International
Capital
Market
Association

ICMA

ICE Benchmark Administration Limited (IBA)
Milton Gate
60 Chiswell Street
London EC1Y 4SA

(Submitted by email to IBA@theice.com)

16 October 2015

Dear Sirs,

IBA Second Position Paper on the evolution of ICE LIBOR[1]

The International Capital Market Association (ICMA) is responding to the above.

Representing a broad range of capital market interests including banks, asset managers, exchanges, central banks, law firms and other professional advisers, ICMA's market conventions and standards have been the pillars of the international debt market for almost 50 years. See: www.icmagroup.org.

ICMA is responding in relation to its primary market constituency that lead-manages syndicated, vanilla debt securities issues throughout Europe on behalf of corporate borrowers. This constituency deliberates principally through ICMA's Primary Market Practices Committee[2], which gathers the heads and senior members of the syndicate desks of 48 ICMA member banks, and ICMA's Legal and Documentation Committee[3], which gathers the heads and senior members of the legal transaction management teams of 21 ICMA member banks, in each case active in lead-managing syndicated debt securities issues in Europe.

We have not answered specific questions posed in the Second Position Paper but we set out our thoughts in relation to the content of the Second Position Paper generally in the Annex of this letter and have noted where our remarks relate to a certain section of the Second Position Paper.

Yours faithfully,

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[1] Available here.

[2] More information is available here.

[3] More information is available here.

ANNEX

General remarks regarding contractual continuity

1. Improving benchmark robustness is a positive goal. However, in improving the robustness of a benchmark, it is important to ensure that there are no negative side effects for outstanding contracts that reference that benchmark.

2. ICMA has previously communicated this to IBA and others in the light of proposals for changes to LIBOR[4]. Given the key aspects of IBA's proposals for the evolution of LIBOR are unchanged (e.g. expanding the range of counterparties and eligible transactions), those contractual continuity issues remain relevant.

3. To recap, changes to LIBOR must be made in such a way as to ensure that:

   a) the fallback provisions under standard bond terms and conditions would not be triggered due to 'evolved LIBOR' being too commercially dissimilar from current LIBOR to be considered the rate that the parties intended to use[5]; and

   b) the current form of the first standard fallback provision in bond contracts (typically to obtain offered quotes for LIBOR from reference banks) does not become too commercially dissimilar from 'evolved LIBOR' to be used, were it to be triggered in the circumstances for which it is intended i.e. where the 'evolved LIBOR' rate is not available (leaving aside the practical reality of whether quotes could be obtained from reference banks).

4. It is important to avoid disputes (vexatious or otherwise) arising as to whether parties have acted in accordance with particular bond terms and conditions when 'evolved LIBOR' is introduced. This could be particularly problematic in the bond market where the contract referencing LIBOR is not a bilateral contract between identified parties. Rather, the borrower's agent's calculation of the interest rate based on LIBOR would impact all investors in the bond[6] (including, possibly, retail investors), who may subsequently assert that they have a claim in respect of the calculation of the interest rate on the bond.

Transaction timing and publication (Q6 – Q13 of the Second Position Paper)

5. An illustration of a potentially significant commercial change to LIBOR is the proposals in relation to transaction timing. Certain of the proposed options involve a change to the timing for publication of LIBOR from approximately 11.45 London time to approximately 14.15 London time or the following business day at an undefined time.

6. Floating rate bond terms and conditions typically state that the interest rate will be set by reference to LIBOR as published on a certain screen page as of 11.00am London time on a certain day. Similar to the issues raised in relation to re-publication of LIBOR under the IBA Error

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[4] See ICMA's response to the IBA Error Policy Consultation and ICMA's response to the ILOC / BBALIBOR Joint Consultation Paper on LIBOR Re-fixing. ICMA also responded by email to IBA's First Position Paper on the evolution of LIBOR on 9 April 2015.

[5] In respect of bond terms and conditions that reference LIBOR by its publication on a screen page, this concern may be ameliorated insofar as 'evolved LIBOR' were to continue to be published on that screen page or on a screen page stating that it succeeds the current screen page.

[6] This could be anywhere from one investor to many hundreds of investors.

Policy Consultation[7], any changes to the time or method of publication for LIBOR could impact the rate that is used to calculate the interest rate on the bond, and ultimately the coupon that investors receive. This should be borne in mind in taking forward any of the proposed options relating to transaction timing.

Definition of LIBOR (Q40 – Q42 of the Second Position Paper)

7. The Position Paper states that there will no longer be a need for the Administrator's Question under 'evolved LIBOR', because LIBOR will be based on transactions to the greatest extent possible. However, it is not clear why the removal of the Administrator's Question necessitates a new formal definition for LIBOR, or what purpose that formal definition is intended to fulfil. Bond terms and conditions typically refer to LIBOR by reference to the rate published on a certain screen page. It is not clear how or why this would need to change in light of IBA's new proposed definition of LIBOR. Furthermore, the issues set out in paragraph 3 above in connection with existing bonds should be taken into consideration to ensure that the introduction of a new definition of LIBOR does not result in greater uncertainty in relation to the difference between current LIBOR and 'evolved LIBOR'.

Conclusion

8. We believe that it will be very important to consider the need to reduce or eliminate the risks outlined above in taking forward the proposals to evolve LIBOR. To achieve this, it would be desirable to think about practical measures such as: (i) continuing to publish LIBOR in the same place it is currently published or posting notices on current and new LIBOR publication sites in relation to any change in publication venue; and (ii) publishing market statements to the effect that fallback provisions are not triggered by the changes (or providing sufficient time to allow such market statements to be published).[8]

[7] ICMA's response to the IBA Error Policy Consultation is available here.

[8] In the UK, it might be helpful if such a statement was obtained through the FMLC.