

The Interim LIBOR Oversight Committee
BBA LIBOR Ltd
(Submission by e-mail to liborconsultation@bballibor.com)

29 November 2013

Dear Sirs,

ILOC / BBALIBOR – Joint Consultation Paper on LIBOR Re-fixing

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

Setting standards internationally, ICMA is a unique organisation and an influential voice for the global capital market. It represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as 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 over 40 years. See: www.icmagroup.org.

ICMA is responding in relation to its primary market constituency that lead-manages syndicated debt securities issues throughout Europe. This constituency deliberates principally through ICMA's Primary Market Practices Sub-committee¹, which gathers the heads and senior members of the syndicate desks of 31 ICMA member banks, and ICMA's Legal and Documentation Sub-committee², which gathers the heads and senior members of the legal transaction management teams of 19 ICMA member banks, in each case active in lead-managing syndicated debt securities issues in Europe.

We set out our response in the Annex to this letter and would be pleased to discuss it with you at your convenience.

Yours faithfully,

A handwritten signature in blue ink, appearing to read "R. Ewing", with a large, sweeping flourish at the end.

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¹<http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Primary-Market-Practices-Sub-committee/>.

²<http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Legal-and-Documentation-Sub-committee/>.

General remarks

1. Continuity of contract is a fundamental underpinning of market certainty and the key focus of this response. This is so in relation to current outstanding bonds.
2. Furthermore, the ability to borrow new funds in the bond markets, by issuing new bonds on the same terms as current outstanding bonds that are then treated as fungible with the current outstanding bonds, is a significant source of liquidity for issuers and of investment choice for investors (as smaller sums can be borrowed than would otherwise be the case). Bond market liquidity can also be hampered by unnecessary divergence of substance between bond terms of different issuers. Consequent to these two aspects, it is important that the market has confidence that the same contractual mechanics will generally apply to new bond issues as to current outstanding bonds.
3. Consistency of terms between the bond markets and the swap markets where many bonds are hedged is also important.

Succession to ICE Benchmark Administration Limited

4. On a subject not strictly related to the Joint Consultation Paper, ICMA understands it is intended that the future LIBOR screens to be published by NYSE Euronext Rate Administration Limited (to be renamed ICE Benchmark Administration Limited - "ICELIBOR") will state that they are succeeding current screens of BBA LIBOR Ltd ("BBALIBOR"). This is a welcome contribution to continuity of contract, which could be further bolstered by a formal joint statement to this effect by BBALIBOR and ICELIBOR.

LIBOR refix proposal

5. The Joint Consultation Paper proposes inter alia a second afternoon fix (to cure any errors noticed by then), which would also be "as of 11.00 am" for that day (though with a suggested nuance for the first fix being 'final' with occasional correction rather than 'provisional' subject to systematic confirmation).
6. Reflecting such an approach when determining the coupon payments due on specific bonds would be very difficult from a logistical perspective. Rate fixing agents would likely not do their calculations until after the deadline for re-fixing, which would result in delays in dissemination of new rate information. LIBOR is often used in other time zones; an afternoon re-fixing deadline could occur after the close of business in those time zones meaning rates would not be calculated until the next day. This problem would be particularly acute for bonds with back-end fixes, where the coupon period is determined by reference to LIBOR as at the end (rather than the start) of the borrowing period resulting in a particular coupon payment.
7. There is also a strong concern that re-fixing may trigger needless uncertainty as to which rate would apply to individual bonds – even where informed experts are in agreement that a court would ultimately find the initial fix only to be applicable. Parties could well initiate vexatious litigation to leverage out of court settlement with litigation-averse counterparties for amounts they would not be substantively entitled to.
8. Confidence in the future LIBOR will be best bolstered by strong governance processes around how individual contributions are produced and then collated and transparent residual fallback procedures to ensure that a single and reliable rate is produced each day, which should mean that no re-fixing is necessary.
9. However, if a re-fix mechanism has to be adopted (because of regulatory obligations), it should be characterised as a postponement by no more than an hour of the publication of the single rate, which would still be "as of 11 a.m.". In other words, if there is a problem (some quotes being late or submitted rates seeming inconsistent), it should be possible to address the problem quickly enough to just delay publication, within an acceptable timescale, of the single rate. Such a re-fixing would thus be a non-public process, internal to the LIBOR administrator.