



BULLETIN – 210118/55

ICMSA Bulletin – The discontinuation of LIBOR/IBORS – operational and procedural considerations for Consent Solicitations and Written Resolutions

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The challenge of transitioning legacy floating rate securities that mature after 2021 and reference LIBOR rates to new risk free reference rates (which we reported on in ICMSA Bulletin 200610/50 - *The discontinuation of LIBOR/IBORS – timeline of a consent solicitation* (available [here](#))), remains a formidable one. In recent months supervisory authorities and regulatory bodies have underscored the importance of accelerating transition away from LIBOR to new risk-free reference rates. This position has been supported by the UK government, which announced in June 2020 that “It is in the interests of financial markets and their customers that the pool of contracts referencing LIBOR is shrunk to an irreducible core ahead of LIBOR’s expected cessation, leaving behind only those contracts that genuinely have no or inappropriate alternatives and no realistic ability to be renegotiated or amended”¹. Whilst the ICMSA is working hard with regulators and other industry bodies to explore whether other potential solutions exist, in the vast majority of cases the most viable means of achieving the active transition of these legacy securities is likely to remain for issuers to launch consent solicitation exercises to obtain noteholder consent to change the terms of the securities. ICMSA Bulletin 200610/50 discussed in detail the various stages of a consent solicitation exercise, in particular highlighting the fact that they typically require the active participation of a range of different parties and can be time-consuming.

This Bulletin supplements Bulletin 200610/50 with some practical guidance on the operational process for launching and completing consent solicitations in the clearing systems and for conducting a written-resolution exercise to change the terms of the securities (where that is a realistic option).

Table of Common Operational Questions and Answers

The issuer (with the assistance of the tabulation agent) will need to set up the operational aspects of the consent solicitation with the relevant agents, the common depository/common service provider² and the clearing systems prior to launch in order to ensure the consent solicitation can be supported operationally without delay on the launch date. In order to facilitate a smooth launch of the consent solicitation through the information chain of Issuer – Principal Paying Agent – (Solicitation Agent/Tabulation Agent – (Common Depository/Common Service Provider)² – Clearing Systems – ICSD Participants/Custodians – Ultimate Beneficial Owner of the Notes, it is strongly recommended that issuers complete a Table of Common Operational Questions and Answers in the form set out at Annex 1. This should be provided to the common depository/common service provider (via the principal paying agent and tabulation agent) or solicitation agent along with the draft consent solicitation memorandum and official notice, which, for the avoidance of doubt, should contain this information in any event, ahead of the launch date.

¹ Rishi Sunak, Statement UIN HCWS307, 23 June 2020

² The issuer may appoint a Solicitation Agent to handle the consent solicitation event directly with the Clearing Systems.



Consent solicitation memoranda do not always include all the crucial operational items which are integral to the set-up of the consent solicitation at the clearing systems in an easily usable format. This can mean that a significant amount of additional communication is needed between the issuer/its counsel and the common depository/common service provider or solicitation agent who has to convert the information in the consent solicitation memorandum into an operational and swift-compliant notification to the clearing systems. This can delay the release of the relevant notification required for launch. The provision of a Table of Common Operational Questions and Answers, together with the Consent Solicitation Memorandum can streamline the timely launch and successful completion of the consent solicitation and drive efficiencies for all parties. This is a particularly important consideration given the volume of deals that are likely to require amendments to effect the transition away from LIBOR before the end of 2021 and the attendant pressures on clearing systems and service providers to minimise operational lag and execution risk.

Written resolutions and proof of holdings

As reported in ICMSA Bulletin 200610/50, one of the “active transition” options potentially available to issuers will be to amend interest rate provisions by way of written resolution. However, issuers should be aware that written resolutions will only be a suitable option in a narrow spectrum of transactions where a very small number of known investors hold the requisite amount of notes. The vast majority of debt issuances have been issued by way of global note. The global note is deposited with a common depository or common safekeeper who holds the global note on behalf of the clearing systems who then credits notes to the accounts of the direct participants. Where an investor claims to hold an interest in the notes and wishes to approve modifications, it must provide documentary proof of holding to the trustee/fiscal agent in a form that can be reconciled with the relevant portion of the debt represented by the global note.

The proof of holding can take different forms. For notes held in either of the ICSDs, a screenshot of the account holding at the clearing system can be sufficient to prove the note holding position of the direct participant (for notes held in Euroclear, the screenshot will be from ‘EasyWay’, ‘EUCLID’ or SWIFT MT535; for accounts in Clearstream, Luxembourg it will be from ‘Creation Online’, ‘XACT Web Portal’ or SWIFT MT535). If the noteholder is not itself the direct participant in the clearing systems, any account screenshot will also need to be accompanied by custodian confirmation letters signed by each relevant intermediary in the note holding structure in order to establish the chain of ownership. Any disclosure should reference the ISIN number for the notes, the currency and amount of the holding as well as details of the direct participant and the underlying beneficial holder. As an alternative to the screenshot, ICSD Participants can request the ICSD to issue a formal Statement of Account. If required, the Statement of Account can also stipulate the name of the underlying beneficial holder. Another reliable way for a noteholder to prove its holding is to procure that the clearing system delivers a disclosure message (known as a SWIFT message) to the trustee/fiscal agent, provided that the trustee or fiscal agent has requested the clearing systems to set-up a disclosure event. By way of contrast, where the notes are held in definitive registered form outside of the clearing systems, the proof of holding should be an extract of the register dated the same date as the written resolution, together with a custodian confirmation letter if the definitive notes are held through a nominee.

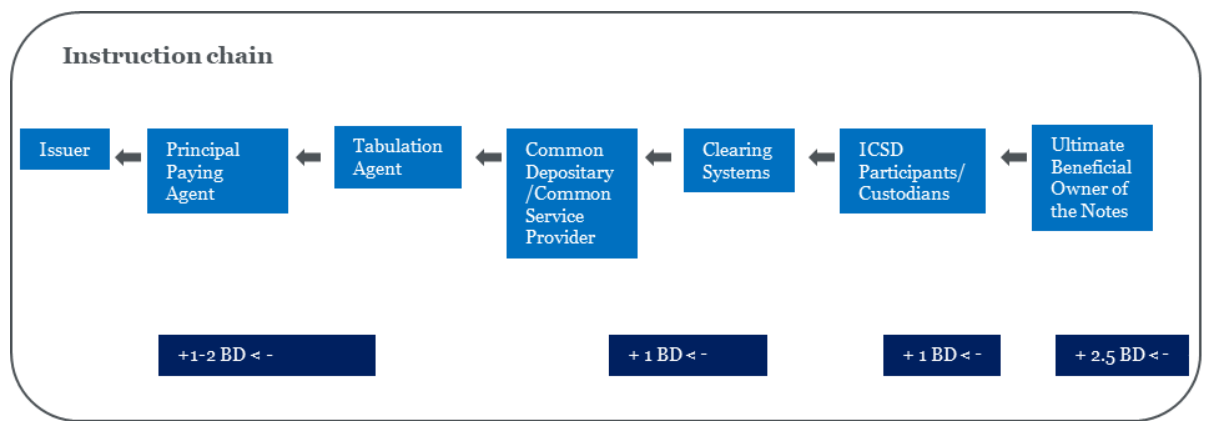
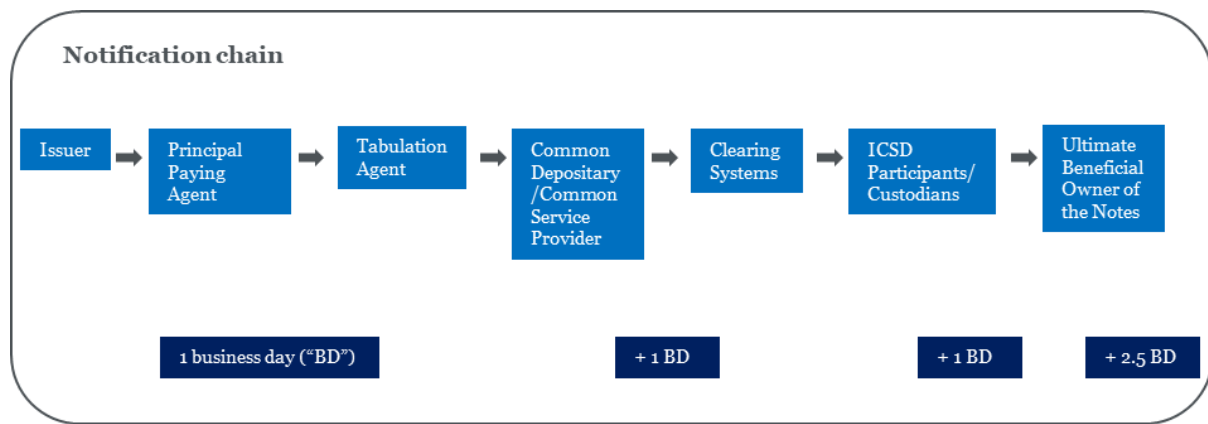
It is very important for the proof of holding and the written resolution to be dated on the same date so that the trustee/fiscal agent can be confident that the noteholder(s) signing the written resolutions are in fact entitled to approve the relevant amendments on the date of the written resolution. This can be achieved either through blocking of the notes until the signing date of the written resolution, or by using



a record date for the applicable proof of holding. Trustees and fiscal agents may have their own internal procedures for proof of holdings (supplementary to those described in this bulletin).

Timing considerations

Issuers and, in particular, noteholders, should take note of the fact that there are multiple parties involved in the communication chain for a consent solicitation. Some of the issues arising from this communication chain were the subject of discussion between market participants in the wake of the 2009 financial crisis and are summarised in the SCI Special Report “Bondholder Communications Reviewed” paper from 2014³. The diagrams below show the typical time taken for information to flow from an issuer to a noteholder⁴ and vice versa.



It is suggested that noteholders take the following actions in order to assist them with ensuring that their votes in respect of a consent solicitation are received by the deadlines specified in the Consent Solicitation Memorandum:

³ SCI Special Report – “Bondholder Communications Reviewed” – dated 17 June 2014. The report was published in the Global ABS conference newsletter but is also available within the Publications section of the ICMSA website.

⁴ There may be additional custodial layers between the ICSD Participants and Ultimate Beneficial Owner of the Notes.



- Ensure that they are clear as to the identity of their custodian and whether that party is a direct ICSD participant or if they, in turn, hold via one or more further intermediaries. The greater the number of intermediaries, the more time that will be required for voting instructions to be transmitted through the instruction chain.
- If possible, obtain contact details of the relevant team or personnel at their custodian(s) in order to expedite communication channels.
- Where documentation in respect of a consent solicitation has not been received through the notification chain shortly following the public announcement of a consent solicitation, contact the relevant custodial team to request that it is provided.
- Confirm with their custodian(s) that their contractual arrangements permit information and documentation on consent solicitations to be passed to the noteholder and, where relevant, for the custodian(s) to interact directly with e.g., the solicitation agent.
- Confirm with their custodian(s) the exact timing requirements and procedures that the custodian(s), any other relevant intermediaries and the clearing systems require for voting instructions to be received by the applicable deadline. Note that the deadlines of each entity in the instruction chain are likely to be (significantly) earlier than those specified in the consent solicitation memorandum.
- Agree with their custodian the procedure for requesting any confirmation of beneficial ownership document / proof of holding as at a particular date (see above at “Written resolutions and proof of holdings”). This will be particularly relevant where a noteholder holds its notes through several different accounts or entities, as proof of holding will be required for each such account or entity.
- Ensure that they are aware of their own internal procedures, contact details for relevant teams and timings for submitting voting instructions.

Annex 1

Template Table of Operational Questions and Answers

Template Operational Questions	To be completed by Arranger/Issuer
ISIN(s) ⁵	
Security name(s)	
Securities Clearing:	
Is security Bifurcated? If so, who is managing non ICSD holdings?	
Event Details:	
What is the event type? (e.g. Noteholder Meeting, Electronic Consent)	
Is Disclosure required, when instructing? If so, ICSD Participant &/or Final Beneficial Owner? What contact details are required (e.g. Name, Address, Email etc)?	
What is the minimum instruction amount and multiples thereafter?	
Can Instructions be withdrawn ahead of the deadline? If so, what is the deadline to withdraw (date & time (UK time))?	
List of Options to instruct on? (Consent, Decline, Attend, Abstain, No Action) What is the default option?	
Is Split Voting required? I.e. If there is more than one resolution, can noteholders instruct per resolution (e.g., Resolution 1 In Favour, Resolution 2 Against), or does the noteholder have to vote on the entire consent (e.g., All Resolutions In favour)?	
Are noteholders only required to submit an electronic voting instruction through the ICSDs? I.e., no other acceptance paperwork is required to be completed ⁶ .	

⁵ We recommend that issuers should group consent requests for multiple securities into consent solicitation documents with common features.

⁶ We strongly recommend a paperless process.

If paperwork is required, please detail which forms are required, who needs to complete these forms, to whom these forms need to be sent, by which date and time and in which format (e.g. email or original).	
Is the Event Record Date or Blocking?	
If Record date, what is the record date to be used?	
If Blocking, when can the bonds be unblocked? (Either a Date is provided or TBC post results)	
What is the Voting Quorum? (if applicable) 1 st Meeting & 2 nd Meeting	
What is the Percentage Consent to Pass? 1 st Meeting & 2 nd Meeting	
If a collection of ISINs on the notice, are they all to be tabulated separately for the purposes of determining Quorum & Pass?	
Contact name that can be shared with Noteholders (if applicable) ⁷	
Is an incentive fee applicable?	
What is the fee amount? (if applicable)	
What are the fee conditions? (e.g., only paid to holders voting in favour or to all holders, only paid if resolution successful) (if applicable)	
What is the fee settlement date? (if applicable)	
Can the consent solicitation memorandum be distributed in the market via the ICSDs or should it be kept confidential (holders need to register with the agent to obtain a copy)?	
Deadlines:	
What is the deadline to instruct the Issuer/Arranger/Tabulation Agent? Date & Time (UK Time), if different to the expiration date/time in the notice.	
Early & Late Deadline (if applicable)	

⁷ This information is not mandatory and can be omitted where the specific event warrants its exclusion. Direct communication between the noteholder and the Solicitation Agent and/or the Tabulation Agent may accelerate the resolution of enquiries if the noteholder has a query on the proposed changes or the content of the consent solicitation memorandum. Noteholders may also contact their custodian (or the ICSDs if the noteholders hold the notes as ICSD Participants) as their service provider. It may, however, take time if enquiries need to be raised through a custody chain.