CP22/21 Consultation on ‘synthetic’ US dollar LIBOR and feedback to CP 22/11

ICMSA Response

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 markets. Our membership includes 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.

We welcome the opportunity to provide the views of the IBOR Transition Working Group of the ICMSA on the FCA’s consultation paper (“**CP**”) 22/21 regarding ‘synthetic’ US dollar LIBOR (the “**Consultation**”).

We have responded to those aspects of the Consultation which most directly affect and impact our membership and give our views primarily in relation to the international capital markets, and in particular, with respect to legacy floating rate notes which reference LIBOR.

Chapter 3 Further consultation on US dollar LIBOR

Q1: Do you have any views or comments regarding our proposal on a synthetic US dollar LIBOR and its duration – or any other comments on this section of this consultation?

The ICMSA welcomes the FCA’s proposals regarding US dollar synthetic LIBOR where US legislation will not otherwise apply. The smooth transition that the market has experienced with respect to sterling LIBOR suggests that the use of a synthetic rate is an effective and commercially viable tool to assist with an orderly transition of legacy IBOR-based securities, providing an extended period for emergence of clear market positions and to assist communications for those transactions which are problematic to transition. The ICMSA therefore fully supports the proposed introduction of a synthetic equivalent of US LIBOR for a suitable period to enable the transition of the large volume of floating rate debt securities which reference US dollar LIBOR.

We would like to make the following observations with respect to the proposed duration of synthetic US dollar LIBOR:

- As highlighted in our response to CP22/11, it is not possible to be completely certain or guarantee that all legacy contracts (whether bonds or otherwise) which reference a particular LIBOR setting (i) have been transitioned to an alternative reference rate by any given date or (ii) otherwise have existing robust (and operationally workable) fallback mechanisms.
- In addition, as the FCA highlights in the Consultation, the volume of legacy US dollar LIBOR transactions is material, particularly when compared to other legacy transactions which reference LIBOR settings for different currencies.
- Whilst it is appreciated that the FCA will need to balance its stated desire to transition away from the use of all LIBOR settings as promptly as possible, the challenges and risks posed by a premature transition away from any LIBOR setting which remains widely used in the market, in our view, outweigh any disadvantages of continuing to publish such LIBOR setting on a synthetic basis for use by those transactions for which an active transition has not yet been made.
- Whilst the proposed end date of 30 September 2024 for the publication of synthetic US dollar LIBOR gives a meaningful period of time for issuers of capital markets debt instruments to begin to effect a transition away from US dollar LIBOR, the scale and nature of that transition (especially when compared to volumes in the sterling and Japanese yen LIBOR contexts) remains challenging[1]. The ICMSA therefore encourages the FCA to keep under review the number of legacy US dollar LIBOR transactions, their maturity profile and likely contractual fallbacks with a view to assessing the right time to cease publication of any synthetic US dollar LIBOR setting.

Finally, we note the concerns previously raised in our responses to FCA consultation papers CP21/29 and CP22/11 regarding the practical operation by the paying agency community of Type 1 fallback provisions. The ICMSA is grateful for the FCA's engagement on this topic, but it is worth noting in the context of this Consultation that the continued availability of a synthetic US dollar LIBOR rate materially reduces the operational difficulties and risks of litigation associated with such fallback mechanisms.

Q2: Do you agree with the manner in which we propose to exercise our methodology change power?

As we have said in our responses to previous FCA LIBOR consultations, one of the primary drivers towards achieving an orderly transition on a market-wide basis is the topic of international consistency, such that there isn't an arbitrary distinction between the result achieved for similar classes of debt securities simply by virtue of their governing law. The FCA directly acknowledges this point in the Consultation. To that end, and in particular to achieve parity with the outcome under the US LIBOR Act, the ICMSA agrees with the FCA's proposal that synthetic US dollar LIBOR should be calculated as the sum of the CME Term SOFR Reference Rate plus the ISDA fixed spread adjustment for the corresponding settings.

1 See, for example, the list of considerations set out in our response to Question 3a of CP22/11.

The ICMSA also encourages the FCA to maintain engagement with US regulatory authorities with a view to managing the interaction between the applicability of synthetic US dollar LIBOR and the US LIBOR Act (and minimising, or preferably eliminating, any potential overlap). Whilst consistency of the applicable SOFR-based rate is key, it remains important for a smooth transition that issuers, agents and other market participants are able to identify clearly, and without scope for dispute, the transition pathway for each of their legacy US dollar LIBOR securities.

Q3: Do you have any other views or comments on our proposed exercise of our methodology change power, including about how this would impact you?

As a substantial portion of the ICMSA's membership comprises paying and calculation agents which are responsible for the calculation of floating rate interest rates for floating rate debt securities, the ICMSA wishes to express support for the FCA's proposal that the CME Term SOFR Reference Rate will be widely available through IBA and that publication will continue to be mandated at or around 11.55 a.m. London time on relevant business days. This will integrate well with existing operational processes that are central to a smooth and orderly transition to a synthetic US dollar LIBOR rate.

Q4: Do you agree with the manner in which we propose to exercise our legacy use power?

Consistent with the FCA's approach to synthetic sterling and yen LIBOR, the ICMSA supports the FCA's proposed broad use of its legacy use power in the context of synthetic US dollar LIBOR.

Q5: Do you have any other views or comments on our proposed exercise of our legacy use power, including about how this would impact you?

No.