THE INVESTMENT ASSOCIATION

Response to consultation

FCA Consultation Paper 21/29: Proposed decisions on the use of LIBOR (Articles 23C and 21A BMR)

20 October 2021

Sent by email: cp21-29@fca.org.uk

About the Investment Association

The Investment Association (IA) champions UK investment management, a world-leading industry which helps millions of households save for the future while supporting businesses and economic growth in the UK and abroad. Our 270 members range from smaller, specialist UK firms to European and global investment managers with a UK base. Collectively, they manage £9.4 trillion for savers and institutions, such as pension schemes and insurance companies, in the UK and beyond. 44% of this is for overseas clients. The UK asset management industry is the largest in Europe and the second largest globally.

Introduction

The IA is grateful for the opportunity to respond to the FCA consultation paper *CP21/29: Proposed decisions on the use of LIBOR (Articles 23C and 21A BMR)*. We are supportive of the FCA's efforts on LIBOR transition and our members have been active in the transition process to ensure they are ready for the cessation of LIBOR offerings.

In drafting our response to the consultation we have coordinated work through our LIBOR Transition Working Group. We stand ready to facilitate further conversations around the use of synthetic LIBOR and any other transition issues as the FCA would find useful.

Question 1: Do you agree with the manner in which we propose to exercise our legacy use power?

Yes, we agree with the FCA proposal to permit legacy use of 6 synthetic LIBOR settings in all contracts except cleared derivatives (whether directly or indirectly cleared). We also support the proposal not to apply any limitations or conditionality to the above permissions, at least before the end of 2022.

The proposal as set out in the consultation paper could have wider application to ensure that it captures swap rates, including Fix-to-Float products. It should, for example, be allowed to incorporate the ICE Swap Rate that the FCA has supported as an appropriate approach in line with the ISDA Swap Rate Fallback Provisions in Confirmations for legacy transactions (*ISR Fallbacks Documentation*).

Question 2: Do you have any other views or comments on our proposed exercise of our legacy use power?

Our members act on behalf of clients who ultimately are the beneficial owners of bond instruments within their portfolios that may require the legacy use power. We are keen to ensure that there should be no detriment to the bonds liquidity or value as a direct result of referencing a synthetic LIBOR rate. Investment management process requires an ability to rebalance and therefore trade such positions in the future. A lack of secondary market for these instruments could lead to the loss of value and significant underperformance of these bonds to the detriment of the owner.

It is the responsibility of bond issuers to ensure that there is adequate provision for LIBOR references within their instruments. We therefore would want bondholders to be protected should there be any reason that banks should not or would not want to provide future bids for synthetic LIBOR linked instruments (for example due to capital disincentives). We are therefore also looking for clarification as to whether the FCA will support such a secondary market for synthetic LIBOR linked instruments

Another area where we seek clarity from the FCA is where these legacy powers would apply de facto to instruments that do not fall in the scope of BMR – even though they may still reference LIBOR, such as private loans. The private loan market constitutes a significant portion of contracts that reference LIBOR and our members would appreciate clarity on regulatory treatment. We believe that this should also be in scope for legacy use of synthetic LIBOR under the same terms set out in the consultation and the FCA should clarify that if this is used then it will not be treated as a conduct issue.

Question 3: Do you agree that we have identified correctly the main groups of contracts that do not currently contain adequate provisions to deal with a prohibition on use?

Yes, we agree with your assessment as set out in paragraphs 3.4 to 3.9 in the consultation paper that contracts that do not currently contain adequate provision include uncleared derivatives and bonds.

As above, we also see private loans as a group of contracts that do not currently contain adequate provision. They currently fall outside the scope of BMR, but in some cases reference LIBOR.

Question 4: Do you have any views or comments on the rationale for our proposed legacy use decision?

The rationale set out in the consultation paper (paragraphs 3.10 to 3.74) is coherent and reflects our members thinking around legacy use.

Question 5: Do you agree with the manner in which we propose to exercise our new use restriction power?

Yes, we agree with the proposed use of restriction power relating to US dollar LIBOR settings.

Question 6: Do you have any comments on the proposed exceptions to the new use prohibition?

N/A – as question 5

Questions 7: Do you have any other views or comments on our proposed decision to exercise our new use restriction power?

N/A – as question 5

Questions 8: Do you agree that we have identified correctly the potential risks of new use of US dollar LIBOR?

Yes, we agree with the assessment that without restrictions on new use of these settings, it is possible that a significant proportion of these contracts would be replaced by further LIBOR-referencing contracts.

Questions 9: Do you have any views or comments on the rationale for our proposed decision to restrict new use?

Clear guidance from regulators is crucial in ensuring all market participants take the necessary steps to transition – this consultation paper is an important step in that process.