement is now finalised. The next steps involve looking at who would publish the adjustment spread.

Work in respect of the Sterling Cash Market Legacy Transition Task Force paper focused on the bond market has now been finalised. This is a short educational piece which is intended to encourage active transition in the bond market, including by providing information on the process of conducting consent solicitations. A similar paper is expected to be published in respect of loans.

ICMA continues to monitor announcements by HM Treasury on its intention to bring forward legislation to address 'tough legacy' contracts. ICMA will also continue to monitor developments on the announcement by the European Commission on 24 July 2020 of a proposal for a regulation amending the EU Benchmarks Regulation ("**BMR**"). The proposal aims to ensure that when a widely used benchmark is phased out, it does not cause disruptions to the economy and harm financial stability in the EU. It was noted that there are many outstanding questions about how the announced intentions by the regulators to introduce legislation to deal with the transition would work in practice across the UK, US and EU.

In anticipation of the HM Treasury, FCA, and Bank of England roundtable regarding the intention to bring forward legislation to address 'tough legacy' LIBOR contracts on 6 August 2020, ICMA submitted a number of questions to the RFR Secretariat. It is hoped that the roundtable will provide clarity on these.

6. ICMSA update

ICMSA is working on reviewing the draft wording for negative consent language for EURIBOR. ICMSA is working with its members to identify some of the key concerns in this respect and to ensure that the final version of this document works for all parties.

Individual ICMSA members continue to work with their clients, including by having discussions around conventions. ICMSA is continuing to work on outreach and education to the wider market.

It was noted that there are a number of practical difficulties arising from using the wording from one jurisdiction in the context of another jurisdiction or a multinational transaction. For example, whilst a 2 day lookback for SOFR might be workable in the US context, it is much more difficult to apply on a multinational deal where the issuers, agents and clearing systems are all based in different geographical locations.

ICMSA continues to work on a number of bulletins on outstanding key issues and market updates, which are expected to be released throughout H2 2020.

Along with other trade associations represented on the Working Party, on 10 July 2020, ICMSA participated in the FSB OSSG roundtable on reforming major interest rate benchmarks.

On 12 June 2020, ICMSA published a bulletin entitled ***"The discontinuation of LIBOR/IBORS – timeline of a consent solicitation***", which provides some background and explanation of the process around consent solicitations, including timelines.

7. ISDA update

ISDA will soon launch amendments to the 2006 ISDA Definitions to implement new fallbacks and the IBOR Fallback Protocol to facilitate inclusion of the new fallbacks in existing non-cleared IBOR derivatives transactions between counterparties that both adhere to the protocol. The final launch date will depend on completion of review by the competent authorities. The effectiveness of amendments to the 2006 ISDA Definitions and related protocol is estimated for end-2020, but will be at least three months after the launch date.

On 21 July 2020, it was announced that Bloomberg started calculating and publishing fallbacks that ISDA intends to implement for certain key IBORs. These are available on the Bloomberg terminal, but also on a 24 hour delay basis on Bloomberg's website.

On 21 July 2020, ISDA published its *'Interest Rate Benchmark Review: First Half of 2020 and Second Quarter of 2020'.* This report uses data from the Depository Trust & Clearing Corporation swap data repository. It therefore only covers trades that are required to be disclosed under US regulations. On 28 July 2020, ISDA launched an RFR adoption indicator to monitor the adoption of RFRs in derivatives trading. The indicator will provide a monthly snapshot of RFR trading activity in interest rate derivatives markets, based on global cleared over-the-counter and exchange-traded derivatives data from seven central counterparties spanning six currencies. The indicator is intended to help derivatives market participants keep tabs on progress to shift to RFRs ahead of the end of 2021. ISDA also published a white paper explaining the methodology of the RFR adoption indicator.

ISDA is working on analysing the potential implications of the announced intention by the US, UK and EU authorities to introduce legislative solutions in the context of the transition.

On 14 July 2020, ISDA held a virtual conference on the path forward for LIBOR transition, which is now available on demand. Speakers include Director of Markets and Wholesale Policy at the FCA, Edwin Schooling Latter, and Chairman of Institutional Securities at Morgan Stanley and Chair of the US Alternative Reference Rates Committee ("**ARRC**"), Tom Wipf. On 16 and 18 September, ISDA is holding a Benchmark Strategies Forum in Asia Pacific and Japan, respectively.

8. JSLA update

The last meeting of the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks took place on 16 July 2020. In the meeting, there was an update on the global discontinuation of interest rate benchmarks, updates from the sub-groups and Task Force on Term Reference Rates, and a discussion about an upcoming draft public consultation. The minutes of the meeting will be published in due course.

Work is ongoing with respect to selecting a spread adjustment that will apply to either term reference rates, to overnight RFR compounded in arrears and to TIBOR as a replacement benchmark.

In respect of a replacement benchmark for JPY LIBOR, the majority of respondents supported the waterfall structure as follows: (i) term reference rates; (ii) overnight RFR compounded in arrears; (iii) the alternate rate of interest that has been selected by the lender, giving due consideration to (a) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention, as well as taking into account the consistency with global discussions, market participants' preference for term reference rates and the Loans Sub-Group's discussion on spread adjustments for these rates.

It was acknowledged in the Committee meeting that it would be beneficial for the Committee to publish best practice recommendations to help develop a common understanding among the entire market.

On 26 May 2020, the Committee announced that QUICK Corp., a financial market information vendor which was selected in February 2020 as a calculating and publishing entity of prototype rates, has started publishing prototype rates for JPY term risk free rates calculated based on JPY overnight index swaps.

9. LMA update

The LMA continues to work on documentation, partly in light of some of the announcements made by the Sterling RFR Working Group in respect to the transition, including the announcement that after the end of Q3 2020, new and re-financed LIBOR-referencing loan products should include clear contractual arrangements to switch to SONIA or other alternatives ahead of end-2021.

The LMA is also currently looking into the European Commission's proposal for a regulation to amend the BMR. There are some concerns around possible implications arising from different regulators trying to come up with a one-size-fits-all solution. The LMA will review the proposal with its lawyers and provide representations to the regulators as appropriate.

Given the impact of Covid-19 on the ability to hold physical events, on 23 and 24 September 2020, the LMA is holding its Annual Syndicated Loans Conference in a virtual format. One of the panels will be focused on LIBOR transition and comprise of panellist representation from the regulators, banks and developing markets.

In respect of education, the LMA is sending out a regular LIBOR newsletter to its members which sets out information on key LMA initiatives on LIBOR transition, as well as the latest legal and regulatory news and other sources of useful information on the transition.

On 21 July 2020, the LMA published an updated table which sets out RFR referencing loans which have been announced to date. This reflects two new SONIA referencing loans. This table is available on the LMA LIBOR Microsite and is publicly available.

10. LSTA update

On 30 June 2020, the ARRC published its updated recommended contractual fallback language for USD LIBOR denominated syndicated loans. The updated fallback language amends the "hardwired approach" which was first published in April 2019. The ARRC's best practice recommendations state that syndicated loans should begin using hardwired fallback language from no later than 30 September 2020. In this update, the hardwired fallback language was updated to recommend the use of simple daily SOFR in arrears in the second step of the waterfall (behind forward-looking term SOFR) and include a more permissive early opt-in trigger, which allows parties involved in the loan to switch over to the fallback rate before LIBOR is officially discontinued or determined to be unrepresentative. The User's Guide section of the original document was also updated to explain the rationales and mechanics of all components of the fallback language.

On 22 July 2020, the ARRC released conventions related to using SOFR in arrears, both daily simple SOFR and daily SOFR compounded in arrears, in syndicated loans. The conventions follow the ARRC's key objectives for 2020, which identified the publication of recommended conventions and supporting materials for syndicated loans as a priority milestone for the year, as well as the ARRC's updated recommended hardwired fallback language for syndicated loans. The recommended conventions address both new loans that are originated using SOFR and legacy loans that "fall back" from USD LIBOR to SOFR upon the cessation of LIBOR or LIBOR being declared unrepresentative. It was noted that when term rates emerge, these will for the most part follow LIBOR conventions. Updates in respect of the ARRC's recommended hardwired fallback language for bilateral loans and corresponding conventions are both forthcoming.

On the LSTA side, the LSTA circulated for comment to its working party members the 'Daily Simple SOFR Concept Document'. The LSTA is also finalising the 'Compounded SOFR in Arrears Concept Document' and is looking at ways of transitioning legacy LIBOR-referencing documentation to SOFR.

11. TACT update

TACT continues to holds its lunchtime virtual sessions for members.

TACT continues to highlight to its members that when seeking to amend trust documentation, it is critical to ensure that the latest available benchmark discontinuation language is included. This is relevant at all stages of a deal. However, there are some concerns amongst TACT members that they may be asked to make consent payments when seeking to make changes to documentation arising from the transition, given that this has been increasingly the case when trying to amend documentation in the context of Covid-19.

12. UK Finance update

On 28 July 2020, the Sterling RFR Working Group published a statement confirming the publication of a suite of materials designed to assist market participants in taking action and progressing with the implementation of LIBOR transition plans. The materials include: (i) the Sterling RFR Working Group's updated priorities for 2020-2021, including an updated roadmap; (ii) a Q&A paper in relation to the Sterling RFR Working Group's revised end-Q3 2020 milestones for loan markets; and (iii) the first set of videos in a series of educational videos which provide background on the key elements of LIBOR transition.

In the first video, Alieda Moore – Deputy Agent for London, Bank of England, provides a brief introduction to LIBOR transition. In the second video, Toby Williams – Technical Specialist, Benchmarks Policy team at the Financial Conduct Authority, discusses why market participants need to transition away from LIBOR.