

## CHANGES AND CESSATION PROCEDURE

The UK Government [announced](#) on 23 June 2020 that it intends to legislate to ensure that the UK Financial Conduct Authority (FCA) has the appropriate regulatory powers to manage and direct any wind-down period prior to eventual LIBOR cessation.

The new regulatory powers would enable the FCA to direct a methodology change for LIBOR, in circumstances where the FCA has found that:

- The benchmark is not representative of the market it seeks to measure;
- The benchmark's representativeness will not be restored; and
- Action is necessary to protect consumers and/or to ensure market integrity and it is feasible for the administrator to change the methodology in the way required.

Existing law would also be strengthened to prohibit the use of LIBOR where its representativeness will not be restored, whilst giving the FCA the ability to specify limited continued use in legacy contracts.

The FCA has [welcomed](#) the announcement and proposes to publish statements of policy on its approach to potential use of these powers following further engagement with stakeholders in the UK and internationally. In particular, the FCA has also noted that it will seek stakeholder views on possible methodology changes based on the alternative risk free rates chosen in each of the LIBOR currency jurisdictions, and on the consensus already established in international and UK markets on a way of calculating an additional fixed credit spread that reflects the expected difference between LIBOR and risk-free interest rates.

Both the UK Government and the FCA advise that market participants should continue to focus on active transition of legacy contracts on terms that they themselves agree with their counterparties, because this is the only way to have certainty as to contractual continuity and control over contractual terms. They caution that parties who rely on regulatory action, enabled by the proposed legislation, will not have control over the economic terms of that action. Moreover regulatory action may not be able to address all issues or be practicable in all circumstances, for example where a methodology change is not feasible, or would not protect consumers or market integrity.

## 1. Introduction

[ICE Benchmark Administration Limited](#) (IBA) is the administrator for a variety of systemically important benchmarks, including ICE LIBOR™ (LIBOR™), precious metals, rates and term reference rates.

This Changes and Cessation Procedure is published by IBA in compliance with Article 28 of the Benchmarks Regulation (BMR) which requires a benchmark administrator to publish, together with the Benchmark Statement required under Article 27 of the BMR, a procedure concerning the actions to be taken by the administrator in the event of changes to or the cessation of a benchmark which may be used in the EU.

This Changes and Cessation Procedure is specific to ICE LIBOR and sets out the steps that IBA would take in the event of a change to or cessation of ICE LIBOR.

Equivalent Procedures are available for all benchmarks administered by IBA.

## 2. BMR requirements

Article 28(1) of the BMR requires a “procedure concerning the actions to be taken by the administrator in the event of changes to or the cessation of a benchmark which may be used in the Union in accordance with Article 29(1)”.

Article 29(1) states that:

“A supervised entity may use a benchmark or a combination of benchmarks in the Union if the benchmark is provided by an administrator located in the Union and included in the register referred to in Article 36 or is a benchmark which is included in the register referred to in Article 36.”

## 3. Background

IBA is working to seek, where appropriate, the support of globally active banks for the publication of certain LIBOR settings after year-end 2021 when the FCA intends that it would no longer be necessary for it to sustain LIBOR through its influence or legal powers.

The primary goal of this work would be to provide those LIBOR settings to users with outstanding LIBOR-linked contracts that are impossible or impractical to modify. Any such settings would need to be compliant with relevant regulations and in particular those regarding representativeness.

IBA’s work in seeking the support of banks for the publication of certain LIBOR settings after year-end 2021 is also designed to facilitate the industry’s work towards an orderly adoption of alternative ‘risk-free’ reference rates (RFRs) into the financial system, as called for by the Financial Conduct Authority (FCA) and the central banks.

There is no guarantee that any LIBOR settings will continue to be published after year-end 2021. Users of LIBOR should not rely on the continued publication of any LIBOR settings when developing transition or fall back plans.

## 4. Changes to LIBOR

If IBA proposes to make changes to LIBOR, IBA’s [Consultation Policy](#) is followed.

## 5. Approach to cessation

IBA's approach to handling cessations of some or all LIBOR settings varies according to whether:

- IBA decided not to seek to publish some or all LIBOR settings after a specified date; or
- IBA is not able to continue to produce the benchmark in a reliable fashion that represents the economic reality that the benchmark is intended to measure. In accordance with Article 11(1)(a) of the BMR, the provision of a benchmark is governed by the requirement that the input data be sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure.

## 6. Voluntary discontinuation

IBA would inform the FCA as soon as a decision to cease publishing some or all LIBOR settings was being considered. IBA would then engage actively with the FCA and the relevant central bank(s) throughout the process.

IBA would announce the intended discontinuation as soon as possible and would give market participants at least one year's notice of an intention voluntarily to cease publishing any LIBOR settings.

If other benchmark administrator(s) expressed an interest in publishing LIBOR settings that IBA was no longer seeking to publish, IBA would be prepared in principle to work with such administrators to help to facilitate the transition for market participants. Such facilitation might include any or all of the following: help with setting project and transition timelines; participation of IBA staff in meetings with contributors or users to explain the handover; and/or sharing relevant regulatory policies or procedures produced by IBA. IBA would also communicate directly with LIBOR licence holders to ensure they are aware of the change in administrator.

## 7. Inability to produce representative settings

As stated above, LIBOR settings need to be compliant with relevant regulations and in particular those relating to representativeness.

As set out in Article 11(4) of the BMR:

“Where an administrator considers that the input data does not represent the market or economic reality that a benchmark is intended to measure, that administrator shall, within a reasonable time period, either change the input data, the contributors or the methodology in order to ensure that the input data does represent such market or economic reality, or else cease to provide that benchmark.”

The FCA would be informed immediately if IBA suspected that certain or all LIBOR settings would become unrepresentative owing to, for example, reduced input data on a continuing basis or a fundamental change in the underlying interest that the benchmark seeks to measure, or any other circumstance where IBA could not continue to publish LIBOR.

IBA would share with the FCA the results of any representativeness testing. Once any such testing had been verified, IBA would share the information as appropriate with other relevant

regulatory bodies, central banks and/or the LIBOR Oversight Committee to seek to ascertain whether the situation would be likely to be of a short term nature or more irreversible.

Regarding reduced input data, IBA has policies and procedures that are designed to address periods when input data is reduced for short periods. IBA's [Reduced Submissions Policy for LIBOR](#) is published on the website.

If the situation is likely to be of a longer term nature, IBA would follow the steps outlined below.

## 8. Cessation steps

Details of any proposed cessation of ICE LIBOR would be reviewed and agreed with the LIBOR Oversight Committee which would have an important role in monitoring the execution of the plan.

Key factors to be considered are:

- The timing of the cessation, including how much notice should be given;
- Whether any transitional or mitigating measures could or should be implemented; and
- Stakeholder engagement.

## 9. Timings and notice

The timing would take into consideration the relevant factors in the prevailing circumstances:

- The urgency, if any, of ceasing the benchmark;
- The amount of notice that should be given to stakeholders to allow them to take a number of actions: to identify alternative arrangements; to put such alternatives in place; to ensure that contractual documentation is amended as necessary;
- The timing of any transitional or mitigating measures;
- The extent of any likely IT or process issues;
- Whether there are any important dates or milestones in the near future (for example, expiries of financial instruments referencing the benchmark); and
- Whether there are any regulatory, legal or other provisions that might affect the timing.

## 10. Engaging with external stakeholders

If cessation of some or all of the LIBOR settings were under consideration, IBA's [Consultation Policy](#) would apply.

As stated above, the LIBOR Oversight Committee would have an important role in agreeing the cessation plan and monitoring IBA's execution of the plan.

IBA would also engage with other relevant stakeholders, including:

- Users of the benchmark – directly (for example, by email to registered licensees and by conference calls where appropriate), through any relevant association(s) and/or through paid advertisements;

- Contributors, if any, associated with the benchmark;
- Redistributors of the benchmark; and
- The media.

IBA would also include relevant information and relevant contact details on its website.

#### 11. Regulatory action

It should also be noted that circumstances in which the FCA might exercise one of its supervisory powers could include:

- If the FCA assessed that one or more LIBOR panels had shrunk so significantly, in terms of the number of banks or the market share of the banks remaining, that the FCA no longer considered the relevant rate capable of being representative, or
- If IBA wished to cease publishing LIBOR rates and the FCA decided, pursuant to Article 21 (Mandatory administration of a critical benchmark) of the BMR, to require IBA to continue to administer the LIBOR rates for up to 24 months<sup>1</sup>.

#### 12. Review

This Changes and Cessation Procedure is subject to review at least annually by the LIBOR Oversight Committee.

First published: May 2018

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<sup>1</sup> Changed to 5 years by EU Regulation 2019/2089.