

**Future Cessation Guidance – 2021 ISDA Interest Rate Derivatives Definitions and 2006 ISDA Definitions**

**ICAPZAR**

The International Swaps and Derivatives Association, Inc. (“**ISDA**”) provides the following guidance for parties to over-the-counter derivative transactions that are affected by the announcement made on September 14, 2023 (the “**ICAPZAR Cessation Announcement**”) by TP ICAP (“**ICAP**”) that the ICAPZAR rate will cease publication from December 31, 2023. The announcement can be found [here](#).

ISDA is issuing this guidance in the interest of mitigating market risk and the promotion of orderly and consistent application of triggers and fallbacks by market participants. This guidance is not legal advice and market participants should consult their legal advisors as appropriate. Market participants should not rely on this guidance for any purpose but should review the contractual terms of each affected transaction in order to understand the effects of the events described above. ISDA does not assume any responsibility for this guidance and it is not intended to set a precedent. Parties are not obliged to follow any particular course in relation to the matters discussed. Nothing in this guidance changes or overrides parties’ contractual rights or obligations. Parties should therefore review the terms of their contracts in order to determine whether the information in this guidance is accurate and/or applies to their particular case. For cleared transactions and transactions executed on electronic confirmation platforms, market participants should refer to the contractual terms of the applicable clearing house or confirmation platform, as applicable. ISDA reserves the right to amend or otherwise update this guidance from time to time.

## Guidance

The purpose of this Guidance is:

- (1) **2021 ISDA Interest Rate Derivatives Definitions:** to describe how the terms of the 2021 ISDA Interest Rate Derivatives Definitions (Versions 1.0 to 9.0), published by ISDA on its 'MyLibrary' platform (the "**2021 Definitions**") apply to the ICAPZAR Cessation Announcement;
- (2) **2006 ISDA Definitions:** to describe how the terms of the 2006 ISDA Definitions published by ISDA (the "**2006 Definitions**") apply to the ICAPZAR Cessation Announcement; and
- (3) **2018 ISDA Benchmarks Supplement:** to describe how the terms of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement (the "**ISDA Benchmarks Supplement**") apply to the ICAPZAR Cessation Announcement.

Terms used but not defined in this Guidance have the meanings given to them in the 2021 Definitions, the 2006 Definitions or the ISDA Benchmarks Supplement, as applicable.

### **The ICAPZAR Announcement**

On September 14, 2023, TP ICAP announced in the **ICAPZAR Cessation Announcement**:

*"The purpose of this Market Notice is to advise that TP ICAP has undertaken a review of its screens and seeks to notify stakeholders that ICAPZAR Reset rate will cease publication from 31 December 2023.*

*This decision has been taken in light of a review of our wider publications and suitability of reference rates."*

### **Application of the 2021 Definitions to the ICAPZAR Cessation Announcement**

Pursuant to Versions 1.0 to 4.0<sup>1</sup> (inclusive) of the 2021 ISDA Interest Rate Derivatives Definitions Matrix for Mark-to-Market Currency Swaps (the "**2021 MTM Matrix**"), the ZAR/USD Currency Exchange Rate is the exchange rate which appears on "Refinitiv ICAPZAR" (the "Source Page") at, or as close to, 10 a.m. London time (the "MTM Fixing Time") (such foreign exchange rate being "**ICAPZAR**") on the day that is two London, Johannesburg and New York Business Days prior to the first day of the Calculation Period (the "MTM Fixing Date") (unless otherwise agreed between the parties).

An Index Cessation Event under the 2021 Definitions<sup>2</sup> will occur in respect of a Currency Exchange Rate set out in the 2021 MTM Matrix, upon:

*"a public statement or publication of information by or on behalf of the Administrator of the Applicable Benchmark announcing that it has ceased or will cease to provide the Applicable Benchmark permanently or indefinitely, provided that, at the time of the statement or*

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<sup>1</sup> Note that the main book, matrices and other ancillary documents that constitute the 2021 Definitions re-version independently. As at the date of this guidance, the latest version of the main book is Version 9.0 while the latest version of the 2021 MTM Matrix is Version 4.0. Further information as to which versions prevail on which dates can be found in the Version Maps published in the 'Resources' section for each version of the main book of the 2021 Definitions on **ISDA My Library**.

<sup>2</sup> The analysis regarding the occurrence of an Index Cessation Event and the corresponding Index Cessation Effective Date set out in this section applies equally to each version of the 2021 MTM Matrix published by ISDA as at the date of this Guidance. However, please note that relevant amendments have been made in Version 5.0 of the 2021 MTM Matrix, as explained further below.

*publication, there is no successor administrator or provider, as applicable, that will continue to provide the Applicable Benchmark.”*

In light of the above, an Index Cessation Event with respect to ICAPZAR as the ZAR/USD Currency Exchange Rate occurred on September 14, 2023 by virtue of the announcement by TP ICAP that ICAPZAR will permanently cease.

The Index Cessation Effective Date is the first date on which the ZAR/USD Currency Exchange Rate would ordinarily have been published or provided and will no longer be published or provided. It is a question of fact as to the date on which this will occur. However, as the ICAPZAR Cessation Announcement provides that ICAPZAR will cease publication from December 31, 2023, the Index Cessation Effective Date is expected to be the first London, Johannesburg and New York Business Day<sup>3</sup> after December 31, 2023 on which ICAPZAR would ordinarily have been published or provided but is not published or provided. ISDA understands that the first London, Johannesburg and New York Business Day immediately following Sunday, December 31, 2023 is expected to be Tuesday January 2, 2024, unless Tuesday January 2, 2024 is an unscheduled holiday in London, Johannesburg or New York.

The Generic Fallback Provisions in the 2021 Definitions, as modified by Section 11.5.2 (*Generic Fallback Provisions in respect of the Currency Exchange Rate*), will apply from the date of the Index Cessation Event (i.e. the date of the ICAPZAR Cessation Announcement). They require the parties to act in good faith and use commercially reasonable efforts to identify an effective fallback under each of the Alternative Continuation Fallbacks. Where more than one such fallback would be effective, the one resulting from application of the Alternative Continuation Fallback that appears highest in the order set out in Section 8.6.3 (*Alternative Continuation Fallbacks*) prevails.<sup>4</sup>

The four Alternative Continuation Fallbacks that apply are:

- **Agreement between the parties.** It is open to the parties to agree on the actions, if any, to be taken in order to account for the Index Cessation Event;
- **Alternative Pre-nominated Index.** This would only apply if the parties had specified a replacement foreign exchange rate and may require the Calculation Agent to apply an Adjustment Payment or Adjustment Spread;
- **Alternative Post-nominated Index.** This would require a replacement foreign exchange rate to be nominated by a Relevant Nominating Body or by the current administrator of ICAPZAR. ISDA has no information to suggest that an Alternative Post-nominated Index will be nominated in relation to the Index Cessation Event; and
- **Calculation Agent Nominated Replacement Index.** The Calculation Agent may nominate an alternative foreign exchange rate and determine whether an Adjustment Spread or Adjustment Payment is required.

Pursuant to Section 11.5.2 (*Generic Fallback Provisions in respect of the Currency Exchange Rate*) of the 2021 Definitions, to the extent none of the Alternative Continuation Fallbacks are successful, Calculation Agent Exchange Rate Determination will apply as the final fallback. Unlike Calculation Agent Nominated Replacement Index (the fourth Alternative Continuation Fallback described above), which results in a permanent fallback, this requires the Calculation Agent to determine an equivalent rate to the one described in the 2021 MTM Matrix on the applicable “MTM Fixing Date”

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<sup>3</sup> The expectation that the Index Cessation Effective Date will be a London, Johannesburg and New York Business Day is based on the fact that the 2021 MTM Matrix provides that the “MTM Fixing Date” for ICAPZAR is on a day which is a London, Johannesburg and New York Business Day.

<sup>4</sup> Refer to the [ISDA Summary of the Generic Fallback Provisions](#) for a summary of the Generic Fallback Provisions.

at the relevant “Cut Off Time” or as close to that time as reasonably practicable each time the Currency Exchange Rate is required.

#### ***Application of the 2021 Definitions and Version 5.0 of the 2021 MTM Matrix***

Note that ISDA intends to publish Version 10.0 of the main book of the 2021 Definitions on November 3, 2023. Version 5.0 of the 2021 MTM Matrix will also be published as part of this update. The Currency Exchange Rate which will apply in Version 5.0 of the 2021 MTM Matrix for purposes of ZAR/USD Mark-to-Market Currency Swaps will be the “ZAR/USD exchange rate expressed as ZAR per USD 1.00 published on USDZARFIXM11=WM” on the “Source Page” “Refinitiv WMR11SPOT01” on the same specified “MTM Fixing Date” at, or as close to, 11 a.m. London time (“**WMR11**”).

The ICAPZAR Cessation Announcement will therefore not have an impact on contracts which incorporate Version 5.0 of the 2021 MTM Matrix.

#### ***Application of the 2006 Definitions and the 2006 MTM Matrix***

Pursuant to the 2006 Definitions and all versions of the 2006 ISDA Definitions MTM Matrix for Mark-to-market Currency Swaps (the “**2006 MTM Matrix**”), the Currency Exchange Rate for ZAR/USD Mark-to-market Currency Swaps is ICAPZAR. The 2006 Definitions provide that, if the Currency Exchange Rate does not appear on the “Source Page” on the “Fixing Date” (which for ICAPZAR is two London, Johannesburg and New York Business Days prior to the first day of the Calculation Period) at the “Fixing Time” (which for ICAPZAR is 10 a.m. London time), the parties will seek to agree an alternative rate by the “Cut Off Time” specified in the version of the 2006 MTM Matrix which applies to the relevant Transaction, on that “Fixing Date”. Pursuant to the 2006 Definitions, the parties’ agreement is required each time the Currency Exchange Rate is required under the relevant Transaction, as the obligation to agree does not apply until the exchange rate required fails to appear on the specified “Source Page” at the “Fixing Time” on the “Fixing Date”.

If the parties are unable to agree an alternative rate by the “Cut Off Time”, the Currency Exchange Rate will be a rate equivalent to the specified exchange rate as determined by the Calculation Agent at the applicable “Cut Off Time” on the “Fixing Date” (or as close to such time as is reasonably practicable).

#### ***Application of the ISDA Benchmarks Supplement***

There is no “index cessation event” provided for in relation to Currency Exchange Rates under the 2006 Definitions. This means that, for transactions incorporating the ISDA Benchmarks Supplement, a “Priority Fallback” as defined in Section 1.1 (*Specific provisions for certain Relevant Benchmarks*) will not apply.

Accordingly, the provisions of Section 1.2 (*Consequences of a Benchmark Trigger Event*) of the ISDA Benchmarks Supplement will apply and each party must seek to apply one or more “Alternative Continuation Fallbacks” in the period from the occurrence of the ICAPZAR Cessation Announcement (the “Benchmark Trigger Event”) to the “Cut-off Date” of the first London, Johannesburg and New York Business Day immediately following December 31, 2023. ISDA understands that the first London, Johannesburg and New York Business Day immediately following Sunday, December 31, 2023 is expected to be Tuesday January 2, 2024, unless Tuesday January 2, 2024 is an unscheduled holiday in London, Johannesburg or New York.

The ISDA Benchmarks Supplement includes equivalent Alternative Continuation Fallbacks to those set out in the 2021 Definitions in respect of Currency Exchange Rates except that No Fault

Termination will apply as the final fallback if no Continuation Amendment has been made pursuant to one of the Alternative Continuation Fallbacks by Close of Business on the Cut-off Date.

### **MarkitWire**

ISDA understands that in respect of ZAR/USD Mark-to-Market Currency Swaps that are confirmed via MarkitWire, the position is as set out below. However, ISDA assumes no responsibility for the accuracy of this information and members are encouraged to confirm this position with MarkitWire.

ZAR/USD Currency Pair Mark-to-Market Currency Swaps confirmed on MarkitWire incorporate either the 2021 Definitions (Versions 1.0 to 9.0) or the 2006 Definitions. The ISDA Benchmarks Supplement is not applicable to MarkitWire transactions.

Elections for the terms “Source Page”, “MTM Fixing Date”, “MTM Fixing Time” and “Cut Off Time” are made explicitly in each MarkitWire Mark-to-Market Currency Swap Confirmation. For relevant Currency Pairs MarkitWire holds default elections for these terms which are updated from time to time to reflect changes published by ISDA in the 2021 MTM Matrix. However, it should be noted that the default elections are provided solely to facilitate the manual entry of a MarkitWire Confirmation and parties are able to override the default elections and, in the case of a Confirmation submitted into MarkitWire via an Application Programming Interface (API), parties are required to provide the elections for these terms explicitly.

MarkitWire’s current default elections for these terms for the ZAR/USD Currency Pair are consistent with the latest published version of the 2021 MTM Matrix (Version 4.0) and the Source Page election is therefore “Refinitiv ICAPZAR”.

With respect to new transactions referencing the ZAR/USD exchange rate, MarkitWire currently supports “Refinitiv WMR11SPOT01” and this can be selected at the time of booking in order to be consistent with the relevant proposed changes in Version 5.0 of the 2021 MTM Matrix. This requires an active election (in addition to active elections for the proposed changes to MTM Fixing Time and Cut Off Time) and, in the absence of such elections for a manually entered Confirmation, ICAPZAR applies as the default until the Production Date of the MarkitWire 20.2.1 release.

MarkitWire plans to update its default elections for the ZAR/USD exchange rate to “Refinitiv WMR11SPOT01” (together with corresponding default updates for MTM Fixing Time and Cut Off Time) to apply to new transactions incorporating the 2021 Definitions or the 2006 Definitions in its 20.2.1 Production release scheduled for November 25, 2023 (the “**Production Date**”).

For the settlement of ZAR/USD Mark-to-Market Currency Swaps’ Initial Exchange and Final Exchange at CLS via MarkitWire, MarkitWire is reviewing the volume of existing ZAR/USD Currency Pair transactions referencing the “Refinitiv ICAPZAR” Source Page and has begun discussions with its CLS Service members. These discussions focus on the preferred timing of automated CLS settlement for new transactions referencing “Refinitiv WMR11SPOT01” and appropriate treatment for the legacy transactions referencing “Refinitiv ICAPZAR”.

For bilaterally confirmed transactions in MarkitWire (where the Initial Exchange and Final Exchange are not settled at CLS via MarkitWire), parties to the transaction can currently, if desired, submit an amendment in MarkitWire to update their transactions to reflect the new “Source Page”, with “WMR11SPOT01” being an available selection in MarkitWire in that field.