Benchmarks Regulation: how we propose to use our powers over use of critical benchmarks

The response

This online form provides the format for your response to the CP.

Introduction

The Financial Services Act 2021 (FS Act) introduced a package of amendments to the Benchmarks Regulation (BMR). This package was aimed at ensuring the FCA has the appropriate regulatory powers to help reduce risk in the wind-down period before LIBOR ceases permanently. The FCA is consulting on how it proposes to consider using two new powers relating to the use of critical benchmarks that are being wound down.

Responding to the consultation

You are asked to respond to the consultation by completing this online response process that lists the questions as set out in the consultation paper.

The following is a link back to the consultation paper if you need to refer back to it.

CP 21/15 Benchmarks Regulation: how we propose to use our powers over use of critical benchmarks

Note, this online form provides a short summary of the CP. For full details please refer to the CP.

Why we are consulting

We are seeking views on how we propose using two new FCA powers, which are described below. The 'legacy use' power could be used in relation to any critical benchmark designated as an Article 23A benchmark, and the 'new use restriction power' could be applied to any critical benchmark that is ending. LIBOR is a critical benchmark to which these powers could be relevant (and the only UK critical benchmark currently), but the consultation sets out factors that could also apply to other critical benchmarks.

The 'legacy use' power: If a critical benchmark becomes permanently unrepresentative of the market it is intended to measure, it may be designated as an 'Article 23A benchmark'. This results in an automatic prohibition on use of the benchmark by UK supervised entities. However, this ‘legacy use’ power allows us to permit some or all ‘legacy’ (i.e. existing) use of the benchmark to continue. The consultation sets out which factors we think are relevant in determining what kind of legacy use we might permit.

The ‘new use restriction’ power: This power gives us the ability to prohibit some or all new use of a critical benchmark when we have been notified that its administrator intends to stop providing it at a future date. The consultation sets out which factors we think are relevant in determining if and how we might restrict new use of a critical benchmark we know is ending.

Instructions
You can use this form to upload your completed document. Please complete the 'about you' section first.

FCA privacy notice on how we will use the data you provide in this survey:
https://www.fca.org.uk/privacy/personal-data-and-surveys-consultations-and-market-research

Consultation Questions

Introduction to ICMSA response

1. The International Capital Market Services Association (ICMSA) is a London-based self-regulating organisation representing international financial and non-financial institutions active in the provision of services to the International Capital Market. Our membership includes universal banks, registrars, stock exchanges, law firms, the International Central Securities Depositories (ICSDs) and other service providers specialised in specific product segments. The primary purpose of the association is to foster the highest standards in the practice and management of international capital market services, thereby facilitating the efficient functioning of the market.

2. We welcome the opportunity to provide the views of the IBOR Transition Working Group of the ICMSA on the FCA's consultation paper 21/15 regarding the Benchmarks Regulation (the "**Consultation**").

3. We have responded to those aspects of the Consultation which most directly affect and impact our membership and give our views primarily from the standpoint of the international bond market, and in particular, with respect to legacy floating rate notes which reference LIBOR. Our response therefore focuses on those questions regarding the FCA's legacy use power under Article 23C(2) BMR, which we believe to be of critical importance to the ongoing, orderly functioning of the international bond market.

4. In producing this response, however, we have spoken with representatives of the International Capital Market Association (ICMA), who have kindly shared their own response to the Consultation with us. The ICMSA endorses and agrees with all of the responses provided by the ICMA, including responses as to the FCA's new use restriction power.

5. With respect to the FCA's new use restriction power in particular, we reiterate the ICMA's position that if the FCA is to impose any limitations on the exercise of such power, that such limitations are likely to be more straight forward to formulate and apply if they are temporal in nature e.g. only applying a restriction in cases where a contract will mature after the benchmark will cease. It is likely to be challenging to formulate clear and practicable limitations based on features of certain types of products, and there is no power to monitor or restrict such issuance through the ICSDs or the trustee/agency community. The practical, legal and operational issues which are likely to arise, would present the same challenges as those which are relevant in the context of the FCA's exercise of its legacy use power (as to which, see our responses to Questions 1 to 5).

Question 1

What kinds of provisions do you consider would lead to unintended, unfair or disruptive outcomes, or prove inoperable in practice, if a critical benchmark could no longer be used?

ICMSA RESPONSE

1. The key provisions of relevance to this question are the fallback provisions in a typical floating rate note which cater for the circumstance where the primary reference rate is no longer

available. In a typical English law governed bond, the fallback arrangements fall into three broad categories:

- **Type 1 fallbacks**. These are traditional bond fallbacks triggered when the reference rate does not appear on the relevant screen page or the relevant screen page is unavailable. Such provisions were drafted in contemplation of a temporary cessation of LIBOR for a short period in a market environment were reference banks were willing and able to provide IBOR quotations independently of the rate which appears on the relevant screen page.

- **Type 2 fallbacks**. These provide for the issuer to appoint an independent agent to select an alternative rate and appropriate credit adjustment spread following certain trigger events, typically the permanent cessation of LIBOR and other events such as a prohibition or restriction on use.

- **Type 3 fallbacks**. These are the same as Type 2 fallbacks, but have an additional trigger event based on an announcement that the reference rate is or will no longer be representative.

2. If a critical benchmark was no longer permitted to be used, the high-level consequences include the following:

   a. **Type 1 fallbacks**: If a Type 1 fallback is triggered as a result of non-publication of the relevant critical benchmark, such a provision would typically provide for the issuer or its agent to source one or more quotations from reference banks as an alternative method of calculating the interest rate in the absence of the screen rate. If no such quotations are obtained, (i) the interest rate on the bonds defaults to the rate determined for the prior interest period, (ii) there are no further fallback provisions if reference banks do not give any quotations or (iii) the calculation agent may be required to determine the appropriate rate of interest in its discretion.

      There are a number of consequential issues:

      - As reference banks are no longer providing such quotations for the purposes described above, Type 1 fallback provisions are no longer fit for purpose.[1] In particular, in the case of fallbacks which fall within the ambit of sub-paragraph (i) above, any calculation of interest following the discontinuation of the critical benchmark will effectively result in floating rate bonds becoming fixed rate bonds. This would clearly be an unintended outcome and has the potential to cause market disruption.

      - Type 1 fallback provisions provide a practical challenge for paying and calculation agents as they are contractually bound to repeat the reference bank consultation process described above on each interest payment date, notwithstanding that in practice, reference banks no longer provide such quotations. This is likely to be a burdensome requirement and an unnecessary use of resources which, in the context

[1] Indeed, even if (in a hypothetical scenario) reference banks were to provide quotations, such quotations would no longer be representative of the market and would risk exposing investors to an arbitrary rate.

of sterling LIBOR for example, could be avoided by a broad permission for UK supervised entities to use synthetic LIBOR for legacy LIBOR bonds.

- It is widely understood in the international capital markets that the role of a calculation agent in the context of floating rate debt securities is to calculate, on behalf of the issuer, the payment due on the basis of pre-determined terms, which they cannot amend. Critically, such an agent does not set the terms of the securities in question (including the benchmark to be used) and therefore exercises no form of discretion when making the relevant calculations. It is on this basis that a calculation agent is not considered a user under the BMR, as per the guidance published by ESMA in Question 5.3 of its FAQs on the BMR. Some calculation agents may not, therefore, have in place appropriate legal, regulatory and internal permissions and authorisations to enable them to perform the obligations incumbent upon them under Type 1 fallback provisions which involve discretionary determinations.

For the reasons described above, it is our view that the use of Type 1 fallbacks will lead to unintended, unfair or disruptive outcomes, and will likely prove to be inoperable in practice. The ICMSA encourages the FCA to consider publishing a recommendation that (in line with its announcement on 5 March 2021 that panel banks shall no longer be compelled to submit to LIBOR) reference bank fallback procedures should be disapplied in the context of legacy LIBOR securities. Any such announcement would be consistent with the approach taken in the ARRC's legislative tough legacy solution[2] and would therefore encourage international harmonisation, notwithstanding the differing approach taken to tough legacy in the UK. In the context of a multicurrency issuance under a programme facility for example, it would be an unintended outcome if a series of USD LIBOR notes does not trigger the reference bank mechanism (on account of the ARRC's legislative intervention) whilst, in the absence of guidance or a recommendation from the FCA, a comparable sterling LIBOR series still does.

b. **Type 2 and 3 fallbacks**:

Notwithstanding that Type 2 and Type 3 fallbacks were developed specifically to address discontinuation of one of more reference rates, there are likely to be significant legal, practical and operational challenges associated with their use. It is possible that a prohibition on legacy use for UK supervised entities could trigger Type 2 and Type 3 fallbacks. As Type 2 and Type 3 fallbacks have developed organically in the market, there is not a common set of provisions which applies to all floating rate debt across the market. A bond-by-bond analysis would be needed based on the specific drafting of the fallback trigger to determine whether the prohibition on use has constituted a trigger event for any particular bond.

If Type 2 or Type 3 fallbacks are triggered as a result of a prohibition on use by UK supervised entities, they will likely result in the bond referencing an alternative RFR. However, the transition to an alternative RFR is not automatic and will require certain

[2] §18-401 of Assembly Bill A164B reads as follows: "Following the occurrence of a LIBOR Discontinuance Event, any Fallback Provisions in a contract, security or instrument that provide for a Benchmark Replacement based on or otherwise involving a poll, survey or inquiries for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR shall be disregarded as if not included in such contract, security or instrument and shall be deemed null and void and without any force or effect."

steps to be taken and costs to be incurred resulting in practical challenges for bond issuers, their agents and trustees.

As noted above, the bespoke drafting of any particular Type 2 or Type 3 fallback may present its own unique challenges, but it is expected that these practical challenges will broadly include:

- identifying and appointing an independent adviser in time for relevant interest amounts to be determined. Whilst the ICMSA understands that certain entities are capable and willing to perform such a role, (i) there remains a question as to whether there is sufficient capacity in the market for an independent adviser to be appointed across all floating rate transactions and (ii) it is possible that different independent advisers will give different recommendations as to the necessary changes to be made, which could lead to further uncertainty and lack of consistency in the market for floating rate instruments and greater operational difficulty for the paying agency community in managing the treatment of different interest calculations across their business;

- once an independent adviser is appointed, identifying the appropriate replacement RFR (whilst this will be supported in the sterling markets by the recommendations of the Sterling RFR Working Group, similar recommendations have not so far been made with respect to Japanese yen LIBOR FRNs, and the issuer or independent adviser will still need to determine the appropriate conventions for use), agreeing the nature of the changes which need to be made to the contractual documents (including, critically, whether such amendments can be made under the terms of the contracts in the absence of noteholder consent) and identifying the precise point at which the interest rate flips to the new RFR;

- the operational challenges for paying/calculation agents to amend their systems from a basic IBOR-related calculation to the more complex calculation required to calculate an RFR-based interest rate;

- preparing, agreeing and serving relevant notices related to the documentary changes that will be needed to reflect the new RFR and credit adjustment spread;

- the issuer, the paying/calculation agent, the trustee and potentially the independent adviser would likely all need to appoint legal counsel, which has a timing and cost impact;

- depending on the point in time during any particular interest period that a Type 2 or Type 3 fallback provision is triggered, this could present extremely challenging timing issues to be able (i) effect the relevant changes to the bond documentation in accordance with the contractual provisions and (ii) give the required amount of notice to holders through the ICSDs (noting in particular the need for information regarding the changes to cascade through the multiple layers of the custody chain). If the timing is so tight, such that it is simply not possible to make the changes by the contractual deadline, this is likely to trigger significant legal, practical and operational uncertainty as to how interest is calculated for the intervening period; and

- there are also likely to be consequential impacts of changing the interest rate from a forward-looking IBOR calculation to a backward looking RFR calculation outside of the bond contract, such as unwinding and/or renegotiation of swap and hedging arrangements and bilateral adjustment of accrued interest amounts for OTC trades conducted between market participants at the same time as the changes take effect.

Perhaps the most pertinent factor, which has the potential to cause significant market disruption, is that all of the above practical challenges will be exacerbated by the likelihood that the majority of Type 2 and (assuming that the prohibition on use is accompanied by an official announcement of unrepresentativeness) Type 3 fallbacks, would be triggered at the same time. This is further compounded by the fact that (as at the date of this response) there is very little, if any, prior experience or precedent of Type 2 or Type 3 fallbacks having been operated in practice.

A final point of relevance, but which is bespoke to the securitisation market, is that from late 2017 onwards, a number of securitisations have included negative consent wording in line with model text produced by AFME. The wording operates in broadly the same manner as Type 2 and Type 3 fallbacks to permit an active transition to an alternative benchmark. Whilst a number of issuers are already amending securitisations using this negative consent mechanic, there may be logistical issues in seeking rating agency confirmations (which most of the negative consent provisions include to comply with rating agency requirements) if a large number of negative consents are launched towards the end of this year.

3. In conclusion, it is clear that the unintended outcomes and practical challenges associated with triggering bond market fallbacks could pose a realistic threat to market integrity, which could be addressed through a broad and targeted application of the FCA’s Article 23C(2) legacy use power.

Question 2

a. Do you think the factors below are relevant to determining whether or not it is feasible to amend contracts?

	Yes	No	No view
Whether appropriate alternatives are available	●	○	○
Ease of amending the contract (eg number of parties; legal, regulatory or operational procedures)	●	○	○
Whether large volumes of contracts can be amended without making bespoke amendments	●	○	○
The nature of the parties to the contract	●	○	○
The effect of prohibition on parties who must consent to, or be involved in, amending the contract	●	○	○
Evidence of similar contracts having been amended	○	●	○
How much notice parties have had of the prohibition	○	●	○

b. Where you do not think a factor is relevant, please explain why.

ICMSA RESPONSE

1. **Evidence of similar contracts having been amended:** Whilst this is a relevant consideration to a degree, in the UK bond market, the only realistic prospect of amending sterling LIBOR bonds is through a consent solicitation process. Although multiple sterling LIBOR bonds have been amended via a consent solicitation process, the use of consent solicitations to transition the whole of the legacy LIBOR bond market is unlikely to be feasible. The key challenges are that (i) it will not always be possible to obtain the requisite consent from bondholders (and there have been examples of this in the market to date) and (ii) it is highly unlikely to be possible to transition all affected legacy bonds in the time available, noting in particular that consent solicitations can be a long and costly process (as to which, see further below).

2. **How much notice parties have had of the prohibition:** It goes without saying that the longer the notice period that is given to the market, the more likely it is that issuers and other market participants will be able to effect an orderly transition away from LIBOR. A short notice period may, therefore, risk the possibility that parties are not properly able to transition legacy LIBOR securities, which could potentially pose a threat to market integrity. That said, from a

more substantive standpoint, the length of the notice period has no effect on the contractual provisions of legacy LIBOR bonds, so regardless of how much notice has been given to the market, if it is not possible to e.g. transition such legacy securities using a consent solicitation process (as noted above), the length of the notice period is irrelevant.

c. Are there any other factors not listed that are relevant?

The following considerations do not relate to additional factors which may be relevant, but support the inclusion of the second and fifth factors listed in the table above:

1. For typical English law governed securities, there are two broad methods through which a bond contract can be amended: (i) exercise of discretion by a trustee (for bonds which have a trustee structure) and (ii) obtaining the consent of bondholders. Taking these in turn:

    a. **Trustee discretion** – under the terms of a typical English law governed trust deed, a trustee is afforded limited discretionary powers to amend a bond contract without seeking the consent of bondholders through a consent solicitation exercise. However, the scope of those powers is often (if not, always) restricted such that it does not apply to key "money terms" of the bonds. Any change to the interest rate of a bond (in order to transition away from a critical benchmark) would fall squarely within the scope of such restriction, so a trustee would not have the contractual power to sanction the amendments which are needed to effect the relevant changes.

    b. **Consent solicitation** – in circumstances where the trustee is not able to exercise its discretion and for securities with a fiscal agency structure, the only option available to an issuer to amend the terms of a legacy IBOR security is to seek the consent of the bondholders by way of an extraordinary resolution, which would most commonly take place by way of a consent solicitation exercise. As noted above, a number of consent solicitations have already been conducted in the UK market, with mixed results. There are a range of legal and practical challenges to the success of a consent solicitation exercise (see further at paragraph 2 below), including (i) elevated quorum requirements to pass an extraordinary resolution to effect the necessary amendments to the interest rate provisions and (ii) in the securitisation market (where floating rate debt is common), multiple meetings of the holders of each class of notes may be required for a single transaction. Given these factors, when considered together with the number of outstanding legacy bonds which reference LIBOR, we believe there is no realistic prospect that all such bonds can be the subject of a consent solicitation exercise before the end of 2021, and even for those that are, there is a real risk that the consent solicitation process fails.

2. It is also worth noting that the consent solicitation process for widely held bonds in the international capital markets can be a long and costly undertaking. The ICMSA has published the following bulletins as part of its own market advocacy regarding the practical issues and challenges associated with mass liability management exercises in the context of LIBOR transition, which ultimately affect the feasibility of amending contracts in the international bond market:

    - **ICMSA Bulletin 200305/49 – The discontinuation of LIBOR/IBORS – different approaches for transition under English law trust deeds and New York law**

indenture: a comparison of how the transition away from IBORs could be approached under each of English and New York law governed bond documentation.

- **ICMSA Bulletin 200610/50 - The discontinuation of LIBOR/IBORS – timeline of a consent solicitation**: a step by step guide through the process of a typical consent solicitation exercise in the international bond market.

- **ICMSA Bulletin 210118/54 – The discontinuation of LIBOR/IBORS – implications for English-law note trustees and agency roles – Update – Legacy Transactions**: an update to ICMSA Bulletin 181018/44 (The discontinuation of LIBOR/IBORS – implications for English-law note trustees) and ICMSA Bulletin 190118/45 (The discontinuation of LIBOR/IBORS – implications for English-law agency roles).

- **ICMSA Bulletin 210118/55 - The discontinuation of LIBOR/IBORS – operational and procedural considerations for Consent Solicitations and Written Resolutions**: a supplement to 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.

Question 3

a. Do you think there may be situations where we could or should only permit a limited form of continued use of the benchmark?

- ○ Yes
- ◉ No
- ○ No view

b. Please explain your answer.

ICMSA RESPONSE

1. In the context of the international bond market, given the issues noted in our responses to previous questions, permitting only a limited form of continued use does not address the crux of the tough legacy problem. Whilst a temporary period of continued use could allow a greater number of issuers to transition their legacy IBOR-referenced debt, the inherent limitations of the consent solicitation process remain and it may not be feasible to transition all such securities. We believe that legacy use should be permitted without any restrictions or limitations (whether time-based or conditioned upon other factors) with a view to maintaining market integrity and supporting an orderly wind-down of critical benchmarks.

2. We also note that imposing a time limit for continued use of LIBOR is inconsistent with the legislative solutions for tough legacy proposed in the EU and the US, which involve a legislative override of LIBOR references in contracts and securities (and therefore have no time limit).

3. Whilst our response is given primarily with reference to vanilla floating rate debt issued in the international capital markets, it is worth noting that for more complex financing structures (such as securitisations and repackagings), there is a need to consider the interconnected nature of the different product types which comprise such transactions (such as swaps, liquidity facilities and other credit enhancement arrangements). For example, if permission to use synthetic LIBOR is not extended to all instruments within a securitisation structure at all (or at the same time), this could give rise to cashflow mismatches that will be difficult to manage (especially where the originator or sponsor is no longer active/solvent as there is no longer a decision maker, nor a party willing to assume the costs of amendment).

4. Also of relevance is the international nature of the capital markets, which by definition, encompasses issuers on a global basis, a number of whom who may not be closely following IBOR reform and/or the consequences of having outstanding tough legacy instruments. Others may also be content to let their floating rate debt with Type 1 fallbacks lapse to become fixed rate instruments. In these instances, the appointed agents and trustees are left to service instruments which require transition to a new reference rate, but without the contractual power unilaterally to fix the problem. By permitting market-wide use of the relevant benchmark, this will ensure a more homogenous approach to IBOR transition and preserves market integrity, even in circumstances where the issuers have not taken active steps to effect that transition.

Question 4

a. Do you think the considerations below are relevant to determining whether it would be desirable to exercise our legacy use power?

	Yes	No	No view
The effect of permitted legacy use on the robustness and / or the sustainability of any benchmark used as an input to the Article 23A benchmark.	◉	○	○
International consistency.	◉	○	○
Whether contracts are required by law or regulation to contain suitable fallbacks but there has been non-compliance with the requirement.	○	◉	○
The degree to which we can set out clear and practicable criteria for the market.	◉	○	○

b. Where you do not think a consideration is relevant, please explain why.

ICMSA RESPONSE

1. We do not consider non-compliance with a requirement to contain robust fallbacks to be a relevant factor for the FCA in determining whether or not to exercise its legacy use power.

2. As part of an orderly transition away from any critical benchmark, it is very important that a consistent approach is adopted across the market for all market participants with legacy IBOR bonds outstanding. This is particularly important in the international bond market where, despite alignment of bond fallback wording at a high level, the precise scope of the detailed contractual drafting can vary significantly between different issuers. Given this lack of standardised language and the different approaches used to cater for IBOR cessation in different types of bonds, it would be very challenging to set out clear criteria for permitting legacy use in some types of bonds and not others.

3. If any individual bonds have been issued without provisions catering for permanent cessation of the relevant reference rate, they are highly likely to be isolated cases and should not impact upon the FCA's policy with respect to the bond market as a whole. From a noteholder standpoint, it may also be difficult to justify why legacy transactions should be treated differently based on whether or not they included robust fallback language, when at the time of investing in such instruments, holders were unlikely to have had control over the type of

fallback language in the documentation and/or would not have been alive to (or understood) the impact of a permanent cessation of the relevant benchmark.

4. Without a clear and consistent set of guidelines and understanding as to which instruments continue to be tough legacy following the cessation of a relevant benchmark, there is also likely to be a significant practical challenge for the paying and calculation agency community (which forms a large part of our membership) to set up systems that cater for bespoke arrangements on a per security, or per issuer, basis. In the context of LIBOR for instance, there are clear operational benefits for paying agents and calculation agents to know that all debt instruments which have not successfully migrated to an alternative reference rate prior to 31 December 2021, would automatically switch to a synthetic LIBOR rate.[3] Far from assisting with an orderly wind-down of a critical benchmark, the potential confusion and uncertainty that could result from a divergent approach and/or a lack of clarity would undermine that very objective.

c. Are there any other considerations not listed that are relevant?

ICMSA RESPONSE:

1. Whilst not an additional consideration, the ICMSA feels strongly that international consistency across the Eurobond market is a significant factor and directly relevant to UK market integrity. As the international bond market includes different types of entities located in different jurisdictions, the effect of one party being restricted from using a particular reference rate and others not being so restricted could be problematic. Similarly, the ICMSA encourages the FCA to consider international consistency with respect to the use and availability of synthetic rates for non-sterling LIBOR currencies (notably Japanese yen, euro and Swiss franc), by supporting the continued and consistent availability of appropriate synthetic rates (and for appropriate tenors) across all currencies. Any differentiation between either (i) the type of parties which may use a reference rate or (ii) the availability of synthetic rates for different LIBOR currency options, may lead to confusion and uncertainty and the practical challenges for agents (referred to elsewhere in this response) are likely to be exacerbated.

2. In the UK market, therefore, a broad permission for UK supervised entities to use synthetic LIBOR for legacy LIBOR bonds would help to ensure international consistency for bond market participants, given that non-UK supervised entities are unlikely to be subject to a prohibition on use.

3. We also refer to paragraph 2 of our response to Question 1, where we highlight the unintended consequences for multicurrency issuances arising out of a lack of international consistency between the approach to US dollar and sterling LIBOR fallback wording.

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[3] It is also important that following the introduction of synthetic LIBOR, the synthetic LIBOR rate would need to appear on the same screen page and at the same time as is currently the case for sterling LIBOR. For synthetic LIBOR to act as a genuine successor rate to LIBOR in the context of tough legacy instruments, it is critical to ensure that no changes to bond documents are required, in particular as trustees and agents are unable to exercise discretion to accommodate any such changes. For example, if synthetic LIBOR were to be calculated as a combination of an RFR plus a margin, such combined rate should appear on the current LIBOR page.

Question 5

Are there other relevant factors or considerations we have not reflected in our proposed policy approach to the use of our legacy use power?

ICMSA RESPONSE

We do not have anything further to raise in addition to our responses set out in this consultation document.

Question 6

a. Do you think the factors below are relevant to determining whether new use of a ceasing critical benchmark could be a risk to consumer protection and / or market integrity?

	Yes	No	No view
System-wide operational risk of a cliff-edge when the benchmark ceases.	○	○	○
The nature and/or degree of activity in the market(s) underpinning the ceasing critical benchmark.	○	○	○
Whether the benchmark is expected to remain representative for the entirety of the wind-down period.	○	○	○
The risk that consumers or the market face unexpected changes (eg volatility or liquidity impacts) in the ceasing benchmark or market(s) using it.	○	○	○
Whether there is adequate confidence and liquidity in alternative benchmarks and market preparedness to use them.	○	○	○

b. Where you do not think a factor is relevant, please explain why.

c. Are there any other factors not listed that are relevant?

Question 7

a. Do you think there may be situations where we could or should impose a limited form of restriction (eg for certain contract maturities; certain types of product or user, or after a defined time period)?

- ○ Yes
- ○ No
- ○ No view

b. Please explain your answer.

Question 8

a. Do you think the considerations below are relevant to determining whether us <u>not</u> intervening in respect of certain new use of the ceasing critical benchmark might support consumer protection or market integrity?

	Yes	No	No view
Whether new use reduces exposure to the ceasing benchmark	○	○	○
Whether users have access to suitable replacement benchmarks	○	○	○

b. Where you do not think a consideration is relevant, please explain why.

c. Are there any other considerations not listed that are relevant?

Question 9

a. Do you think the other factors below are relevant in determining whether and how exercising our new use restriction power would advance consumer protection and / or market integrity?

	Yes	No	No view
International consistency	○	○	○
The degree to which we can set out clear and practicable criteria for the market.	○	○	○

b. Where you do not think a factor is relevant, please explain why.

c. Are there any other factors not listed that are relevant?

Question 10

Are there other relevant factors or considerations we have not reflected in our proposed policy approach to use of our new use restriction power?

Question 11

Please provide any other comments you may have on this consultation.

We are asking for comments on this Consultation Paper (CP) by 17 June 2021.

You can submit this Word document using the online form here:
Benchmarks Regulation: how we propose to use our powers over use of critical benchmarks

If you have any questions when completing the survey, please contact cp21-15@fca.org.uk.