CONSULTATION QUESTIONNAIRE

Please provide your feedback by returning your completed questionnaire to IBA

on or before **Friday 19 September 2014**

Name of respondent	Ruari Ewing
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Organisation (if any)	The International Capital Market Association (ICMA)
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1. Intraday refix cut-off time

A cut-off of 15.00 London time for reporting an error to IBA is the interim policy for an intraday refix.

Your preferred cut-off	*N/A*
Your earliest cut-off	*N/A*
Your latest cut-off	*N/A*

Please comment on your choice:

Please see box 5 below.

2. What materiality threshold of the published rate would you choose?

Under the interim policy, an error of less than 3 basis points on the published rate would not trigger an intra-day fix.

Percentage		***Is there a minimum in basis points?***	
Preference	*N/A*	***Yes / No***	*N/A*
Lowest	*N/A*	***If Yes, what is the minimum value?***	*N/A*
Highest	*N/A*		

Please comment on your choices:

Please see box 5 below.

3. If you need a notice period for changes in the threshold, what would it be:

We will need to review the thresholds periodically to accommodate different rate environments.

If Yes, how long would you need? No comment. Please see box 5 below.

4. To what number of decimal places do you think ICE LIBOR should be published?

ICE LIBOR is currently published to 5 decimal places.

2	*3*	*4*	*5 (NO CHANGE)*	*6*

5. Please add any additional comments:

Introduction

Setting standards internationally, the International Capital Market Association (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-committee[1], which gathers the heads and senior members of the syndicate desks of 31 ICMA member banks, and ICMA's Legal and Documentation Sub-committee[2], 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.

General remarks

1. Continuity of contract is a fundamental underpinning of market certainty (as noted in the Error Policy Consultation) 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.

[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/.

LIBOR refix proposal

4. The Error Policy Consultation proposes *inter alia* a second afternoon fix to cure any errors noticed by then. It is not clear if such refix would also be "as of 11.00 a.m." for that day (which it should be – see #8 below) or otherwise.
5. A later refix could cause logistical difficulties in determining the coupon payments due on specific bonds. Rate fixing agents would likely delay their calculations until after the deadline for re-fixing (whatever that may be), which would result in delays in dissemination of new rate information for the bond. LIBOR is often used in other time zones; an afternoon refixing 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.
6. 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 one 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.
7. 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 refixing is necessary.
8. However, if a refix 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 refix would thus be a non-public process, internal to IBA. Such a refix would also ensure consistency between screen-rate based cash bonds (terms of which generally do not specifically contemplate a refix) and any related derivative trades incorporating Section 7.6(a) of the 2006 ISDA Definitions (which provides that the relevant rate will be subject to any corrections to the information displayed on the relevant screen within one hour of when that rate is first displayed on that screen).

Interim arrangements

9. The concerns with an intraday refix noted above apply equally in the context of any interim arrangements put in place before the consultation is completed and the outcome implemented.

Please email your completed questionnaire to:

IBA@theice.com

on or before **Friday 19 September 2014**

or post it to arrive by that date.

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