Minutes of LIBOR Trade Association Working Party Meeting

held on 1 December 2021

via teleconference

Present:

AFB
AFME
ICMA
ICMSA
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. UK Finance

UK Finance noted that it was pleased to see the Critical Benchmarks Bill (References and Administrators' Liability) Bill successfully pass through each stage of the House of Commons, and is looking forward to the Bill receiving Royal Assent.

UK Finance noted that it is hearing relatively few concerns from its members on the sterling side as parties remain engaged with their transition efforts.

UK Finance hopes to see the FCA release a Feedback Statement on its most recent consultation regarding the rules for the use of synthetic LIBOR before the end of 2021 (CP21/29). UK Finance is hoping that any Feedback Statement will address some of the points that it raised in its response to the consultation. Namely, UK Finance is keen for more clarity from the FCA on the annual process for considering any potential extensions of the availability of sterling synthetic LIBOR, and the timing and process of any tightening of the broad restrictions on synthetic LIBOR's use. Since the meeting the FCA published the Feedback Statement (10 December).

UK Finance is receiving a high volume of questions on the use of USD LIBOR in the UK after year-end. In light of regulatory guidance to cease 'new' use of USD LIBOR from January 2022, most of these questions relate to what constitutes 'new' use for these purposes, with grey areas around uncommitted facilities.

3. SIFMA update

SIFMA noted the importance of the impending no 'new' USD LIBOR use after 2021 year-end milestone. To this end, SIFMA is focused on monitoring Federal tough legacy legislation in the US, which is still making its way through the legislature.

Over the summer the House Financial Services Committee approved legislation containing safe harbour provisions for those contracts which are transitioning from LIBOR to SOFR and which currently contain weak fallbacks (the Adjustable Interest Rate (LIBOR) Act of 2021 (H.R. 4616)). The next step is for the legislation to be voted on by the full House of Representatives. The legislation has been subject to discussions between industry and consumer groups, but SIFMA remain hopeful that it will be voted on by year-end. Since the meeting, H.R. 4616 was voted on and approved by the House of Representatives (9 December).

Meanwhile, SIFMA noted that in the Senate, a bipartisan bill will be introduced imminently. A recent hearing between the Senate Banking Committee, industry, ARRC and AMERIBOR witnesses resulted in all parties agreeing that the legislation was satisfactory as drafted. Again, SIFMA remain optimistic that this legislation will pass before year-end but is acutely aware that this is now only a few weeks away. The legislation compels the Federal Reserve to do a number of things, including writing rules on 6-month timelines, and so from an operational point of view, the sooner this legislation is passed, the more prepared the market can be.

The LMA asked whether, in SIFMA's experience, AMERIBOR was gaining any traction. SIFMA responded that AMERIBOR has always had its own specific audience, namely smaller banks such as regional and community banks. It remains fairly popular with these market participants. In the capital markets, SIFMA is not aware of much AMERIBOR activity at all. Here, where SOFR and other RFRs are not being used, the most popular alternative rate is BSBY. However, there have been comments by the regulators on BSBY and so SOFR is now the predominant rate.

4. LSTA update

The LSTA noted that it has been seeing increased SOFR activity. In particular it is seeing more use of term SOFR, especially in the institutional loan market.

The LSTA has also seen momentum building with respect to spread adjustments. It has seen various deals built around a 3-tiered pricing model, comprising the sum of the benchmark rate (for example, term SOFR), a separate credit adjustment spread (**CAS**) and the applicable rate. In the institutional space, the CAS has depended on the tenor: it has normally been 10 basis points for 1 month, 15 basis points for 3 month, and 25 basis points for 6 month tenors.

In the investment grade space, the LSTA has seen a slightly different pricing model with the CAS being flat across all tenors. Some transactions have also taken a 2-tiered approach to pricing where the CAS is built into the applicable rate.

The LSTA was keen to emphasise that it is too early to label these trends as market conventions, but that it will continue to monitor market behaviours.

Elsewhere, the LSTA noted that in the US domestic market the threshold of USD denominated syndicated facilities that are publicly available has been reached for the purposes of using the early opt-in trigger for ARRC hardwired fallback language. Since the hardwired fallback language requires the use of the ARRC spread adjustment, it is not currently economically desirable for borrowers to take this option. This is because they would be required to pay more than they would if they were to engage in a new SOFR origination (based on where the market is today). As a result, the LSTA is not expecting many participants to exercise the early opt-in, but it is noteworthy that it is available.

The LSTA noted that the ability to transition is there and it will be closely monitoring how quickly and in what volume market participants do move.

Elsewhere, the LSTA noted that in respect of new deals there are questions on the operation of incremental facilities. In particular, the operation of MFN provisions where the base loan is in LIBOR but the incremental facility is linked to SOFR is a concern, particularly in terms of fungibility.

The LSTA noted that market participants are continuing to progress with respect to the licensing process with CME. Though there is still a lot of work to be done before all relevant market participants have signed licensing agreements, the issue of licensing should not be a problem moving forward as CME has been offering grace periods.

Lastly, in terms of documentation, the LSTA is currently making some minor amendments to its SOFR suite.

5. AFME

AFME noted that it is continuing to support its members in the transition away from LIBOR. Generally, requests for assistance are decreasing (especially on the securitisation side) as market participants are busy ensuring that everything is in place for year-end.

Otherwise, AFME is keen to see the various tough legacy laws pass through their respective legislative procedures.

6. LMA update

The LMA remains focused on updating its suite of documentation. Its leveraged documents (including intercreditor agreements) are nearly finalised and should be released before year-end. These will be based on compounded RFRs but will kept under review should market practice develop to use different rates (for example, term SOFR). The LMA is also in the process of updating its Spanish, French and German law facility agreements with RFR provisions in place of LIBOR.

The LMA is also finalising its secondary documents. The finalised versions of the secondary trading exposure drafts should be released on 4 January 2022. The LMA is also tracking term SOFR activity so that it can consider any amendments to its term SOFR wording as and when such changes may be appropriate.

Elsewhere, the LMA is focusing on educational pieces to assist market participants in the transition. This includes e-learning modules to help simplify some of the more complex concepts in the transition. The LMA is also hosting an online webinar on 13 December which will include a general update on the transition and a presentation on the exposure draft term SOFR document.

7. JSLA update

The JSLA was not able to attend the meeting, but had sent a summary update by email, which was read out:

The Japanese Financial Services Industry (**JFSA**) and the Bank of Japan (**BOJ**) jointly conducted a brief survey in October and released the summary in November. The results indicated that significant progress has been made in the areas of loans, bonds and derivatives as of the end of September 2021, with 85.1% of loans complete, 51.6% of bonds complete, and 99.1% of derivatives complete.

The majority of contracts for which transition had not yet been completed as at the end of September are expected to transition away from Japanese yen LIBOR by the end of December 2021.

Although a small number of contracts may not complete their transition by the end of the year, exceptionally, the transition for these contracts is expected to be completed before the first interest payment or revision of interest rates after the turn of 2022.

There were no contracts that would fall under the category of tough legacy contracts and were expected to use synthetic yen LIBOR.

The JSLA will continue to support its members in the transition process.

8. ICMSA

ICSMA noted that it is continuing to monitor announcements and developments from regulators, especially to the extent that they clarify the role of polling banks.

ICMSA's members are increasing active conversions to RFRs, whether that be for bonds or for amendments to back-end documents such as loans, swaps, servicing agreements and the like.

ICMSA noted that, as SOFR issuance increases across Europe, it anticipates that the market will engage in more conversations regarding the difference in expectation for 2 day lookback periods compared with 5 day lookback periods or the use of an index. This is conversation will be tied into market participants' abilities to be able to calculate rates, to communicate with clearing systems and to navigate time zones with clients across Europe. ICSMA noted that these issues are more prevalent in Europe than the US where the market seems to have coalesced around a 2 day lookback period for SOFR. ICSMA noted that it is not looking to publish any further guidance on the issue as it has published materials on the topic before.

9. ICMA update

ICMA noted that it is continuing to look into operational issues that will potentially arise on day 1 without LIBOR. It is a matter that was recently raised during a Bond Market Sub Group (**BMSG**) meeting.

ICMA are not receiving many queries from its members, with everyone busy with the transition itself.

ICMA noted that the BMSG is also focusing on future issues in the transition away from LIBOR, notably on the work surrounding USD LIBOR under English law (of which there is a significant number of affected transactions), as well as sterling LIBOR under New York law (of which there is a much less significant number of affected transactions). ICMA, as well as other members of the BMSG, are also awaiting further guidance from the FCA with respect to these outstanding issues

Elsewhere, ICMA is looking at secondary market conventions for trading SONIA-referencing floating rate notes where the accrued interest is not known at the trade date.

ICMA also raised some concerns regarding the Euro WG letter on the designation of statutory replacement rates for sterling and Yen LIBOR. These concerns are mainly centred around ensuring any such designation does not undermine the work that has been done to ensure that synthetic LIBOR is a continuation of LIBOR rather than a new, replacement rate. The timing of any such designation is also critical. ICMA will be continuing to monitor this issue closely and work to ensure that there are no unintended consequences of any action taken.

10. GFMA update

The GFMA is continuing to assist its members in the LIBOR transition. The GFMA highlighted the FSB statement in support of the cessation of LIBOR published on 22 November 2021.

In addition, the GFMA noted that the joint LIBOR FSB and OSSG report of 2020 was published in early 2021, and so it is looking forward to the new report being published at the beginning of 2022.

11. AFB update

The AFB noted that it is continuing to monitor members' transition efforts and asking for feedback where necessary. The AFB has not received many questions from its members recently, suggesting that the transition is going well.

Much like other members of the Working Party, the AFB will also continue to monitor legislative developments both in the US and in the UK.

12. AOB

After discussion, the Working Party resolved to continue with monthly meetings in 2022, to be reviewed at the end of Q1.

The LMA thanked members of the Working Party for their updates. The date of the next meeting is to be set for January 2022 and minutes would be circulated.