Minutes of LIBOR Trade Association Working Party Meeting

held on 2 December 2020

Present:

AFB
AFME
ICMA
ICMSA
JSLA
LMA
LSTA
TACT

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. AFB update

AFB noted increasing activity amongst its members regarding their LIBOR transition efforts. AFB members are responding to regulatory announcements and the AFB was grateful for the significant efforts of the LMA in respect of loan market transition. AFB highlighted its member meeting on 3 December 2020 where LIBOR transition progress would be further discussed.

It was noted that AFB is also looking at the implications of the recent announcement on 30 November 2020 by ICE Benchmark Administration (**IBA**) on its plan to consult on its intention to cease: (i) the one-week and two-month USD LIBOR settings after 31 December 2021; and (ii) all remaining USD LIBOR settings after 30 June 2023. AFB is also considering the FCA consultations on the FCA's new powers under proposed Articles 23A and 23D.

3. AFME update

AFME noted that it continues to work closely with ICMA, ICMSA and TACT on trustee and paying agent issues, including associated operational issues. AFME also highlighted the work of the GFMA on a letter to authorities regarding cross-border regulatory cooperation.

AFME is also looking at the IBA announcements and FCA consultations. It was noted that the Euro RFR Working Group had published consultations on EURIBOR fallback trigger events and €STR based EURIBOR fallback rates. AFME wrote the section on securitisations in the fallback rates paper and is encouraging members to respond to the EURIBOR fallbacks consultations.

4. ICMA update

ICMA continues to track consent solicitations in the market. ICMA highlighted that it had seen new consent solicitations over the last few weeks. It was also noted that ICMA is working on the operational aspects of consent solicitations, as well as trustee and agent concerns during LIBOR transition with AFME, ICMSA and TACT. In particular, ICMA is considering what aspects of the consent solicitation process can be eased to make it more attractive for investors and issuers. This will be further discussed at the £ Bond Market Sub-Group meeting on 9 December 2020.

Regarding documentation and fallbacks, ICMA is drafting a consultation paper to support a recommendation nominating a successor rate for legacy GBP LIBOR bonds. It is hoped this will be finalised in time to be on the £ RFR Working Group agenda for January 2021. This supplements the LMA's ongoing work on the appointment for a provider to publish the recommended credit adjustment spread for fallbacks in cash products referencing GBP LIBOR.

It was further noted that ICMA has been closely following developments on the Financial Services Bill. On 17 November 2020, Paul Richards, a Managing Director at ICMA and chair of the £ Bond market Sub-Group, gave evidence during the first sitting of the Financial Services Bill in the UK Parliament. Ministers asked various questions regarding the necessity for strengthening the Bill for its workability in the bond market. ICMA is also considering its next steps in relation to the FCA consultations on its new proposed powers, including whether it will submit a response on behalf of members.

It was also noted that so-called "type 2" and "type 3" fallback provisions in bonds could, depending on the drafting, be triggered if there were to be early announcements by the FCA in relation to future unrepresentativeness or future cessation of LIBOR.

5. ICMSA update

ICMSA is involved in discussions with TACT, ICMA and AFME on issues faced by trustees and agents. In particular, discussions involve the steps that ICMSA can take to help the bond market regarding tough legacy transition. Such discussions have increased over the last few months, ICMSA reported a good level of progress on the inter-association calls.

Regarding education, ICMSA now has its final drafts of two bulletins which will soon be published. These will be tweaked in light of the recent announcement by IBA on its plan to consult on its intention to cease USD LIBOR settings in two phases. It was highlighted that one of the bulletins focuses on a follow-up to ICMSA's previously issued paper on consent solicitations. It also provides a template list of information which can help paying agents in particular. In addition, it includes information on proof of holding which trustees expect to see (notwithstanding that processes are handled by clearing systems). The bulletin also covers suggestions for investors on coordinating with their custodians to ensure LIBOR transition education is passed on to all parties.

The second bulletin provides a brief update on the trustee position during the LIBOR transition. The bulletin also flags any limitations on what trustees have discretion to agree on as part of the bond issuance process.

6. ISDA update

ISDA was not present during the call but had provided the LMA with an email update to read to the Working Party.

ISDA noted that the number of entities adhering to the IBOR Fallbacks Protocol continues to grow and is now well over 1000. It also continues to consider the various tough legacy legislative proposals, including the Financial Services Bill, and will consider responding to the FCA's consultations on its new powers under proposed Articles 23A and 23D on behalf of members as well as encouraging members to respond independently.

In relation to documentation, ISDA published guidance following the announcement on 12 November 2020 by Refinitiv, the administrator for the Canadian Dollar Offered Rate (**CDOR**), that it will cease publication of the 6-month and 12-month CDOR tenors in May 2021. The guidance sets out the effect of the announcement under the IBOR Fallbacks Protocol. ISDA is also in the process of drafting a new definition to be added to the 2006 ISDA Definitions for the SONIA ICE Swap Rate, which IBA began publishing in 'beta' format in October. In addition, updates will also be made to the Settlement Matrix for new SONIA swaptions. ISDA further added that it continues to draft new definitions for overnight or daily risk-free rates and is continuing to consider what guidance it can publish regarding the use of these overnight risk-free rates with various conventions that are developing in the cash markets.

ISDA also noted that it held a 2-day virtual conference on Understanding the New IBOR Fallbacks in early November 2020.

7. JSLA update

JSLA is discussing Tokyo Overnight Average Rate (**TONA**) based conventions within the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks. In particular, discussions are being held on maintaining consistency with the SONIA and SOFR conventions recommended by the Sterling RFR Working Group and the ARRC. On 30 November, the results of the second public consultation on the appropriate choice and usage of Japanese Yen interest rate benchmarks were published. It was noted that the use of TONA in the derivatives market has not received the same uptake in Japan as that of SONIA in the sterling market or SOFR in the US dollar market. Therefore, conventions may need to include additional recommendations for the use of TONA by interest rate swap market participants.

The results of the consultation also showed that such companies were still unclear on whether the principal alternative reference rate for yen-denominated derivatives transactions would be the Tokyo Term Risk-Free Rate (**TORF**) or TONA. In addition, it was noted that JSLA often hears from both borrowers and lenders that they do not want to transition to a post-determined interest rate. Borrowers and lenders expressed that replacement benchmarks are to be agreed upon by both parties.

JSLA further noted that the TORF is to be developed as soon as possible.

8. LMA update

In terms of documentation, the LMA had released on 23 November 2020: (i) an updated version of the exposure draft of multicurrency term and revolving facilities agreement incorporating rate switch provisions (lookback with lag); (ii) a new Rate Switch Agreement (lookback with observation shift); (iii) an updated commentary to the Rate Switch Agreements; (iv) a term sheet for the Rate Switch Agreements; and (v) RFR terms to use in conjunction with the supplement to the replacement of screen rate clause.

It was highlighted that the version of the rate switch agreement produced by the LMA with observation shift intends to provide the market with optionality as the Sterling RFR Working Group has identified the lookback with observation shift approach as a viable and robust alternative to the lag approach.

The LMA also noted that it is currently working on a multicurrency RFR facility agreement based on RFRs from the outset, along with an accompanying term sheet. The LMA is also engaging with its secondary documentation committee regarding potential amendments, and is also considering issues in respect of its wider suite of documentation.

On the education side, the LMA will release a number of webinars over the next few weeks. Clifford Chance will be filming a webinar on the rate switch agreements to assist members in addition to the published commentary. Other webinars will focus on specific sectors such as real estate finance and export finance, in addition to a spotlight interview with Tesco on their recent £ 2.5 billion multicurrency revolving credit facility which was based on RFRs from the start. The LMA also continues to regularly update its list of RFR referencing loans to track market deals, the most recent version being published on 27 November 2020. The LMA is also working with the Sterling RFR Working Group on the use of Bloomberg credit adjustment spreads for cash markets and also a paper on options for calculating credit adjustment spreads for active transition.

In response to tough legacy announcements, the LMA is looking at the various announcements and consultations in the UK and EU. The LMA is considering the FCA consultations on the use of its powers under proposed Articles 23A and 23D, as well as the Euro RFR Working Group consultations on EURIBOR fallback trigger events and €STR-based EURIBOR fallback rates. In particular, the LMA is flagging the use-cases set out for forward-looking term rates considered in the €STR-based fallback rates consultation to members in specific sectors, such as export finance, and encouraging them to respond. The LMA is also looking into the implications of the Financial Services Bill.

AFME noted that it had adopted the same approach on the Euro RFR Working Group consultations and also reached out to its members specifically in regard to the securitisation section and that it would be encouraging members to respond but AFME was considering whether it needed to also respond on behalf of members. It was noted that the LMA was considering whether it should respond in addition to members. ICMA is also taking the same approach and considering whether to respond.

9. LSTA Update

LSTA workstreams will be evaluated against the announcement on 30 November 2020 by IBA on its plan to consult on its intention to cease LIBOR settings in two phases. In particular, the LSTA is analysing the impact of the announcement on new SOFR loan originations and on legacy USD LIBOR products. It was noted that the US regulators had responded to the IBA announcement by stating that market participants should be issuing new loans based on SOFR as soon as practicable and in any event by the end of 2021.

The LSTA also continues its extensive remediation efforts for USD LIBOR loans particularly with buy-side parties. It was noted that the potential extended publication of certain USD LIBOR tenors for legacy products may impact timelines for such remediation efforts. It was further noted that the LSTA is also looking at the impact of IBA's announcement on basis risks of CLO assets transitioning from LIBOR and, separately, also on multicurrency loans. Overall, the LSTA has observed appetite in the market for early transition to SOFR.

On the documentation side, the LSTA continues to produce an amendment document to cater for various scenarios, including where the underlying loan does not include fallback provisions. The LSTA also continues to work on its new compounded SOFR facility agreement based on a compounding the rate methodology, as well as multicurrency versions of the simple and compounded documents.

In terms of market practice, the LSTA reminded members of the ARRC announcement recommending that all new syndicated business loans should include ARRC-recommended (or substantially similar) hardwired USD LIBOR fallback language as soon as possible, but in no event later than 30 September 2020. Following this announcement, the LSTA has seen significant uptake in USD LIBOR fallback language and, in particular, the ARRC recommended alternative benchmarks waterfall. Roughly 30% of loans tracked in October used a version of the fallback language (where ARRC fallback language was the preferred choice for most market participants).

10. TACT update

TACT continues to work closely with ICMSA and AFME to brainstorm on issues and potential solutions for trustees. It reported good progress following its recent call on 30 November 2020 and calls are scheduled to continue on a regular basis. TACT had also raised concerns to Bloomberg on the issues faced by trustees and on ways in which the market can instruct them.

Regarding taxation concerns, TACT has reached out to Euroclear to discuss the level of engagement on LIBOR transition between investors and clearing houses. TACT informed members that Euroclear will now draft a note to be sent to investors to address LIBOR transition concerns.

11. AOB

The LMA thanked members of the Working Party for their participation on the calls throughout 2020. The date of the next meeting is to be set for January 2021.