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## ARTICLE 21(3) BENCHMARKS REGULATION – NOTICE OF FIRST DECISION

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**To:** ICE Benchmark Administration Limited

**Reference Number:** 608291

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

**Date:** 15 November 2023

### 1. ACTION

- 1.1. For the reasons given in this notice and pursuant to Article 21(3) of the Benchmarks Regulation, the Financial Conduct Authority (“the Authority”) has decided to compel ICE Benchmark Administration Limited (“IBA”) to continue publishing 3-month sterling LIBOR (“the LIBOR Version”) for a period of 3 months starting immediately after the publication of the LIBOR Version on 29 December 2023 and ending immediately after the final publication on 28 March 2024.
- 1.2. The LIBOR panel banks ceased contributing input data in respect of the LIBOR Version after 31 December 2021. IBA had previously notified the Authority that it intended to cease providing the LIBOR Version after 31 December 2021 unless the Authority were to exercise its powers to require IBA to continue to publish the LIBOR version on a “synthetic” basis. The Authority subsequently required IBA to [continue publication of certain LIBOR settings](#), including the LIBOR Version, under a [changed, “synthetic” methodology](#), which was no longer representative, for an additional year after 31 December 2021 (“Initial Compulsion”). Upon review, the Authority was entitled to extend this period of

- compulsion by up to 12 months, where necessary.
- 1.3. On 23 November 2022, the Authority, having taken account of feedback received to its June 2022 [consultation](#), [required](#) IBA to continue to publish the LIBOR Version under the existing changed, “synthetic” methodology, for a further 12 months from 30 December 2022 until immediately after final publication of the LIBOR Version on 29 December 2023 (“Subsequent Compulsion”).
  - 1.4. At the same time, the Authority informed IBA that, subject to the further reviews required by Article 21(3) of the Benchmarks Regulation, it intended to use its powers to compel IBA to continue to publish the LIBOR Version for a final period until the end of March 2024, but not beyond that date.
  - 1.5. The Authority has now reviewed its Subsequent Compulsion decision and, having taken account of further feedback and information available to it, has decided to require IBA to continue to publish the LIBOR Version under the existing changed, “synthetic” methodology, for a further 3 months starting immediately after the publication of the LIBOR Version on 29 December 2023 until immediately after final publication of the LIBOR Version on 28 March 2024.
  - 1.6. The decision as set out in this notice takes effect on a date determined in accordance with this paragraph 1.6. The decision is subject to review in the event of any written representations made by IBA and shall take effect if
    - (1) IBA makes no representations within the deadline for making such representations, on the date immediately succeeding that deadline; or
    - (2) IBA does make representations and on review of those representations, the Authority confirms to IBA that it maintains the decision set out in this notice by means of a Second Decision, on the date of that Second Decision notice or as otherwise set out in that Second Decision.
  - 1.7. Accordingly, in view of the absence of certainty as to whether the decision to compel publication contained within this notice will be maintained, the Authority asks IBA to treat this notice as confidential. The Authority requests that IBA does not disclose it or its contents to a third party (except for the purpose of obtaining legal advice on its contents) or publicise this notice without the Authority’s written consent until
    - (1) if no representations are made, the deadline for making written representations has passed, or
    - (2) if IBA has made representations, the Authority has confirmed to IBA the decision set out in this notice by means of a Second Decision.
  - 1.8. Please see paragraph 5 of this notice for important information about procedural rights.

## **2. SUMMARY OF REASONS**

- 2.1. The Authority has decided to exercise its power under Article 21(3) of the BMR to compel the administrator of LIBOR, IBA, to continue publishing the LIBOR Version for a further 3 months under the existing changed, 'synthetic', methodology, until 28 March 2024, in order that the LIBOR Version may be ceased to be provided in an orderly fashion. In its consultation published on 30 June 2022, the Authority sought views on when it would be possible for the LIBOR Version to cease in an orderly fashion. Based on the [feedback](#) received to this consultation and further information received through its engagement with UK supervised mortgage lenders, the Authority considers that it is necessary to extend the period of compelled publication by a period of 3 months and that the LIBOR Version can be ceased on 28 March 2024 in an orderly fashion. This is to provide more time for market participants, especially parties to mortgage contracts, to complete transition away from the LIBOR Version.
- 2.2. The Authority has no intention to use its powers to compel IBA to continue to publish the LIBOR Version beyond 28 March 2024.

### **3. DEFINITIONS**

- 3.1. In this notice, the following definitions apply:

"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.

### **4. REASONS FOR ACTION**

#### Background

- 4.1. The LIBOR panel banks ceased contributing input data in respect of the LIBOR Version after 31 December 2021. IBA had previously notified the Authority that it intended to cease providing the LIBOR Version after 31 December 2021 unless the Authority were to exercise its powers to require IBA to continue to publish the LIBOR Version on a "synthetic" basis. The Authority subsequently

required IBA to [continue publication of certain LIBOR settings](#), including the LIBOR Version, under a [changed, "synthetic", methodology](#), which was no longer representative, for an additional year after 31 December 2021 ("Initial Compulsion").

- 4.2. Under Article 21(3) of the BMR, the Authority was required to review its Initial Compulsion decision by the end of the Initial Compulsion period in order to decide whether to extend that period by an appropriate period not exceeding 12 months.
- 4.3. On 30 June 2022, the Authority published a consultation seeking views on when it would be possible for the LIBOR Version to cease in an orderly fashion. The Authority, having taken account of the feedback received to this consultation, required IBA to continue to publish the LIBOR Version under the existing changed, "synthetic" methodology, for a further 12 months from 30 December 2022 until immediately after final publication of the LIBOR Version on 29 December 2023 ("Subsequent Compulsion"). This additional period was necessary for market participants, especially parties to mortgage contracts, to complete transition away from the LIBOR Version.
- 4.4. At the same time and based on the feedback received to the consultation, the Authority informed IBA and the market that, subject to the further reviews required by Article 21(3) of the Benchmarks Regulation, it intended to use its powers to compel IBA to continue to publish the LIBOR Version for a final period until the end of March 2024, but not beyond that date. This was to ensure that market participants had adequate notice of intended cessation in order that the LIBOR Version could be ceased to be provided in an orderly fashion. The Authority also considered that a clear intended cessation date for the LIBOR Version would serve as impetus for a final transition effort.

#### Ceasing the LIBOR Version in an orderly fashion

- 4.5. As part of the feedback received to the June 2022 consultation, mortgage lenders highlighted challenges in engaging with borrowers, where their consent was necessary for contractual amendments to be implemented. Further to this feedback, in Q3 2023, the Authority engaged with UK regulated entities with outstanding mortgage exposures and received feedback on their transition progress. Market participants confirmed that they are progressing in the implementation of their transition plans and continue to engage with borrowers to transition the remaining contracts by the end of March 2024, the intended cessation date for the LIBOR Version.
- 4.6. On the basis of this evidence, the Authority accepts that the additional three-

month period beyond the end of December 2023 is necessary for market participants to complete their transition plans. However, having taken into account market participants' transition progress and level of preparedness, the Authority considers that firms will be able to complete transition away from the LIBOR Version by the end of March 2024.

- 4.7. Based on feedback and information available to it, the Authority considers that the LIBOR Version can be ceased in an orderly fashion by that date.

#### Conclusion

- 4.8. The Authority considers that it is necessary for it to extend its compulsion of IBA to continue publication of the LIBOR Version for a further 3 months until immediately after final publication of the LIBOR Version on 28 March 2024. This is to ensure that market participants have the time to complete their transition plans for the outstanding mortgage contracts, in order that the LIBOR Version may be ceased to be provided in an orderly fashion.
- 4.9. The Authority does not intend to use its powers to compel IBA to continue to publish the LIBOR Version beyond 28 March 2024.

## **5. PROCEDURAL MATTERS**

- 5.1. This notice constitutes the Authority's First Decision for the purposes of MAR 8.7.5G and is given to IBA in accordance with MAR 8.7.5G. IBA may make written representations by email to the Authority. The deadline for making written representations is 29 November 2023. The address for doing so is:

Vanessa Le Blanc  
Manager, Benchmarks Supervision  
Email: [vanessa.leblanc@fca.org.uk](mailto:vanessa.leblanc@fca.org.uk)

- 5.2. MAR 8.7.7G(1) states that where written representations are made to the Authority, the Authority will review its decision and will decide whether to maintain, vary or revoke it. MAR 8.7.7(G)(4) further states that when the Authority has completed the above review, the Authority will issue a written notice which gives details of the decision in response to the review, its reasons for that decision and state the date on which that decision takes effect.

## **6. AUTHORITY CONTACTS**

- 6.1. 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)).

JON RELLEEN

Director of Infrastructure and Exchanges, for and on behalf of the Authority

SIMON WALLS

Director of Wholesale Sell-Side, for and on behalf of the Authority