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ISDA IBOR Fallbacks Supplement and Protocol

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The Short Read

The anticipated demise of the London Inter-Bank Offered Rate ("LIBOR") from the end of 2021 will have a significant impact on financial markets and market participants in a number of ways, including:

- determining which fallback rates will replace LIBOR in contracts and how those replacements will come into effect;
- economic mismatches in contracts if the fallback rate is not equivalent to the LIBOR being replaced (due to term differences, and credit and risk premia differences); and
- identifying and mitigating the market risks presented by the LIBOR transition.

Where firms rely on a LIBOR currency rate, whether as a benchmark or performance target or in their derivative and other trading documentation, action will need to be taken: (i) from a regulatory perspective to identify and mitigate the resulting risks, including market risks; and (ii) to identify an appropriate replacement rate, and to determine when such replacement rate will begin to apply and the contractual mechanisms for achieving this.

So far as the OTC derivatives market is concerned, the International Swaps and Derivatives Association, Inc. ("ISDA") has put forward a potential solution for how to determine a replacement rate once LIBOR is permanently discontinued (as well as in certain other scenarios). This solution involved extensive consultations and market involvement and takes the form of the IBOR Fallbacks Supplement and the ISDA 2020 IBOR Fallbacks Protocol (the "Protocol"). The combination of these two documents allows market participants to amend new and existing ('legacy') transactions across a wide range of trading documentation whereby references to LIBOR and other Inter-Bank Offered Rates ("IBORs") will be replaced by the relevant 'term adjusted risk free rate plus a spread' upon permanent cessation of the IBOR and, in some cases, a pre-cessation determination that it is no longer representative. The Protocol is particularly widely drafted and will affect IBOR references not only in ISDA documentation but also in certain other industry master documentation, such as the various iterations of the Global Master Securities Lending Agreement and Global Master Repurchase Agreement. Adherence to the Protocol may be made now.

Although adherence to the Protocol is generally encouraged (and, indeed, expected) by regulators and industry bodies, it is still necessary to consider whether the Protocol is appropriate for all legacy transactions and for all agreements to be covered by its terms. The operation of the Protocol will inevitably lead to inclusion or exclusion of certain transactions and agreements, in circumstances where such inclusion or exclusion is not desirable. As such, Protocol adherence will not be a panacea of compliance for legacy OTC derivative transactions, in which case separate bilateral amendment agreements between parties are likely to be necessary.

The Full Read

A great deal has been written and spoken about the upcoming transition from LIBOR (and potentially in the future, other IBORs) to alternative overnight virtually risk free rates ("Alternative RFRs"). In this *Briefs for the Buy side*, we aim to: (1) in Part 1, briefly cover some key concepts and issues relating to the LIBOR transition as it affects the OTC derivatives markets; and (2) in Part 2, focus on the recent IBOR Fallbacks Supplement[1] (the "Supplement") and ISDA 2020 IBOR Fallbacks Protocol[2] (the "Protocol").

Part 1: LIBOR Background

What is LIBOR?

LIBOR is the prevailing benchmark interest rate at which contributor banks (of which there are between 11 and 16, depending on the LIBOR currency) will lend to each other on an unsecured basis. The LIBOR administrator is ICE Benchmark Administration ("IBA") which is regulated by the UK Financial Conduct Authority (the "FCA"). On a daily basis, each contributor bank submits the rate at which it could borrow funds were it to do so by asking for and then accepting inter-bank offers in a reasonable market size just prior to 11:00am, whereupon the IBA determines the final rate using a trimmed arithmetic mean methodology. LIBOR is calculated for 5 currencies (U.S. Dollar, Euro, Pound Sterling, Japanese Yen and Swiss Franc) and 7 tenors or maturities (being 1 day, 1 week, 1 month, 2 months, 3 months, 6 months and 12 months). It is used as a reference rate for hundreds of trillions of dollars of bonds, derivative contracts, loans, structured products and other financial instruments globally.

The problems with LIBOR

LIBOR was the subject of 'fixing' allegations which emerged during and after the global financial crisis of 2007-2008, resulting in a number of banks being fined for manipulating LIBOR by colluding to submit false rates.

Regulators' interest being piqued, the oversight of LIBOR was transferred from the British Bankers Association to the FCA (in fact, the Financial Services Authority, as it was at the time) following the recommendations in "The Wheatley Review of LIBOR: final report"[3] (the "Wheatley Report").

Initially, the intention was to reform LIBOR rather than replace it. The Wheatley Report concluded that "[a] move to replace LIBOR could only be justified by clear evidence that the benchmark is severely damaged" and "… the issues identified with LIBOR, while serious, can be rectified through a comprehensive and far-reaching programme of reform; and that a transition to a new benchmark or benchmarks would pose an unacceptably high risk of significant financial instability, and risk large-scale litigation between parties holding contracts that reference LIBOR"[4].

However, by 2017, the tune had changed. A market data gathering exercise in the wholesale bank borrowing and related markets indicated that relatively few real transactions underpinned the rates being submitted by contributor banks to the IBA. This decline in real, observable transactions substantiating the submissions led Andrew Bailey, then Chief Executive of the FCA, to summarise the situation by posing the question: "The absence of active underlying markets raises a serious question about the sustainability of the LIBOR benchmarks that are based upon these markets. If an active market does not exist, how can even the best run benchmark measure it?"[5]

What will happen to LIBOR?

As a result, it was announced that the FCA would not use its powers to compel panel banks to make their LIBOR submissions beyond 2021[6]; although the 20 LIBOR panel banks agreed to voluntarily continue to make submissions until that date[7].

Therefore, although the end of 2021 is not a definite deadline, LIBOR is expected to be unavailable around that date because either: (i) panel banks are no longer making the necessary submissions for it to be determined; or (ii) the FCA determines that the rate is no longer representative of the underlying market. The FCA has delivered a consistent message that: (i) market participants should not rely upon LIBOR being an available benchmark in any of the five currencies that currently use it as a reference rate after 2021; and (ii) the market should plan for cessation at the end of 2021 and be prepared accordingly. Even during the recent COVID pandemic, the FCA stated that: "The central assumption that firms cannot rely on LIBOR being published after the end of 2021 has not changed and should remain the target date for all firms to meet"[8].

It is, of course, also possible that the FCA may seek to discontinue LIBOR before that date if it determines that the rate is no longer representative of the underlying market.

Alternative RFRs – the replacements

Working groups were established in the affected jurisdictions to identify the appropriate Alternative RFR to replace each key IBOR (in the UK, the Working Group on Sterling Risk-Free Reference Rates (the "WGSRFRR") and in the US, the Alternative Reference Rates Committee (the "ARRC")).

Different Alternative RFRs have been identified for different IBORs as set out below[9]:

LIBOR Currency	**IBOR**	**Administrator**	**Alternative RFR**	**Alternative RFR Administrator**
Australian Dollar	Bank Bill Swap Rate (“BBSW”)	Australian Securities Exchange	Reserve Bank of Australia Interbank Overnight Cash Rate (“AONIA”)	Reserve Bank of Australia
Canadian Dollar	Canadian Dollar Offered Rate (“CDOR”)	Refinitiv	Canadian Overnight Repo Rate Average (“CORRA”)	Bank of Canada
Swiss Franc	LIBOR (“CHF LIBOR”)	IBA	Swiss Average Rate Overnight (“SARON”)	SIX Swiss Exchange
Euro	LIBOR (“EUR LIBOR”)	IBA	Euro Short-term Rate (“€STR”)	European Central Bank
	Euro Interbank Offered Rate (“EURIBOR”)	European Money Markets Institute		
Sterling	LIBOR (“GBP LIBOR”)	IBA	Sterling Overnight Index Average (“SONIA”)	Bank of England

Hong Kong Dollar	Hong Kong Interbank Offered Rate ("HIBOR")	Treasury Markets Association ("TMA")	Hong Kong Dollar Overnight Index Average ("HONIA")	TMA
	LIBOR ("JPY LIBOR")	IBA		
Yen	Tokyo Interbank Offered Rate ("TIBOR")	Japanese Bankers Association TIBOR Administrator ("JBATA")	Tokyo Overnight Average Rate ("TONA")	Bank of Japan
	Euroyen TIBOR	JBATA		
US Dollar	LIBOR ("USD LIBOR")	IBA	Secured Overnight Financing Rate ("SOFR")	Federal Reserve Bank of New York

As an example, SONIA was chosen to be the GBP LIBOR Alternative RFR because: (i) it has the capability to evolve over time and hence is robust to changes in its underlying markets; (ii) it tends to be predictable and tracks bank rates closely; and (iii) it is referenced in the already liquid sterling overnight indexed swap market[10].

Structurally, the relevant Alternative RFRs are different from LIBOR insofar as they: (i) are overnight rates rather than term rates and so do not reflect the current LIBOR tenors; and (ii) reflect different risk and credit premia. In which case, one cannot simply be substituted for the other without adjustments being made to mitigate the differences and minimise the economic value transfer that would otherwise occur.

Each jurisdiction and market sector has been consulting and working on how best to adjust the Alternative RFRs to address and minimise these two key issues. We consider the approach advocated by ISDA for use in the OTC derivatives industry in our consideration of the Supplement and Protocol below.

What are the expectations on asset managers for the LIBOR transition?

The FCA has released a number of communications relating to how UK regulated asset management firms are expected to handle the transition[11]. In their "Dear CEO Letter" of 27 February 2020[12] (the "Dear CEO Letter"), the FCA stated that they "… expect your firm to take all reasonable steps to ensure the end of LIBOR does not lead to markets being disrupted or harm to consumers, and to support industry initiatives to ensure a smooth transition". In summary, firms are expected to: (1) have a strategy in place and take necessary action during the LIBOR transition; and (2) treat customers fairly by following the FCA's rules and guidance.

In essence this involves (i) identifying all contracts and areas where there is an exposure to LIBOR and (ii) identifying, understanding and managing / mitigating the associated risks, including 'conduct risks' (for example, actions that could lead to poor outcomes for clients). Additionally, care should be taken not to create additional exposure risks in the run-up to LIBOR discontinuance; in other words, using and transacting in the new Alternative RFRs ahead of time is encouraged. Indeed, the Dear CEO Letter stresses that asset management firms should "… consider not making any new investments in GBP LIBOR based cash products [e.g. loans, bonds] maturing beyond 2021 by end Q3 2020" and "… now consider switching from LIBOR swaps to SONIA swaps for new positions where possible".

One point that all market participants will need to consider is how to amend their existing contracts from existing IBOR references to an Alternative RFR at the relevant time and how to adjust that Alternative RFR to maintain (as closely as possible) the same maturity and economic effect as the IBOR being replaced. Helpfully, in the context of OTC derivatives, ISDA has been working on this 'replacement rates' problem for some time.

Part 2: ISDA IBOR Fallbacks Supplement and ISDA 2020 IBOR Fallbacks Protocol

Timing

The Supplement will become effective on 25 January 2021. The Protocol (as well an associated FAQ[13] (the "FAQ")) were made available by ISDA ahead of the official launch date on 23 October 2020. An escrow period between 9 October and 23 October encouraged market participants to adhere to the Protocol to demonstrate widespread market support in advance of the official go-live date. Over 250 firms took advantage of the early sign-up.

The combination of the Supplement and the Protocol is intended to cover existing and new trades from 25 January 2021 as follows: (i) all new OTC derivatives transactions incorporating the 2006 ISDA Definitions and referencing one of the IBOR rates covered in the Supplement will incorporate the new contractual fallback rates and (ii) assuming that both counterparties have adhered to the Protocol by that date, existing agreements covered by the Protocol will incorporate the new contractual fallback rates. It is expected that the Protocol will remain open for adherence beyond this date.

What does the Supplement do?

The 2006 ISDA Definitions currently set out the "Rate Options" for multiple currencies which are used to determine the floating amount payable in respect of a swap transaction (for example, "GBP-LIBOR-BBA" is one Rate Option for GBP LIBOR). The 2006 ISDA Definitions do not contemplate the permanent cessation of a Rate Option (only a temporary one) with the result that, if the relevant Rate Option is not available, the Calculation Agent will typically be required to obtain replacement rate quotes from major financial institutions / banks. In circumstances where an IBOR has been permanently discontinued, this solution is not practical since the financial institutions / banks would presumably be unwilling or unable to provide such quotes, resulting in an ineffective and unworkable fallback. The Supplement addresses this shortcoming.

Therefore, for transactions incorporating the 2006 ISDA Definitions, the Supplement provides a means for incorporating, and a methodology for determining, robust fallback rates to replace the Rate Options for each of the following IBORs upon an Index Cessation Event (see below): GBP LIBOR, CHF LIBOR, USD LIBOR, EUR LIBOR, EURIBOR, JPY LIBOR, TIBOR, Euroyen TIBOR, BBSW, CDOR, HIBOR, the Singapore dollar swap offer rate and the Thai baht interest rate fixing (each, a "Relevant IBOR")[14].

Special consideration is given in the Supplement to determining the fallback rates where "Linear Interpolation" applies to a calculation period or compounding period. This is not considered further in this *Briefs for the Buy side*, the below assuming that "Linear Interpolation" is not specified to apply to a covered transaction.

What events trigger the contractual fallbacks?

The events triggering the contractual fallbacks are contained in the Supplement for each Relevant IBOR and are known as "Index Cessation Events":

- ***permanent cessation or discontinuance trigger (statement by administrator)*** – a public statement or publication of information by or on behalf of the administrator of the Relevant IBOR announcing that it has ceased or will cease to provide the Relevant IBOR permanently or indefinitely and at such time there is no successor administrator to provide the Relevant IBOR;

- ***permanent cessation or discontinuance trigger (statement by others)*** – a public statement or publication of information by certain specified bodies / supervisors stating that the administrator of the Relevant IBOR has ceased or will cease to provide the Relevant IBOR permanently or indefinitely and at such time there is no successor administrator to provide the Relevant IBOR; and

- ***pre-cessation trigger*** – in the case of GBP LIBOR, CHF LIBOR, USD LIBOR, Euro LIBOR and Yen LIBOR only (the "LIBOR Rate Options"), a public statement or publication of information by the regulatory supervisor for the administrator of such relevant LIBOR Rate Option (currently being the FCA) announcing that (i) it has determined that the LIBOR Rate Option is no longer, or as of a specified future date will no longer be, representative of the underlying market and economic reality that such LIBOR Rate Option is intended to measure, and that representativeness will not be restored and (ii) the statement or publication is being made in the awareness that it will engage certain contractual triggers for fallbacks activated by pre-cessation announcements by the supervisor (howsoever described) in contracts.

The contractual fallback rates apply from the first date the Relevant IBOR becomes non-representative (in respect of a LIBOR Rate Option) or is no longer provided, whichever is earlier (the "Index Cessation Effective Date").

What happens if only certain tenors of a Relevant IBOR are affected: the initial fallback rate

In order to determine which contractual fallback rate applies, it is first necessary to determine whether all tenors of a Relevant IBOR are discontinued or (in the case of LIBOR Rate Options) become non-representative. If not all tenors are discontinued or (in the case of LIBOR Rate Options) become non-representative, the Supplement includes provisions for how to determine the appropriate fallback for the affected tenor of the Relevant IBOR to apply. Broadly, so long as at least two other tenors of the Relevant IBOR are available (and which, in the case of the LIBOR Rate Options, are still representative), one of which is longer than the affected tenor and one of which is shorter than the affected tenor, then the first contractual fallback rate to be used is determined by interpolating between those two tenors instead of using the All-in Fallback Rate (as described below). However, if the longer and shorter tenors are not available, such that interpolation cannot occur, an Index Cessation Event is deemed to have occurred (and the Index Cessation Effective Date will be the first date on which there is no longer or shorter tenor or, if later, the first date on which the relevant tenor is permanently unavailable (or, in respect of a LIBOR Rate Option, non-representative)).

What happens upon a temporary suspension of the Relevant IBOR (i.e. not due to an Index Cessation Event)?

The Supplement also considers the scenario where the Relevant IBOR may simply be temporarily unavailable (for example, due to a technical screen issue). Where the Relevant IBOR has not been published by the specified source on a certain day and no Index Cessation Effective Date has occurred, then references to the Relevant IBOR will be deemed to be references to the rate provided by the administrator of the Relevant IBOR and published by an authorised distributor or by the administrator itself and, if no such rate is provided or published, the rate formally recommended for use by the administrator of that Relevant IBOR or by another specified entity (whose identity varies depending on the Relevant IBOR in question). If one of the recommended rates does not exist, the Calculation Agent will determine a commercially reasonable alternative rate for the Relevant IBOR, taking into account any rate implemented by central counterparties and/or futures exchanges.

Which contractual fallback rates apply from an Index Cessation Effective Date, and how are they calculated?

Upon an Index Cessation Event, the Supplement provides that for a 'Reset Date' occurring on or after the Index Cessation Effective Date, the first fallback rate for each Relevant IBOR currency will be the Alternative RFR (as set out in the table in "*Alternative RFR – the replacements*", above) as adjusted to reflect the appropriate 'term' plus a spread (the "All-in Fallback Rate"). As mentioned above, Alternative RFRs by themselves are not suitable like-for-like replacements for the Relevant IBORs due to their structural differences. As such, they must also reflect a term adjustment and spread.

In brief, the prescribed methodology for converting an Alternative RFR to the All-in Fallback Rate is as follows[15]:

- *Term Adjustment*: The relevant Alternative RFR is first adjusted using a 'compounded setting in arrears approach' whereby the Alternative RFR is compounded daily over a period which generally corresponds to the tenor of the Relevant IBOR in order to create a term rate (the "Term Adjusted Alternative RFR").

- *Backward Shifting*: Seeing as the total interest amount would otherwise not be known until the very end of the calculation period, which would not be desirable, the methodology uses a 'lag period' and an 'observational shift' whereby the start of the accrual period is determined in accordance with market convention[16] and is then shifted backwards two business days so that the rate can be known ahead of the payment date.

- *Spread Adjustment*: To offset the pricing factors inherent in a Relevant IBOR, a spread adjustment is then made to the Term Adjusted Alternative RFR which is based on the median spread between the Relevant IBOR (in the relevant tenor) and the Term Adjusted Alternative RFR (in the same tenor) over the five year period preceding the Index Cessation Event to yield the All-in Fallback Rate.

The term adjustments, spread adjustments and each All-in Fallback Rate will be published by Bloomberg Index Services Limited[17] (on a specific Bloomberg screen) and their Bloomberg IBOR Fallback Rate Adjustments Rule Book contains detailed information on the calculations[18].

The Supplement also considers the scenario where the All-in Fallback Rate itself or the underlying Alternative RFR is permanently discontinued – introducing a waterfall of alternate methods (which varies between currencies) for determining a fallback rate.

What documents are covered by the Protocol?

The agreements covered by the Protocol ("Protocol Covered Documents") are not limited to ISDA Master Agreements, but also include numerous other trading agreements. In summary, they are:

- ***ISDA documents***. ISDA Master Agreements and Credit Support Documents that: (i) incorporate the 2006 ISDA Definitions, the 2000 ISDA Definitions or certain named earlier ISDA definitional booklets used to calculate floating amounts (each a "Covered Booklet"); (ii) reference a Relevant IBOR "as defined" in a Covered Booklet or otherwise provide that the Relevant IBOR has the meaning given in a Covered Booklet; and/or (iii) reference a Relevant IBOR ((i) to (iii), the "Protocol Covered Documents Criteria");

- ***Specified non-ISDA documents.*** Additional non-ISDA 'master agreements' and non-ISDA 'credit support documents' (set out in the Annex to the Protocol) for both derivative and non-derivative products, including the Global Master Securities Lending Agreements, Global Master Repurchase Agreements and Master Repurchase Agreements, in each case that satisfy the Protocol Covered Documents Criteria; and

- ***ISDA and non-ISDA confirmations***. Confirmations that form part of either in-scope ISDA documents or non-ISDA documents and that satisfy the Protocol Covered Documents Criteria.

The Protocol will amend only Protocol Covered Documents between two adhering parties to the Protocol which have a date before the later of 25 January 2021 and the date on which the later of the two parties adhered to the Protocol.

What does the Protocol do?

The Protocol aims to remediate existing legacy transactions. The Protocol enables adhering parties to amend Protocol Covered Documents as follows: (1) where such Protocol Covered Document incorporates a Covered Booklet, to incorporate the terms of the Supplement (in some instances, together with certain other amendments); (2) where limb (ii) of the Protocol Covered Documents Criteria applies to such Protocol Covered Document, amend the references to the Relevant IBOR to be references to the Rate Option in the Supplement for that Relevant IBOR 'as defined in the Supplement'; and

(3) where limb (iii) of the Protocol Covered Documents Criteria applies to such Protocol Covered Document, include contractual provisions equivalent to the contractual fallbacks contained in the Supplement, associated Index Cessation Events and related terms. In the case of the Protocol, a Relevant IBOR will also include LIBOR (with no reference to, or indication of, the currency of the relevant LIBOR).

As between two adhering parties, the amendments made by the Protocol will take effect on the later of (i) 25 January 2021 and (ii) the date of adherence by the later of the two parties.

Cleared Transactions

The Protocol and the Supplement do not cover documentation governing cleared transactions. It is expected that at least some of the major clearing houses will update their rulebooks to use the terms of the Supplement in respect of legacy cleared transactions (and, of course, future trades will automatically incorporate the fallback rates).

Bilateral Amendments

Where parties consider that the Protocol may not be the appropriate mechanism to amend some or all of their legacy contracts, they may choose instead to incorporate or vary the contractual fallback provisions by using one of the bilateral template agreements published by ISDA[19]. These template agreements (in both principal-to-principal and agency formats) are intended to enable parties to: (i) amend certain existing documents to incorporate the terms of the Protocol (as further supplemented or amended by agreement between the parties); (ii) exclude certain existing documents from the scope of the Protocol and (a) apply separate fallbacks and triggers in such documents or (b) match the fallbacks and triggers in such documents to those in the related hedge product or (c) retain the negotiated fallbacks and triggers already included in such document; (iii) include additional existing agreements within the scope of the Protocol; (iv) disapply the Protocol's pre-cessation trigger Index Cessation Event; and (v) amend the scope and terms of the Protocol in relation to one or more Protocol Covered Agreements.

AB Trading Advisors' View and Comment

Expectations of adherence

Adherence to the Protocol is not mandatory. However, the market expectation is that firms will adhere or otherwise be prepared to explain to their regulatory supervisors why they have not, and how they are managing their LIBOR transition risk.

The FCA has stated that they "encourage early sign-up to the protocol"[20] and that they "and other authorities have consistently and repeatedly urged market participants from all sectors – sell side, buy side, non-financial, to ensure they are ready for the end of LIBOR by adhering to the protocol that ISDA is producing"[21]. The first recommendation in relation to derivatives of the ARRC's Recommended Best Practices[22] is that "market participants should adhere to the [Protocol] within the 3 to 4 month period after it is published…". The WGSRFRR has stated that they "… strongly [encourage] early adherence to the Protocol by both financial and non-financial firms"[23].

The FCA has also stated that: "Firms are more likely to be able to demonstrate they have fulfilled their duty to treat customers fairly where they adopt a replacement rate that aligns with the established market consensus, reached through appropriate consultation, and is recognised by relevant national working groups as an appropriate solution"[24].

Issues to consider in relation to the Protocol

- Due to the sheer breadth of the Protocol in terms of the changes it makes and the agreements it covers, its impact on (and the changes made to) existing transactions should be scrutinised. Scrutiny should encompass:
  - a legal review in terms of whether the various representations can be made (see below), what fallbacks (if any) are already present or catered for in the governing documentation and what the effect will be on the contractual terms governing the terms of such transactions; and
  - an economic review as to the impact on valuation and payment flows under transactions, including determining if any transfer of value upon a

transition between rates will occur given that the credit adjustment to the Term Adjusted Alternative RFR in the All-in Fallback Rate will not completely negate the economic differences between the Relevant IBOR and the Alternative RFR.

The ability to make bilateral amendments outside of the Protocol will allow for tailoring, but thought must be given as to how each transaction should be dealt with.

- By necessity, the Protocol is designed to be a one-size-fits-all approach. Therefore, despite regulatory pressure, adherence may not be the correct approach for all legacy transactions – particularly where the IBOR referenced in the derivative hedging instrument (e.g. an interest rate swap) and the instrument being hedged (e.g. a loan) may move to different Alternative RFRs or transition at different times. In circumstances where a legal or basis risk may otherwise be created, a bilateral amendment approach for those particular transactions may be required. In addition, the exotic nature of some OTC derivative transactions (such as swaptions, caps, floors and in-arrears swaps) demands that a more tailored and complex contractual fallback rate be used in lieu of the All-in Fallback Rate to replace a Relevant IBOR. ISDA has noted that it (i) expects to publish information on how such non-linear products and swaptions would function upon the application of the fallbacks and (ii) is advisable to amend these types of legacy transactions via the Protocol as a first step, as current reference bank 'polling' fallbacks would not be suitable[25]. (Polling refers to collating quotations from dealers in the relevant interdealer market.)

- Given the wide scope of the Protocol Covered Documents that the Protocol seeks to amend, some of the basic representations in the Protocol which would otherwise be taken for granted should now be reviewed. Consideration should also be given as to whether certain formalities, consents, authorisations or other procedures are separately required under the Protocol Covered Documents to ensure that the Protocol representations are not breached.

- An asset manager may adhere to the Protocol as agent for all or some of its underlying funds (each, a "Client") in respect of (i) Protocol Covered Documents it entered into on behalf of the relevant Client as well as (ii) Protocol Covered Documents it did not enter into on behalf of the relevant Client but which it nevertheless has the authority from the Client to amend. However, determining how such an agent may correctly adhere on behalf of its Clients, when the date of such adherence occurs and how to identify which Clients are bound to the Protocol and in respect of which Protocol Covered Documents, is a complicated task and the subject of detailed prescribed procedures in the Protocol.

- Parties will need to consider what will happen to legacy OTC derivative transactions which are not covered by the Protocol and which are not the subject of a bilateral amendment. If the documents governing these transactions do not already contain robust fallbacks, then there may be no mechanism to identify a fallback rate in the event that an IBOR is no longer available. Nor should parties assume that these will form part of the universe of 'tough legacy' contracts (i.e. contracts without robust fallbacks, and which cannot be appropriately amended (for example, where it is impossible to meet the contractual consent requirements to identify and include a fallback rate)) which are intended to be covered by the (currently) competing, overlapping and inconsistent approaches being considered by the UK, the European Union and the United States.

- Given the above, parties may also want to consider if it is possible to reduce exposure to the Relevant IBORs in advance of an Index Cessation Event by, for example, closing out and replacing the affected transactions before the end of 2021. Avoiding entering into transactions referencing LIBOR and having a maturity beyond 2021 will reduce the impact of LIBOR discontinuance. A smaller legacy book will mean smaller headaches when considering the Protocol. This principle of reducing reliance on LIBOR (particularly in respect of products maturing beyond 2021) is one that will apply to all markets, not just to OTC derivatives. The WGSRFRR has updated its roadmap showing the top-priorities for achieving this in the context of GBP LIBOR[26].

[1] Amendments to the 2006 ISDA Definitions to include new IBOR fallbacks – Supplement number 70 to the 2006 ISDA Definitions (Final on October 23, 2020 and published and effective on January 25, 2021); available at: http://assets.isda.org/media/3062e7b4/23aa1658-pdf/

[2] Available at: http://assets.isda.org/media/3062e7b4/08268161-pdf/

[3] Published in September 2012 and available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/191762/wheatley_review_libor_finalreport_280912.pdf

[4] Sections 1.11 and 1.12 of the Wheatley Report.

[5] Speech of 27 July 2017 on '*The future of LIBOR*'; available at: https://www.fca.org.uk/news/speeches/the-future-of-libor

[6] See *fn.* 5 above.

[7] See "*FCA statement on LIBOR panels*"; available at: https://www.fca.org.uk/news/statements/fca-statement-libor-panels

[8] See FCA statement "*Impact of the coronavirus on firms' LIBOR transition plans*" published 25 March 2020; available at: https://www.fca.org.uk/news/statements/impact-coronavirus-firms-libor-transition-plans

[9] This table is an abbreviated and amended version of the one appearing in ISDA's background information on the new derivatives fallbacks entitled "*Understanding IBOR Benchmark Fallbacks*"; available at: http://assets.isda.org/media/50b3fed0/47be9435-pdf/

[10] See "*Why is SONIA the best alternative?*" in the pack entitled "Preparing for 2022: What you need to know about LIBOR transition" by the WGSRFRR of November 2018; available at: https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/what-you-need-to-know-about-libor-transition

[11] A central repository for these can be found at: https://www.fca.org.uk/markets/libor

[12] Available at: https://www.fca.org.uk/publication/correspondence/dear-ceo-asset-management-libor.pdf

[13] ISDA 2020 IBOR Fallbacks Protocol (IBOR Fallbacks Protocol) FAQs; available at: http://assets.isda.org/media/3062e7b4/3cfa460a-pdf/. In addition, the Protocol site on the ISDA website contains a wealth of additional information relating to the Protocol and associated matters; available at: https://www.isda.org/protocol/isda-2020-ibor-fallbacks-protocol/

[14] Note that we do not consider the impact or application of the Supplement or the Protocol on the Singapore dollar swap offer rate and the Thai baht interest rate fixing further in this *Briefs for the Buy side*, which should be read and construed accordingly. (These rates use USD LIBOR as an input for their calculation, so robust fallbacks have been included for these benchmarks in the case of a permanent cessation of USD LIBOR.)

[15] See also the "*Fact Sheet: IBOR Fallbacks*" published by ISDA, Linklaters LLP and Bloomberg; available at: https://assets.bbhub.io/professional/sites/10/Factsheet-IBOR-Fallbacks.pdf

[16] See the definition of "Reference Spot Lag" in the Bloomberg IBOR Fallback Rate Adjustments Rule Book; available at: https://data.bloomberglp.com/professional/sites/10/IBOR-Fallback-Rate-Adjustments-Rule-Book.pdf

[17] See: https://www.bloomberg.com/professional/solution/libor-transition/

[18] See *fn.* 16.

[19] See: http://assets.isda.org/media/3062e7b4/bf8c96ca-pdf/

[20] See page 7 of the Andrew Bailey's (Governor of the Bank of England) speech "*Libor: Entering the Endgame*" of 13 July 2020; available at:

https://www.bankofengland.co.uk/-/media/boe/files/speech/2020/libor-entering-the-endgame---speech-by-andrew-bailey.pdf?la=en&hash=26FF64120E62077B52C879CE4BEAD13315101485

[21] See Edwin Schooling Latter's (Director Markets and Wholesale Policy at the FCA) speech "*Libor transition - the critical tasks ahead of us in the second half of 2020*" of 14 July 2020; available at: https://www.fca.org.uk/news/speeches/libor-transition-critical-tasks-ahead-us-second-half-2020

[22] ARRC Recommended Best Practices for Completing the Transition from LIBOR; available at: https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC-Best-Practices.pdf

[23] Joint WGSRFRR and Bank of England "*Statement welcoming the announcement by ISDA on its IBOR Fallbacks Protocol and IBOR Fallbacks Supplement*"; available at: https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/statement-welcoming-isda-announcement.pdf?la=en&hash=1D9DDAB066CC9B7BD959CA0462106E3F07F9FDF9

[24] See the FCA's "*Questions and answers for firms about conduct risk during LIBOR transition*"; available at: https://www.fca.org.uk/markets/libor/conduct-risk-during-libor-transition

[25] See Initiative / Topic #13 in the "*ISDA and Related Workstreams – Interest Rate Reform*" document of 24 September 2020; available at: https://www.isda.org/a/DErTE/ISDA_BMR-and-Interest-Rate-Reform-Workstreams-Updated-September-24-2020.pdf

[26] See "*UK Working Group on Sterling Risk-Free Reference Rates (RFR WG) 2020-21 Top Level Priorities*", updated in September 2020; available at: https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/rfr-working-group-roadmap.pdf