Minutes of LIBOR Trade Association Working Party Meeting

held on 7 September 2021

via teleconference

Present:

ACT
ICMA
ICMSA
ISDA
GFMA
LMA
LSTA
SIFMA
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. ACT update

The ACT noted that the ARRC's formal recommendation of CME Group's term SOFR has calmed market participants, especially in the sterling corporate space. Otherwise, the ACT is continuing its work to support market participants, build awareness, and ensure that the market continues to progress towards the end-Q4 2021 deadlines. The ACT noted that, in the sterling market, other than tough legacy, it has seen no new issues or challenges in the market.

3. AFME

AFME was unable to attend the meeting but provided the following written update:

AFME was happy to support the ICMA response on CP21/19.

Toby Williams of the FCA will be speaking as part of a panel during AFME's virtual series building up to Global ABS at the end of the month. Toby is speaking on 17 September on "Ibor Transition: how ready are we for 2022?".

4. GFMA

GFMA continues to work on the LIBOR transition and noted that it published a new newsletter last week that covered updates on LIBOR transition over the summer. The newsletter will continue to be published going forward.

5. ICMA

ICMA noted that after a quiet summer activity had started picking up in September.

ICMA is doing work around the mechanics of the operation of fallbacks.

ICMA is also considering whether clarity is required around the role of independent advisors with respect to the operation of fallbacks which require independent advisors to make a determination.

ICMA is also keeping track of recent consent solicitation activity, with five in the past week from HSBC, and one from Royal Bank of Canada.

Elsewhere, ICMA responded to the FCA consultation (**CP21/19**) on the decision to require synthetic LIBOR for six LIBOR settings. It is now awaiting the FCA policy statement on tough legacy.

ICMA also noted that the Financial Services Act 2021 (**FSA 2021**) only gives powers to the FCA for a maximum of 10 years (subject to regular review) to require the publication of synthetic LIBOR. ICMA is looking at the maturity structure of outstanding legacy bonds for each year between 2021 and 2032, since it believes that these will form part of the FCA's assessment when it is doing its reviews.

6. ICMSA update

ICMSA noted that it contributed a paper to the BMSG on the issue raised by ICMA with regards to reference bank mechanisms and polling by agents. The view of ICSMA is that reference banks will not be willing provide those quotations, and that the wording is mostly relatively unclear. ICMSA is hoping for guidance to help agents move past the polling mechanism and on to the final fallbacks. This is, however, subject to wider updates on the status of synthetic LIBOR for legacy loans, which will hopefully make it a moot concern.

ICMSA also noted that it will start work with ICMA on a paper addressing the role of independent advisors, which will include developments on the bulletin that it published earlier in the year on the topic.

7. ISDA update

ISDA noted that it continues to work with other members of the LIBOR Trade Association Working Party to ensure that it has hedge documentation both for loans and other cash instruments that use risk-free-rates (**RFRs**). Namely, ISDA will be circulating some templates that it worked on with the LMA and LSTA to demonstrate how ISDA documentation provisions can be used to hedge RFR conventions in some of the LMA's and LSTA's documentation. This follows on from the FAQs that were published earlier in the summer.

ISDA also noted that it is adding rate options for credit sensitive rates (**CSRs**) including the IHS Markit credit inclusive term rate (**CRITR**) and AMERIBOR.

ISDA is also working with the LSTA on fallback language for ISDA's CSR documentation to match the CSR fallback provisions that will be included in the LSTA's documentation. This work is in its early stages but is progressing well.

ISDA noted that it is continuing to work on fallback provisions for swap rates. It has the fallback for sterling LIBOR already implemented, but for Japanese yen LIBOR and USD LIBOR it is waiting for the relevant administrators to publish the RFR swap rates. ISDA expects this to happen soon.

ISDA also continues to follow progress of the legislative safe harbour processes in the EU, UK and the US. ISDA also reminded the Working Party that the new format for the ISDA Definitions will go live in October.

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8. JSLA update

The JSLA were unable to attend the meeting but provided the following written update:

As shared with the Working Party before, the roadmap in Japan indicated that the amount outstanding of legacy contracts for loans and bonds referencing JPY LIBOR needs to be reduced substantially by the end of this September.

Based on this roadmap, the JSLA has started explanation to the parties intensively since June. And the transition process has mostly been started from August and become peak in September. As a result, many parties have already made their decision, and voting and documentation process follows. Of course, there are a few parties who could not have decided the alternative benchmarks yet.

On 19 August, the JSLA also published reference wordings for the documentary amendment process on technical matters. It believes that this would accelerate the smooth transition.

9. LMA update

The LMA noted its continued work on compounded in arrears documentation over the summer. With the formal recommendation of term SOFR, the LMA has also been working on including a term SOFR option in its developing markets documentation. The LMA hopes to publish more documentation during the course of early autumn.

The LMA also noted that the LMA Syndicated Loans Virtual Conference 2021 will take place on 28 September and will include a LIBOR panel, with participants from both the private and public / regulatory sectors.

The LMA will also be delivering a LIBOR update webinar on 17 September which will cover updates since the last webinar in June and highlight the impending transition deadlines. It was also noted that the LMA recorded a podcast with Brian Fraser of Lloyds covering the operational and agency points on RFR deals.

The LMA reported back from its LIBOR Working Party meeting in July where there was a discussion on how to further assist with the transition of the legacy book. The issues arising were practical in nature, including a scarcity of legal and bank resources. In response to the meeting, the LMA produced a note containing practical guidance for the documentary amendment process to help market participants transition more efficiently.

On the secondary side, the LMA continues to work on secondary trading and cost of carry. It is working on getting to the point of having clarity for the market on how to deal with secondary trading of RFR facilities.

10. LSTA update

The LSTA noted that that, on the documentation side, it released a term SOFR concept credit agreement. This has been welcomed by market participants, many of whom are keen to use term SOFR as soon as possible. Meanwhile, the LSTA is also developing CSR fallback language for documentation containing a CSR.

The LSTA noted that one issue creating constraints regarding originating non-LIBOR loans is the economics. It was noted that the difference between LIBOR and SOFR is currently much lower than historical norms, below what the futures market expected, and much lower than the ARRC spread adjustment. This meant that if one transitioned from LIBOR to SOFR they would encounter difficulties doing so in an economically neutral way. There are discussions in the market about using the swaps market for the adjustment, which is very low, or using SOFR flat. This is disadvantageous for the lending side of the community whereas using the ARRC spread adjustment, which is a five year historical median and fairer from a historical point of view, is disadvantageous for borrowers. There is a clear friction but the LSTA is hopeful that the market will be able to overcome these issues.

In response, the LSTA released a think piece and a webinar in August to cover these issues and to place the spread differences and behaviours between SOFR and LIBOR into historical context. The LSTA also advanced some potential solutions for these issues.

The LMA noted that the sterling market experienced similar issues with differences between LIBOR and SONIA, although this has become less of an issue in the sterling market. In light of this, the

LSTA asked the LMA whether there is a concern about the potential operational burden of having a large number of different spread adjustments across the market, given the current bias towards negotiation of spread adjustments between parties.

The LMA replied that it is a matter of concern and vendors are aware of the complications that it brings. Market participants are trying to factor it in to the extent that one must work with the spread, but there are other options available, such as counterparties agreeing not to include a spread for cost of carry purposes.

ICMA asked the LSTA about the stance of US regulators with respect to CSRs. The LSTA noted that the regulators have discouraged widespread use of CSRs but have not forbidden their use. For instance, in the past, the regulators have publicly said that for derivatives and capital market instruments, SOFR should be used, but there are use cases for CSRs, especially in traditional bank lending.

11. SIFMA update

SIFMA noted that legislation continues to be its main focus. There have been discussions regarding moving the H.R.4616 - Adjustable Interest Rate (LIBOR) Act of 2021 out of the House of Representatives and into the Senate, however SIFMA believes that discussions need to take place between trade groups and some of the consumer groups in order for this to happen. SIFMA is hopeful that the Bill is passed across within the next few weeks as time is running out for legislation to be passed this year.

12. UK Finance update

UK Finance noted that at the beginning of summer, it published a guide on its website aimed at SMEs to help prepare any impacted customers for increased outreach from lenders.

Moving forward, UK Finance is keen to see the outcome of the FCA consultation on the scope and use of synthetic LIBOR. It was noted that the outcome will be of particular interest to those in the mortgage market.

UK Finance is also looking forward to seeing the next steps on additional legislation on safe harbours from HM Treasury, and is hopeful for progress to be made following the end of the Parliamentary recess.

13. AOB

The LMA thanked members of the Working Party for their updates. The date of the next meeting is to be set for October 2021 and minutes would be circulated.