Minutes of LIBOR Trade Association Working Party Meeting
held on 28 October 2020

Present:

AFME
GFMA
ICMA
ICMSA
ISDA
LMA
LSTA
SIFMA
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 has been looking at the Financial Services Bill introduced by HM Treasury on 21 October and is considering its implications on LIBOR transition.

AFME is also continuing its engagement with other associations (including TACT, ICMA and ICMSA) to help address concerns for trustees in respect of LIBOR transition.

3. GFMA update

GFMA members had become more focused on issues around legacy transition following the various recent announcements with regards to CCPs and their approach to LIBOR transition, the announcement of the effective date of the ISDA Fallbacks Protocol and Supplement, as well as various announcement on tough legacy legislation. GFMA members in particular wanted more communication around international coordination on the choices for addressing legacy transition in different jurisdictions, as there are concerns about divergent approaches emerging. GFMA highlighted the importance of consistency of approach in order to enable market participants to deal effectively with their legacy LIBOR transactions. GFMA highlighted that this is of particular concern now as legacy contracts need to start being addressed.

The LMA and ICMSA noted that global coordination was of key importance in the loan and international bond markets and that they have been relaying this message to regulators (in addition to emphasising the global use of the US dollar).

The LMA highlighted that the focus of the regulators in the UK has been on active transition and market participants have been told not to place reliance on tough legacy legislation. However, it is to be seen whether there will be enough time to transition all legacy contracts. The LMA noted on the tough legacy proposals that, to the extent any legislation is expressed to have extra-territorial application, this could cause uncertainty in the market.

GFMA called on the Working Party to help make clear to regulators the importance of global coordination.

4. ICMA update

ICMA has also been considering conflict of laws issues with the proposed tough legacy solutions. It was highlighted that in the bond market there are a significant number of US$ transactions governed by English law, however, the fallback provisions for US$ transactions and UK transactions are not the same so it is not clear which fallbacks will be followed. ICMA is also looking at the implications of the Financial Services Bill.

ICMA continue to look at encouraging active conversion of bonds either through market measures or possibly through legislative measures where appropriate. These options will be further discussed at the £ Bond Market Sub-Group meeting on 2 November.

ICMA also continues to work on operational issues in connection with the trigger of fallbacks, particularly pre-cessation triggers. The drafting of certain fallback provisions means that some fallbacks could be triggered on an announcement of future non-representativeness, rather than when the benchmark rate actually becomes non-representative of the market it seeks to measure. In addition, ICMA is working on the appointment for a provider to publish the recommended credit adjustment spread for fallbacks in cash products referencing GBP LIBOR as well as working on a recommendation by the Sterling Working Group of a successor rate for legacy LIBOR bonds.

ICMA continues to look at conventions in the bond market in light of the conventions announced for the loan market. In particular, consideration is being given as to whether the bond market will adopt an observation shift or lag approach.

5. ICMSA update

ICMSA is also looking at the tough legacy solutions and their implications particularly in the international bond market where multicurrency facilities are typical.

With regard to trustees, ICMSA noted the continuing dialogue with AFME and that trustees are keen to ensure that they have legislative safe harbours.

It was further noted that ICMSA continues to keep a watching brief on the vanilla bond market, where most transactions have a fiscal agent rather than trustee. ICMSA noted that, in practice, benchmark issues are typically dealt with by issuers, making consistency in solutions for tough legacy crucial. ICMSA further added that many European trustees are acting on New York law governed instruments, where consent solicitations require 100% consent. It was also noted that written resolutions to make amendments were not feasible with highly traded bonds.

ICMSA noted that from an operational perspective, it is concerned with the variations in market practice on lookback periods for calculating RFRs. ICMSA understands that most US$ transactions use a 2-day lookback, which places significant time constraints on issuers, agents and clearing systems based in different geographical locations in multinational deals. The ICMSA is also seeing the SOFR Index being used, and in this case, both the IBRD and IADB issues utilised a 5-day lookback period. Contrastingly, however, when employing the SONIA index, it was noted that the EIB's most recent SONIA bond issuance used a 2-day lookback period.

6. ISDA update

ISDA noted its announcement on 9 October of the launch of the IBOR Fallbacks Supplement and Protocol on 23 October. It was highlighted that the effective date of the Protocol is 25 January 2021. In addition, the IBOR Fallbacks Supplement will be effective on 25 January 2021 and future transactions incorporating the 2006 ISDA Definitions after this date will include the new fallback language.

It was noted that the Protocol has been open for adherence in escrow since 9 October and 257 entities adhered during that escrow period. ISDA noted that the number of adherents is expected to grow now that the launch date has passed. It was positive to see that the regulators encouraged early adherence, which may have contributed to the significant number of entities already adhering to the Protocol in escrow.

ISDA also published a number of bilateral amendment agreements to help market participants adopt the Protocol bilaterally and make amendments to the terms of the Protocol. The bilateral templates can also be used to exclude certain transactions from the scope of the Protocol, for example hedging derivatives to allow such derivatives to follow the fallbacks in the hedged loan or bond.

Regarding education, ISDA published in October an IBOR Fallbacks FAQ document, a user guide to fallbacks and RFRs, as well as three webinars on (i) the IBOR Fallbacks Supplement and Protocol, (ii) the IBOR Fallbacks methodology and Bloomberg publication, and (iii) the IBOR Fallbacks bilateral templates. On 9 and 10 November ISDA will also host a live webinar on the Supplement and Protocol.

ISDA is now working on new 'rate options' for daily RFRs which will be added to the 2006 ISDA Definitions. These will be separate to the existing compounded RFR 'rate options' (used in the OIS market) which are already in the 2006 ISDA Definitions. The inclusion of daily RFR 'rate options' will facilitate use of the RFRs with certain conventions, particularly those being seen in the loan and bond markets.

ISDA is also considering the various tough legacy legislative proposals and the Financial Services Bill.

7. LMA update

In terms of documentation, the LMA is working on revising its Exposure draft multicurrency term and revolving facilities agreement incorporating rate switch provisions ("**Rate Switch Agreement**"), which was published on 11 September, following member feedback. The Rate Switch Agreement is based on lookback with lag, in line with the Sterling RFR Working Group's published conventions for SONIA compounded in arrear. It was noted that the LMA will release a version with observation shift at the same time as releasing the revised Rate Switch Agreement. These documents will be shared with ISDA to assist their drafting for daily RFR options.

On 21 October, the LMA also released a note on the Revised Replacement of Screen Rate Clause and pre-cessation trigger, to include a pre-cessation trigger following ISDA's IBOR Fallbacks announcement. This is intended to help market participants match their loans with their hedging arrangements.

On the education side, the LMA released an interview on 23 October with GSK, HSBC and Allen & Overy on their recent deal involving US$2.5 billion and £1.9 billion compounded SOFR and SONIA linked revolving credit facilities. The LMA highlighted that the deal was based directly on RFRs rather than using a switch provision. It also noted the recent Tesco syndicated multicurrency loan, which was also based directly on RFRs. The LMA noted that it was positive to see transition in the market. The LMA had reflected both deals in its updated list of RFR loans on its website.

Moving forward, the LMA will continue to publish educational webinars, including an upcoming webinar on the LMA Rate Switch Agreement once the revised version is published.

8. LSTA update

The LSTA continues to work with buy-side members and has been conducting remediation roundtables to help investors.

On fallbacks, the LSTA had observed that the ARRC hardwired fallback language is beginning to be used. It was noted that although the amendment approach was largely favoured by market participants up until September, this is now starting to change given that the amendment approach poses challenges for transition as there are a significant number of loans to be renegotiated. The LSTA believes hardwired fallback language will as a result be helpful.

On the documentation side, the LSTA has developed a 'Daily Simple SOFR Concept Document', and a 'Compounded SOFR in Arrears Concept Document' (based on a compounding the balance methodology). The LSTA is also working on a compounded facility agreement based on a compounding the rate methodology, as well as multicurrency versions of the simple and compounded documents. It was further noted that the LSTA is developing an amendment document to cater for a number of scenarios, including where the underlying loan includes no fallback provisions at all and forms of notice for conforming changes to be used with the ARRC hardwired approach fallback language. It was further highlighted that the LSTA is working on an accompanying form to provide a template for CLO investors for transactions that do not already contain fallback provisions to transition to ARRC hardwired fallbacks.

9. SIFMA update

SIFMA is working closely on legislative developments in the US. SIFMA is in dialogue with the staff and team of US House Representative Brad Sherman on helping with his Bill. SIFMA noted that the Bill is modelled on the ARRC legislative proposals, and SIFMA has been discussing with the House of Representatives as well as the senate side in a bi-partisan manner on this. SIFMA notes that the timing of the Bill is unclear given other legislative priorities.

SIFMA added that on the point of trustees, the US has seen an increase in trustee initiative. Under article 77 of the New York’s Civil Practice Law and Rules, trustees can open proceedings whereby they approach the court for clarification on parts of documents which are uncertain. Two securitisation trustees, Wells Fargo and U.S. Bank National Association, have sent notices to holders on a number of transactions (680 in the case of Wells Fargo and 20 in the case of US Bank) stating they may potentially start article 77 proceedings to resolve uncertainties in respect of LIBOR transition. SIFMA emphasised that this is a tangible indicator of the nearing LIBOR cessation deadline and shows that trustees are taking action already ahead of this deadline.

On the education side, SIFMA will host a LIBOR panel during its LIBOR transition forum webinar on 10 December to cover US and UK issues, with Edwin Schooling Latter of the FCA to join this panel.

10. TACT update

TACT is working with AFME and ICMSA on brainstorming ideas on legacy considerations for trustees and any guidance which can be provided. TACT noted the difference in the US and UK approach for court involvement in regard to trustee issues (as there is no similar proceeding available in the UK). It was noted that this issue will be further discussed in TACT's joint call. TACT highlighted that calls going forward will be centred around future steps as well as ways in which bondholders can respond.

On the education side, TACT highlighted the importance of educating investors and trustees particularly for the purpose of instructing them on next steps. TACT also noted that it is hoped that further feedback from trustees on this point, and more generally, will be received at TACT's committee meeting on LIBOR on 25 November.

11. UK Finance update

UK Finance was also looking at tough legacy issues.

UK Finance informed members of the increasing work on LIBOR transition in the trade and working capital space in the last few weeks, where there is a large US$ exposure. UK Finance had been engaged in preliminary discussions with UK Export Finance (the UK's export credit agency and governmental department working alongside the Department for International Trade) on proposed approaches to LIBOR transition. BAFT had also been increasing its engagement with the ARRC on this issue and raising the profile of trade finance. It was highlighted that the trade finance industry had expressed concerns over the timing of the SOFR term rate and also the potential uncertainty that could arise for market participants from the fact that there are three providers of the SONIA term rate (IBA, FTSE Russell or Refinitiv) to choose from rather than a single provider.

UK Finance further added that it is concerned about client readiness for transition at the smaller end of the market and continues to work particularly on education for such groups. It is working with the Confederation of British Industry in the UK to ensure end-users are updated on milestones and prepared for end-2021.

On 28 October, UK Finance and the Lending Standards Board published a Best Practice Guidance report on transition for LIBOR for SME customers. It was noted that commercial lending is not regulated in the UK and the Lending Standards Board is a voluntary regulator. The report aims to provide voluntary best practice steps for transition for SME business customers in support of smaller end-user LIBOR readiness.

12. AOB

The date of the next meeting is to be set for December.