FINANCIAL CONDUCT AUTHORITY

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

To:	**ICE Benchmark Administration Limited**
Reference Number:	**608291**
Address:	**Milton Gate, 60 Chiswell Street, London EC1Y 4SA, United Kingdom**
Date:	**23 November 2022**

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 12 months starting immediately after the final publication of the LIBOR Version on 30 December 2022 and before the LIBOR Version would otherwise cease. Subject to the reviews required by Article 21(3) of the Benchmarks Regulation, the Authority intends 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.

1.2. 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 is able to extend this period of compulsion by up to 12 months, where necessary.

1.3. On 30 June 2022, the Authority consulted on when the LIBOR Version could cease in an orderly fashion. The Authority has now reviewed its Initial Compulsion decision and, having taken account of feedback received to the consultation and other information and feedback available, has decided to require 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.

1.4. The decision as set out in this notice takes effect on a date determined in accordance with this paragraph 1.4. 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.

1.5. 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.

1.6. 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 period of 12 months under the existing changed, 'synthetic', methodology, until 29 December 2023, 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 responses received to this consultation and other feedback and information available to it, it considers that the LIBOR Version cannot be ceased at the end of 2022 in an orderly fashion and that more time is needed for market participants, especially parties to mortgage contracts, to complete transition away from the LIBOR Version.

2.2. At the same time, the Authority considers it important to provide an intended cessation date for the LIBOR Version, in part to serve as impetus for a final transition effort. Therefore the Authority is making clear that, subject to the further reviews required by Article 21(3) of the Benchmarks Regulation, it intends 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.

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 ICE LIBOR benchmark provided by IBA;

"version" has the meaning in Article 23G(2) 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 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 is required to review its Initial Compulsion decision by the end of the Initial Compulsion period and may, where necessary, extend that period by an appropriate period not exceeding 12 months.

4.3. On 30 June 2022, the Authority published a public consultation. The consultation closed on 24 August 2022 and the Authority has taken account of all responses received relating to the LIBOR Version, alongside other available information, in reviewing its decision.

Ceasing the LIBOR Version in an orderly fashion

4.4. The Authority received 46 substantive responses to its consultation question (Q4) seeking views on when the LIBOR Version could end in an orderly fashion.

4.5. Nineteen respondents said the LIBOR Version could cease at or before end-March 2024 (three noted benefits from aligning cessation with the end of US dollar LIBOR settings). Eighteen respondents either expressed no specific view on the timing of cessation, or simply said that publication needed to continue beyond 2023. Seven respondents considered that publication should continue for a significant period, and two said that publication should only cease in conjunction with provision of an alternative solution such as legislation, because they considered that some contracts face insurmountable barriers to transition

4.6. The Authority considers that exposures to the LIBOR Version, in themselves, are not determinative of a need for continued publication at this point in the LIBOR transition process. There has now been sufficient time for many market participants with LIBOR exposures to have transitioned them to a different rate. Parties to contracts may have made a conscious choice not to transition, or may have failed to take steps to transition in a timely manner. The Authority has been clear that it will not require continued publication of LIBOR versions for the convenience of those who could take action to convert their contracts, but have not done so.

Obstacles to transition

4.7. The Authority's consultation question (Q5) asked whether respondents had exposures linked to 3-month sterling LIBOR where they had encountered, or expected to encounter, obstacles that prevented them from completing transition to alternative rates by end March 2023. In response, some respondents set out details of what they considered to be such obstacles. The Authority accepts that in some cases there are reasons why transition may not be possible within the timescale set out in the question, and that a further period of publication of the LIBOR Version is therefore required. The Authority considers that the vast majority of contracts should be able to be transitioned to reference appropriate alternative rates by the end of March 2024.

4.8. Parties to commercial contracts can work out between them whether they can reach agreement on an amendment to the terms of the contract or whether there is a preference to retain the existing contract provisions. The Authority does not consider the lack of certainty that counterparties will cooperate with transition as an obstacle to transition in all cases. Where informed parties do not agree a change voluntarily, this may be because they are prepared for cessation of the LIBOR Version.

4.9. With regard to securitisations and other similarly complex transactions, the Authority has acknowledged that there are sometimes additional complexities such that successful consent solicitations may take longer; and its decision takes account of this. The Authority does not accept that these are insurmountable obstacles in most instances. Similarly, the Authority considers that by the end of March 2024, project / private finance initiative (PFI) exposures should have had ample time to transition to alternative rates.

4.10. Some mortgage lenders have highlighted difficulties engaging with borrowers, although progress is being made by some (one reports having reduced exposures by 50 per cent so far) and a significant number of mortgages appear to have provisions for moving to an alternative rate when the LIBOR Version ceases. The Authority must balance the interests of borrowers and lenders without fallbacks against those of borrowers and lenders - and parties to other contracts - whose contracts contain fallbacks that will be triggered by cessation of the LIBOR Version; and also the imposition of requirements on LIBOR's administrator IBA, which is being required to continue to publish LIBOR in an unrepresentative form.

4.11. The Authority considers that it is possible for cessation to be orderly even if not every contract has transitioned away or been equipped with a workable fallback, provided there is not sufficient scale of un-remediated contracts to pose a threat to market integrity or to an appropriate degree of protection for consumers.

4.12. On the basis of current evidence, the Authority does not consider it necessary or proportionate to treat mortgage contracts referencing the LIBOR Version as irresolvable. Lenders can look for routes by which they can move borrowers to an alternative rate that is clearly and transparently fair to the borrower. The Authority accepts that lenders would benefit from more time to do this, and its decision takes account of this. However the Authority considers that lenders are more likely to take proactive steps to transition if a clear future cessation date is set. Therefore the Authority is making clear that, subject to the further reviews required by Article 21(3) of the Benchmarks Regulation, it intends 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.

4.13. The provision and use of the synthetic rate since January 2022 provides lenders with an established alternative rate formula which they could potentially replicate in order to support transition, ensuring continuation of economic outcome, should they wish. This formula could potentially be used in other contracts if needed, e.g. contracts not equipped to use risk-free rates because they require a forward-looking term rate.

4.14. A number of respondents commented explicitly on the importance of a considerable period of notice of intended cessation of the LIBOR Version. The Authority considers that this Notice provides IBA and market participants with ample notice of intended cessation of the LIBOR Version and thus provides affected parties with sufficient time to take the necessary steps to prepare.

Conclusion

4.15. 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 12 months until immediately after final publication of the LIBOR Version on 29 December 2023. Subject to the reviews required by Article 21(3) of the Benchmarks Regulation, the Authority intends to use its powers to compel IBA to continue to publish the LIBOR Version for a further period beyond this, until the end of March 2024; but not beyond that date. This is to ensure that market participants have adequate notice of intended cessation, in order that the LIBOR Version may be ceased to be provided in an orderly fashion.

4.16. The Authority considers that there are practicable approaches to transitioning away from the LIBOR Version available for the vast majority of outstanding contracts referencing the LIBOR Version. The Authority accepts that some contracts will require further time beyond the Initial Compulsion in order for this to take place. However it expects that parties to these contracts should be able to complete transition by the end of March 2024. The Authority considers that providing a clear intended cessation date will provide additional impetus for parties to act.

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 7 December 2022. The address for doing so is:

Vanessa Le Blanc
Manager, Benchmarks Supervision
Email: 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).

EDWIN SCHOOLING LATTER
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