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## **ARTICLE 23A BENCHMARKS REGULATION – NOTICE OF DESIGNATION**

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**To:** ICE Benchmark Administration Limited

**Reference Number:** 608291

**Address:** Milton Gate, 60 Chiswell Street, London EC1Y 4SA  
United Kingdom

**Date:** 3 April 2023

### **1. ACTION**

1.1. For the reasons given in this Notice and pursuant to Article 23A(4) of the Benchmarks Regulation, the Financial Conduct Authority (“the Authority”) has decided to designate the following versions of LIBOR, each being for these purposes treated as a critical benchmark provided by ICE Benchmark Administration Limited (“IBA”), as Article 23A benchmarks:

- (1) 1-month US Dollar LIBOR,
  - (3) 3-month US Dollar LIBOR, and
  - (4) 6-month US Dollar LIBOR
- (“US Dollar LIBOR Versions”).

1.2. Such designation shall take effect at 00:01 London time on 1 July 2023.

### **2. SUMMARY OF REASONS**

2.1. The Authority considers that it is appropriate to designate the US Dollar LIBOR

Versions under Article 23A BMR, taking into account the Article 23A [Statement of Policy](#) published under Article 23F(1)(b).

- 2.2. The Authority has decided to designate the US Dollar LIBOR Versions as it considers the representativeness of each of the US Dollar LIBOR Versions is at risk and IBA cannot maintain and the Authority will not restore their representativeness, in each case after 30 June 2023. The Authority considers that there are good reasons to designate the US Dollar LIBOR Versions under Article 23A, in order to access the Article 23D power to sustain the US Dollar LIBOR Versions to secure their orderly wind-down.
- 2.3. The designation of the US Dollar LIBOR Versions shall take effect at 00:01 London time on 1 July 2023. No contributors will make submissions to IBA in respect of the US Dollar LIBOR Versions after 30 June 2023, and consequently, these US Dollar LIBOR Versions cannot continue to be published on a representative basis after the contributors' departure.

### **3. DEFINITIONS**

- 3.1. The definitions below are used in this Notice:

"the Benchmarks Regulation" or "BMR" means the Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, which is part of UK law by virtue of the European Union (Withdrawal) Act 2018, as amended by the Financial Services Act 2021 and the Critical Benchmarks (References and Administrators' Liability) Act 2021;

"LIBOR" means the LIBOR benchmark provided by IBA;

"the Tribunal" means the Upper Tribunal (Tax and Chancery Chamber);

"version" has the meaning in Article 23G of the BMR and is used to refer to LIBOR as provided for a particular currency and tenor, sometimes known as a LIBOR setting.

### **4. REASONS**

#### **Background**

- 4.1. All of the US Dollar LIBOR panel banks communicated to IBA that they would not be

willing to continue contributing input data for the US Dollar LIBOR Versions after 30 June 2023. Following this, the Authority decided that it would not exercise its powers under Article 23(6) of the BMR to compel continued panel bank contributions to LIBOR.

- 4.2. IBA concluded that, as a result of IBA not having access to input data necessary to calculate the US Dollar LIBOR Versions on a representative basis beyond 30 June 2023, IBA would have to cease these versions immediately following publication on 30 June 2023 unless the Authority were to exercise its powers to require IBA to continue publishing these LIBOR settings under a changed “synthetic” methodology.
- 4.3. IBA formally notified the Authority on 4 March 2021 of its intention to cease providing the US Dollar Versions immediately following publication on 30 June 2023, unless the Authority were to exercise its powers to require IBA to continue to publish LIBOR versions using a changed, “synthetic” methodology. As required by the BMR, each of IBA and the Authority have separately assessed how LIBOR is to be ceased to be provided.
- 4.4. The Authority has decided to compel IBA, under Article 21(3) of the BMR, to continue to publish the US Dollar LIBOR Versions. On 14 March 2023, the Authority gave notice under MAR 8.7 (of the FCA Handbook) of this decision to IBA.
- 4.5. Following the decision to compel publication of the US Dollar LIBOR Versions under Article 21(3) of the BMR, the Authority has assessed and found that the US Dollar LIBOR Versions would not be able to continue to represent the markets they seek to measure after all panel banks cease their contributions after 30 June 2023, and so the Authority considers that the representativeness of the US Dollar LIBOR Versions is at risk. Consequently, on 14 March 2023, the Authority has served a written notice on IBA under Article 21(3B)(a) of the BMR stating this finding. On the basis of this finding, the Authority has decided to designate the US Dollar LIBOR Versions under Article 23A of the BMR.
- 4.6. As IBA has indicated that it cannot determine the USD LIBOR Versions on a representative basis once the panel banks depart and the Authority has decided not to seek to restore the representativeness of the USD LIBOR Versions, the only remaining way to sustain the USD LIBOR Versions is for the Authority to exercise the powers under Article 23D of the BMR to change the methodology to an, unrepresentative, “synthetic” one, following the designation of the USD LIBOR Versions under Article 23A of the BMR, so that IBA is compelled to publish the USD LIBOR Versions under an, unrepresentative, “synthetic” methodology.

## **Reasons for Designation**

- 4.7. The Authority considers that the representativeness of each of the US Dollar LIBOR Versions is at risk and IBA cannot maintain and the Authority will not restore their representativeness, in each case after 30 June 2023. The Authority has previously stated that, immediately after 30 June 2023, the US Dollar LIBOR Versions will no longer be representative and representativeness will not be restored.
- 4.8. The Authority may, if it considers it appropriate to do so, designate a critical benchmark (or any versions of a critical benchmark), under Article 23A of the BMR, if it has given the administrator a notice under Article 21(3B)(a) of the BMR that it considers that the representativeness of the benchmark is at risk, and if the benchmark's representativeness cannot reasonably be restored by the Authority exercising its powers under Article 23(6) of the BMR or if the representativeness can be restored by the exercise of these powers, but there are not good reasons to restore it. The Authority has the option, but not the obligation, to designate if these circumstances arise.
- 4.9. The Authority has decided to designate the US Dollar LIBOR Versions under Article 23A of the BMR as the representativeness of the US Dollar LIBOR Versions is at risk due to all of the panel banks ceasing their contributions after 30 June 2023, and IBA cannot preserve and the Authority will not maintain their representativeness, in each case after this date. The Authority considers that there is adequate justification to designate the US Dollar LIBOR Versions under Article 23A of the BMR, in order to access the Article 23D power to sustain the US Dollar LIBOR Versions using a "synthetic", unrepresentative methodology to secure their orderly wind-down.
- 4.10. The Authority has taken into account the factors in the Article 23A [Statement of Policy](#) as set out below.

#### Restoration and maintenance of representativeness

- 4.11. IBA confirmed in its 5 March 2021 [Feedback Statement on Consultation on Potential Cessation](#) of LIBOR that it could not produce the US Dollar LIBOR Versions on a representative basis once panel banks depart, and that it would have to cease to publish the US Dollar LIBOR Versions unless the Authority exercised its powers to compel continued publication under an unrepresentative "synthetic" methodology.
- 4.12. In its 5 March 2021 [announcement on the future cessation and loss of representativeness of LIBOR](#), the Authority confirmed that it will not require any panel banks to continue to submit to LIBOR beyond the dates from which they have notified their departure, or require IBA to continue to publish LIBOR on the basis of panel bank submissions beyond such dates.

#### Are there good reasons to restore the representativeness?

*Would restoration of representativeness advance our consumer protection and / or integrity objectives?*

- 4.13. The Authority does not consider that its consumer protection and market integrity objectives would be furthered by seeking to restore representativeness by compelling contributors. Any restoration or maintenance of representativeness would prolong exposure of benchmark users, including consumers, to panel bank LIBOR. Whilst this might give them additional time to transition, the Authority continues to have concerns about the suitability of the rate for continued widespread use. In the Authority's view, an interest rate benchmark that includes an element of credit risk, such as LIBOR, is inherently more vulnerable to volatility during times of market stress. This may also impact consumers directly, for example at the start of the Covid crisis, when central banks lowered policy interest rates in order to reduce the impact of the crisis, LIBOR rates still rose as the inter-bank credit risk element of LIBOR (LIBOR over risk-free rates) increased. Arguably, consumers should not be exposed to inter-bank credit risk that they are not well placed to understand or manage. Thus, intervening to compel panel banks to continue to submit input data for the US Dollar LIBOR Versions may be inconsistent with our consumer protection objective, especially as the Authority has other tools to meet the risk of the cessation of the rate.
- 4.14. The Authority also has concerns about whether compelled, panel-bank based LIBOR would remain sufficiently robust and reliable to protect market integrity.
- 4.15. Given this, the Authority does not think that seeking to restore representativeness through compelling contributors would advance its consumer protection or market integrity objectives.

*Market expectations and preparedness*

- 4.16. Since July 2017, the Authority's public communications (in multiple speeches and statements) have made it clear that the Authority did not intend to exercise its powers to maintain LIBOR's representativeness. The Authority has also been clear to panel banks that it did not, and does not, intend to do so.
- 4.17. On 5 March 2021, in the above-mentioned [announcement](#), the Authority stated that it will not require any panel banks to continue to submit to LIBOR beyond the dates from which they have notified their departure, or to require IBA to continue to publish LIBOR on the basis of panel bank submissions beyond such dates.
- 4.18. In addition, since July 2017, market participants and authorities have undertaken substantial LIBOR transition activities, including developing new risk-free rates ("RFRs") and RFRs-referencing products, communicating with clients to raise

awareness of LIBOR transition and inserting into their LIBOR contracts robust fallbacks that operate on a cessation trigger generally and, in some cases, include a loss of representativeness trigger (as is the case with the ISDA Protocol). This has been consistent with the international policy recommendation set by the Financial Stability Board (outlined in its 22 July 2014 [Reforming Major Interest Rate Benchmarks Report](#)) to reduce systemic reliance on IBORs.

- 4.19. Market-led LIBOR transition efforts have prepared the market for the situation in which the US Dollar LIBOR Versions become unrepresentative (and/or cease). New markets have been established and the majority of legacy derivatives products and some legacy cash products contain robust loss of representativeness triggers and fallbacks.

#### *Sustainability of representativeness*

- 4.20. Given the notifications submitted by contributors of input data for the US Dollar LIBOR Versions to IBA about their intention to cease contributing, it is likely that LIBOR's representativeness could only be restored for the duration of any compulsion period that the FCA is able to impose on contributors under Article 23 of the BMR – i.e. panel banks would not volunteer to contribute to the US Dollar LIBOR Versions beyond this period. Therefore, the exercise of the restoration power would only further delay the inevitable cessation of the US Dollar LIBOR Versions as settings based on panel bank contributions.
- 4.21. This means that the representativeness of the US Dollar LIBOR Versions could only be maintained for a maximum period of 5 years, which is the maximum period the FCA could exercise its compulsion power over contributors under Article 23 of the BMR. In addition, the Authority would need to continue to monitor the underlying markets of the US Dollar LIBOR Versions and whether those markets continued to exist or diminish, and would be required to review any contributor compulsion period every 12 months. Subsequently, if any of the US Dollar LIBOR Versions' underlying markets ceased to exist, any compulsion would need to cease. Given the fragility and risk of diminution of the underlying markets of the US Dollar LIBOR Versions, unnecessary uncertainty would be created.

#### *Impact on Contributors*

- 4.22. Existing LIBOR contributors have expressed their concern about the legal and reputational risks associated with continuing to contribute to LIBOR.
- 4.23. In addition, the Authority has previously noted in [PS18/5](#) (on Powers in relation to LIBOR contributions) that requiring a new contributor to contribute input data may

involve that contributor in material costs, and that it could also take time for a new contributor to put in place the systems and controls to allow it to contribute with confidence. This would also require the Authority to undertake substantial and complicated work to identify whether banks are active participants in the relevant underlying market and to engage with banks to understand the feasibility of their contributing input data.

- 4.24. Taking these considerations into account, the Authority does not consider that there are sufficient good reasons to maintain the US Dollar LIBOR Versions' representativeness after 30 June 2023.

### Is there adequate justification to designate?

*Does Article 23A designation and exercise of our powers offer a better route than cessation?*

- 4.25. The Authority has concluded that none of the US Dollar LIBOR Versions could be ceased in an orderly fashion at 30 June 2023 due to a relatively small but material subset of legacy exposures that will not be able to transition away by that date.
- 4.26. IBA has indicated that it cannot determine LIBOR on a representative basis once the panel banks depart, and the Authority has decided not to seek to restore representativeness. Consequently, following the exercise of the Article 21(3) power to compel continued publication, the only remaining way to sustain the US Dollar LIBOR Versions is for the Authority to exercise its power under Article 23D of the BMR to change the methodology to a 'synthetic' one. The Authority has consulted on its intention to exercise its Article 23D powers under the BMR, in the event that the US Dollar LIBOR Versions are designated as Article 23A benchmarks, to impose requirements on IBA relating to the way in which each of the US Dollar LIBOR Versions are determined so that they can continue to be published. This solution would prevent the market disruption which would otherwise be caused by the cessation of the US Dollar LIBOR Versions after publication is concluded on 30 June 2023.
- 4.27. The automatic prohibition on use in Article 23B of the BMR prevents Article 23A benchmarks from being used by supervised entities, subject to any legacy use permissions the Authority may allow. This is a beneficial consequence of designation under Article 23A of the BMR in that, upon designation becoming effective, the prohibition will curtail exposures to the permanently unrepresentative US Dollar LIBOR Versions as they continue to be wound down.
- 4.28. Designating each of the US Dollar LIBOR Versions under Article 23A of the BMR, and

accessing powers to permit legacy use and to make changes to the US Dollar LIBOR Versions, offer a better route to winding them down in an orderly manner.

#### *Contractual Fallbacks*

- 4.29. In addition, the Authority has considered whether designation under Article 23A of the BMR would be a helpful part of the US Dollar LIBOR Versions' orderly wind-down, as it could engage contractual triggers and fallbacks. An Article 23A designation notice can serve as a clear and unambiguous pre-cessation trigger for fallbacks. However, given the Authority's 5 March 2021 [announcement](#), the Authority considers the position is clear and this notice would serve mainly to confirm the previously communicated position that, immediately after 30 June 2023, the US Dollar LIBOR Versions will no longer be representative and representativeness will not be restored.

#### *Alignment with other authorities*

- 4.30. As the regulator of IBA, the Authority is uniquely placed to intervene in a way that could assist contract counterparties in many jurisdictions in finding a consistent way of managing legacy LIBOR exposures. The Authority has engaged with international authorities, including the Financial Stability Board's Official Sector Steering Group (OSSG), IOSCO and the US & EU authorities. There is widespread support across these authorities for continuing the US Dollar LIBOR Versions' publication in synthetic form for a limited period, which, as per paragraph 2.2 above, is only possible if they are designated under Article 23A of the BMR. Moreover, the effect of these designations is to give the Authority the powers required to be able to introduce greater alignment with the approach taken by US authorities in their LIBOR-related federal legislation.
- 4.31. The Bank of England has also been closely involved in LIBOR transition matters and the Authority's strategy in respect of the wind-down of the US Dollar LIBOR Versions. The Bank of England supports the Authority intervening to designate the US Dollar LIBOR Versions under Article 23A of the BMR to support an orderly wind-down of legacy contracts.

#### *Timing of the Designation*

- 4.32. The Authority has decided that these designations shall become effective at 00:01 London time on 1 July 2023. This aligns with the departure of the panel bank contributors and our exercise of the power under Article 21(3) of the BMR to compel the continued publication of the US Dollar LIBOR Versions, i.e. the point at which it will cease to be possible to publish the US Dollar LIBOR Versions on a representative basis.



- 4.33. As IBA has indicated that it cannot determine the US Dollar LIBOR Versions on a representative basis once the panel banks depart and the Authority has decided not to seek to restore the representativeness of the US Dollar LIBOR Versions, the only remaining way to sustain the US Dollar LIBOR Versions would be to exercise the powers under Article 23D of the BMR to change the methodology to a “synthetic” one, following the designation of the US Dollar LIBOR Versions under Article 23A of the BMR, so that IBA is compelled to publish the US Dollar LIBOR Versions under a “synthetic” methodology.
- 4.34. The Authority will update the Benchmarks Register to inform supervised benchmark users of the change in status of the US Dollar LIBOR Versions.

### **Effects of the Designation**

- 4.35. Article 23B of the BMR provides that all use (as defined in Article 3.1(7) of the BMR) by supervised entities of an Article 23A benchmark is prohibited when the Article 23A designation takes effect, except where the Authority makes exemptions for legacy under Article 23C of the BMR. In addition, the Authority may, by issuing a public notice, delay the prohibition for up to four months beginning with the day on which the Article 23A designation takes effect. Supervised entities should note that the Article 23B prohibition will override the [prohibition on new use](#) of the US Dollar LIBOR Versions previously issued under Article 21A of the BMR, and will prohibit all new use of the US Dollar LIBOR Versions.
- 4.36. The prohibition on use of the US Dollar LIBOR Versions under Article 23B of the BMR will take effect on 1 July 2023.

## **5. PROCEDURAL MATTERS**

- 5.1. This Notice is given to IBA under Article 23A(4) of the Benchmarks Regulation and in accordance with The Benchmarks (Provision of Information and Documents) Regulations (SI 2021/812). It is published in accordance with Article 23A(10)(b) of the Benchmarks Regulation 2021.
- 5.2. This Notice is given to the Treasury pursuant to Article 23A(11) of the Benchmarks Regulation.
- 5.3. The following statutory rights are important.

### **The Tribunal**

- 5.4. IBA has the right to refer the matter to which this Notice relates to the Tribunal. Part 9 of the Financial Services and Markets Act 2000 (hearings and appeals) applies in relation to any such reference to the Tribunal. Under paragraph 2(2) of Schedule 3 of

the Tribunal Procedure (Upper Tribunal) Rules 2008, IBA has 28 days from the date on which this Notice is given to it to refer the matter to the Tribunal.

- 5.5. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by IBA and filed with a copy of this Notice. The Tribunal's contact details are: Upper Tribunal (Tax and Chancery Chamber), 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: [uttc@justice.gov.uk](mailto:uttc@justice.gov.uk)).
- 5.6. Further details are available from the Tribunal website: <https://www.gov.uk/government/publications/form-ftc3-reference-notice-financial-services>.
- 5.7. A copy of the reference notice must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to Vanessa Le Blanc at email: [vanessa.leblanc@fca.org.uk](mailto:vanessa.leblanc@fca.org.uk) and the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN.

#### **AUTHORITY CONTACTS**

- 5.8. For more information concerning this matter generally, contact Vanessa Le Blanc at the Authority (email: [vanessa.leblanc@fca.org.uk](mailto:vanessa.leblanc@fca.org.uk)).

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