

## December 2023 Benchmark Module to the ISDA 2021 Fallbacks Protocol (“2021 Fallbacks Protocol”) FAQs

ISDA has prepared this list of frequently asked questions to assist in your consideration of the December 2023 Benchmark Module. Unless otherwise defined herein, capitalized terms used in these FAQs have the meanings given to them in the December 2023 Benchmark Module, the 2021 Fallbacks Protocol, Version 10.0 of the 2021 ISDA Interest Rate Derivatives Definitions (the “**2021 Definitions**”) or the 2006 ISDA Definitions (as amended by each of Supplement number 1 to the 2006 ISDA Definitions to Supplement number 91 to the 2006 ISDA Definitions, inclusive) (the “**2006 Definitions**”).

THESE FREQUENTLY ASKED QUESTIONS DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN CONNECTION WITH THE DECEMBER 2023 BENCHMARK MODULE. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISER THEY DEEM APPROPRIATE PRIOR TO USING OR ADHERING TO THE DECEMBER 2023 BENCHMARK MODULE. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

### Introduction

The December 2023 Benchmark Module is a Benchmark Module to the 2021 Fallbacks Protocol that enables parties to include new fallbacks for WIBOR, as the Relevant Benchmark, as set out in the December 2023 Benchmark Module in their Protocol Covered Documents. A party’s adherence to the December 2023 Benchmark Module will also constitute its adherence to the 2021 Fallbacks Protocol. For more information on the 2021 Fallbacks Protocol and Benchmark Modules in general, see the FAQs to the 2021 Fallbacks Protocol (the “**2021 Fallbacks Protocol FAQs**”) published by ISDA and available [here](#).

**The Relevant Benchmarks included in the December 2023 Benchmark Module or any other Benchmark Module do not include any LIBOR benchmarks and consequently adherence to the 2021 Fallbacks Protocol and the December 2023 Benchmark Module (or any Benchmark Module) will not amend contracts referencing LIBOR in any currency. In order to amend contracts referencing LIBOR, firms will need to adhere to the ISDA 2020 IBOR Fallbacks Protocol.**

These FAQs refer to the “ISDA 2020 IBOR Fallbacks Protocol (IBOR Fallbacks Protocol) FAQs” (the “**2020 IBOR Fallbacks Protocol FAQs**”) due to the similarities between the ISDA 2020 IBOR Fallbacks Protocol and the 2021 Fallbacks Protocol. The 2020 IBOR Fallbacks Protocol FAQs are available [here](#).

For the purpose of these FAQs, references in the “Answers” in the 2020 IBOR Fallbacks Protocol FAQs to:

- (i) the ISDA 2020 IBOR Fallbacks Protocol should be read as references to the 2021 Fallbacks Protocol and, where relevant, the relevant Benchmark Module;
- (ii) the Attachment should be read as references to the relevant Benchmark Module and references to paragraphs in the Attachment should be read as references to the equivalent paragraph (which may have different numbering) in the Benchmark Module;
- (iii) parties adhering to the ISDA 2020 IBOR Fallbacks Protocol should be read as references to parties adhering to the 2021 Fallbacks Protocol through their adherence to a Benchmark Module;
- (iv) Protocol Covered Documents being amended by the ISDA 2020 IBOR Fallbacks Protocol should be read as references to Protocol Covered Documents being amended by a Benchmark Module;
- (v) a Relevant IBOR should be read as references to the Relevant Benchmark;
- (vi) an individual Rate Option should be read as references to an individual Relevant Benchmark and references to LIBOR Rate Options should be ignored;
- (vii) the date of acceptance by ISDA of an Adherence Letter from the later of the two Adhering Parties to adhere to the ISDA 2020 IBOR Fallbacks Protocol should be read as references to the “Adherence Date” for the later of the two Adhering Parties to adhere to the relevant Benchmark Module; and
- (viii) references to the Protocol Effective Date should be ignored.

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## Questions and Answers

### **1. What does the December 2023 Benchmark Module do?**

The December 2023 Benchmark Module is a Benchmark Module to the 2021 Fallbacks Protocol (see Question 1 (*How is the 2021 Fallbacks Protocol structured and what is a Benchmark Module?*) of the 2021 Fallbacks Protocol FAQs for more information on Benchmark Modules). It enables parties:

- (i) whose Protocol Covered Document incorporates, or references a rate as defined in, a Covered ISDA Definitions Booklet, to include in the terms of such Protocol Covered Document certain terms relating to the fallbacks for the Relevant Benchmark that have been included in Version 10.0 of the 2021 Definitions or such equivalent provisions as they relate to that Covered ISDA Definitions Booklet; and
- (ii) whose Protocol Covered Document otherwise references the Relevant Benchmark, to include in the terms of such Protocol Covered Document new fallbacks for the Relevant Benchmark.

The amendments contemplated by the December 2023 Benchmark Module will be included in Protocol Covered Documents entered into between parties that have both adhered to the December 2023 Benchmark Module.

### **2. What constitutes a Relevant Benchmark under the December 2023 Benchmark Module?**

The Relevant Benchmark included in the December 2023 Benchmark Module is the Polish zloty Warsaw interbank offered rate (**WIBOR**). The December 2023 Benchmark Module enables parties to include new fallbacks for this Relevant Benchmark in their Protocol Covered Documents.

**The December 2023 Benchmark Module does not include LIBOR Rate Options or any other references to LIBOR as a Relevant Benchmark and therefore does not enable parties to include fallbacks for any currency of LIBOR in their relevant documents. Parties that wish to include fallbacks for a LIBOR Rate Option in their relevant documents should consider adhering to the 2020 IBOR Fallbacks Protocol and can find more information on the 2020 IBOR Fallbacks Protocol in the 2020 IBOR Fallbacks Protocol FAQs, available [here](#).**

### **3. How are Protocol Covered Documents that incorporate any of Versions 1.0 to 9.0 of the 2021 Definitions amended by the December 2023 Benchmark Module?**

Paragraph 1 of the December 2023 Benchmark Module sets out all of the amendments to be made to a Protocol Covered Document that incorporates Version 1.0, Version 2.0,

Version 3.0, Version 4.0, Version 5.0, Version 6.0, Version 7.0, Version 8.0 or Version 9.0 of the 2021 Definitions in order to include certain amendments set out within Version 10.0 of the 2021 Definitions in respect of the Relevant Benchmark. This is not the same as replacing the relevant version of the 2021 Definitions with Version 10.0 of the 2021 Definitions because Version 10.0 of the 2021 Definitions includes additional changes not included in paragraph 1 which do not relate to the Relevant Benchmark. In order to limit the changes being made to Protocol Covered Documents to only those required to provide for the new permanent cessation and temporary non-publication fallbacks for the Relevant Benchmark that are set out in Version 10.0 of the 2021 Definitions, the changes are set out individually in paragraph 1 of the December 2023 Benchmark Module. However, such amendments make reference to provisions in Version 10.0 of the 2021 Definitions because Version 10.0 of the 2021 Definitions already includes all of the provisions necessary to reflect the fallbacks for the Relevant Benchmark covered by the December 2023 Benchmark Module.

#### **4. How are Protocol Covered Documents that incorporate the 2006 Definitions amended by the December 2023 Benchmark Module?**

A Supplement to the 2006 Definitions was published which related to each of the December 2021 Benchmark Module to the 2021 Fallbacks Protocol and the June 2022 Benchmark Module to the 2021 Fallbacks Protocol. Adherence to each of those previously published Benchmark Modules allowed parties to include the terms of the relevant Supplement to the 2006 Definitions in their Protocol Covered Documents that were documented under the 2006 Definitions. However, following the publication of the 2021 Definitions, ISDA announced that it would cease updating the 2006 Definitions, meaning that no further Supplements to the 2006 Definitions would be published. The final Supplement, Supplement number 91 to the 2006 Definitions, was published on December 16, 2021. As a result, while certain previously published Benchmark Modules have amended Protocol Covered Documents that reference the 2006 Definitions by incorporating the terms of the relevant Supplement to the 2006 Definitions, no such Supplement has been published alongside the December 2023 Benchmark Module.

In the absence of a relevant Supplement to the 2006 Definitions, paragraph 2 of the December 2023 Benchmark Module reflects the updates made to provisions relating to the Relevant Benchmark in Version 10.0 of the 2021 Definitions but adapts those amendments to apply within the framework, and using the defined terms, of the 2006 Definitions, by amending the triggers and fallbacks for the Rate Option “PLN-WIBOR-WIBO”, as defined in Section 7.1(r)(i) of the 2006 Definitions, to reflect those included for the equivalent Floating Rate Option in the 2021 Definitions. For purposes of the Relevant Benchmark only and a Protocol Covered Document, paragraph 2 also introduces into the 2006 Definitions certain general concepts from the 2021 Definitions, such as “Administrator/Benchmark Event”, in order to ensure alignment of the fallbacks that apply to a transaction documented under the 2021 Definitions which references the Relevant

Benchmark and a transaction referencing the same benchmark that is documented under the 2006 Definitions. For more detail on this, please see Question 10 (*Which new concepts from the 2021 Definitions does the December 2023 Benchmark Module insert in Protocol Covered Documents that (i) incorporate a Covered ISDA Definitions Booklet that is not the 2021 Definitions or (ii) contain a generic reference to a Relevant Benchmark without referring to a Covered ISDA Definitions Booklet?*) and Question 11 (*What is an Administrator/Benchmark Event and why has it been included in the December 2023 Benchmark Module?*) below.

In addition to incorporating the updates referenced above that are made to provisions relating to the Relevant Benchmark in Version 10.0 of the 2021 Definitions (as adapted to apply to the 2006 Definitions), certain general provisions relating to triggers and fallbacks from Supplement number 70 to the 2006 Definitions (the Supplement 70 General Provisions) and Supplement number 90 to the 2006 Definitions (the Supplement 90 General Provisions) will also be incorporated into Protocol Covered Documents incorporating the 2006 Definitions that are amended by paragraph 2 of the December 2023 Benchmark Module. For further detail on the Supplement 70 General Provisions and the Supplement 90 General Provisions, see Question 12 (*What are the Supplement 70 General Provisions and the Supplement 90 General Provisions and why are they applied to certain Protocol Covered Documents by the December 2023 Benchmark Module?*) below.

**5. How are Protocol Covered Documents that incorporate the 2000 ISDA Definitions amended by the December 2023 Benchmark Module?**

Paragraph 3 of the December 2023 Benchmark Module provides that Protocol Covered Documents that incorporate the 2000 ISDA Definitions (the “**2000 Definitions**”) and reference the Rate Option of “PLZ-WIBOR-WIBO” will be amended to incorporate the changes set out in paragraph 2 of the December 2023 Benchmark Module that relate to the Relevant Benchmark “WIBOR”, namely (i) the amendments made pursuant to the Supplement 70 General Provisions and the Supplement 90 General Provisions, and (ii) the amended Rate Option “PLN-WIBOR-WIBO” (the “**2006 WIBOR Fallback Amendments**”).

**6. How are Protocol Covered Documents that incorporate the 1991 ISDA Definitions as supplemented by the 1998 Supplement to the 1991 ISDA Definitions amended by the December 2023 Benchmark Module?**

Paragraph 4 of the December 2023 Benchmark Module provides that Protocol Covered Documents that incorporate the 1991 ISDA Definitions as supplemented by the 1998 Supplement to the 1991 ISDA Definitions and reference the Rate Option “PLZ-WIBOR-WIBO” will be amended to incorporate the 2006 WIBOR Fallback Amendments (as defined above) as set out in paragraph 2 of the December 2023 Benchmark Module. No changes are made to Protocol Covered Documents that incorporate the 1991 ISDA

Definitions which are not supplemented by the 1998 Supplement to the 1991 ISDA Definitions as no Rate Options referencing the Relevant Benchmark are included within the non-supplemented 1991 ISDA Definitions.

**7. How are Protocol Covered Documents that reference the Relevant Benchmark “as defined”, or as having the meaning given, in a Covered ISDA Definitions Booklet amended by the December 2023 Benchmark Module?**

Protocol Covered Documents that reference the Relevant Benchmark “as defined”, or as having the meaning given, in a Covered ISDA Definitions Booklet will be amended pursuant to paragraph 5 of the December 2023 Benchmark Module. The exact amendments made by paragraph 5 of the December 2023 Benchmark Module to a Protocol Covered Document that references the Relevant Benchmark “as defined”, or as having the meaning given, in a Covered ISDA Definitions Booklet will depend on which Covered ISDA Definitions Booklet that Protocol Covered Document references. If the relevant Covered ISDA Definitions Booklet is the 2006 Definitions, the 2000 Definitions or the 1991 ISDA Definitions as supplemented by the 1998 Supplement to the 1991 ISDA Definitions, the reference in a Protocol Covered Document to the Relevant Benchmark “as defined”, or as having the meaning given, in a Covered ISDA Definitions Booklet will instead be a reference to the relevant Rate Option as defined in paragraph 2 of the December 2023 Benchmark Module (i.e. the Relevant Benchmark as amended by paragraph 2 to incorporate updated fallback provisions). If the relevant Covered ISDA Definitions Booklet is the 2021 Definitions, the reference in a Protocol Covered Document to the Relevant Benchmark “as defined”, or as having the meaning given, in a Covered ISDA Definitions Booklet will instead be a reference to the relevant Floating Rate Option as defined in Version 10.0 of the 2021 Definitions.

**8. How are Protocol Covered Documents that reference the Relevant Benchmark that is not defined by reference to a Covered ISDA Definitions Booklet amended by the December 2023 Benchmark Module?**

If a Protocol Covered Document includes a reference to the Relevant Benchmark that is not otherwise defined by reference to a Covered ISDA Definitions Booklet, paragraph 6 of the December 2023 Benchmark Module will apply. Paragraph 6 provides that any such Protocol Covered Document shall be amended to reflect the updates made to provisions relating to the Relevant Benchmark in Version 10.0 of the 2021 Definitions. However, as such Protocol Covered Documents do not reference a particular Covered ISDA Definitions Booklet (nor the definitions contained therein), the amendments set out in paragraph 6 of the December 2023 Benchmark Module are worded generically and do not refer to any specific definitions set out in a particular Covered ISDA Definitions Booklet.

**9. Which transactions referencing the Relevant Benchmark are covered by the December 2023 Benchmark Module?**



*Transactions referencing the Relevant Benchmark where a Covered ISDA Definitions Booklet is not incorporated at Master Agreement level.*

Transactions between two Adhering Parties that either (i) reference the Relevant Benchmark and incorporate, or refer to, a Covered ISDA Definitions Booklet in the Confirmation, or (ii) contain a generic reference to the Relevant Benchmark in the Confirmation, and which are entered into under a Master Agreement which does not incorporate a Covered ISDA Definitions Booklet (i.e. is not a Protocol Covered Master Agreement), will only incorporate the amendments set out in the December 2023 Benchmark Module if those transactions have a trade date prior to the Adherence Date of the later to adhere of the two Adhering Parties (the ‘implementation date’) (i.e. only legacy transactions under such a Master Agreement are amended pursuant to the December 2023 Benchmark Module as they will be documented under Protocol Covered Confirmations).

New transactions entered into under a Master Agreement which is not a Protocol Covered Master Agreement after the ‘implementation date’ and which incorporate, or refer to, any of the 1991 ISDA Definitions as supplemented by the 1998 Supplement to the 1991 ISDA Definitions, 2000 Definitions or 2006 Definitions will not incorporate the updated fallback provisions for the Relevant Benchmark as no supplement containing those updated fallback provisions has been published in respect of any of those ISDA definitional booklets. In contrast, a new transaction entered into after the ‘implementation date’ under such a Master Agreement and which incorporates, or refers to, Version 10.0 (or a later published version) of the 2021 Definitions, will incorporate the updated fallback provisions for the Relevant Benchmark.

*Transactions referencing the Relevant Benchmark where a Covered ISDA Definitions Booklet is incorporated at Master Agreement level.*

If, however, a transaction referencing the Relevant Benchmark between two Adhering Parties is entered into under a Protocol Covered Master Agreement which incorporates a Covered ISDA Definitions Booklet, that transaction will be amended pursuant to the terms of the December 2023 Benchmark Module whether it has a trade date before or on/after the Adherence Date of the later to adhere of the two Adhering Parties (the ‘implementation date’). This will be the case irrespective of which Covered ISDA Definitions Booklet is incorporated. That a ‘new’ transaction entered into under a Protocol Covered Master Agreement after the ‘implementation date’ is amended by the December 2023 Benchmark Module is an exception to the general rule that the 2021 Fallbacks Protocol will not amend ‘new’ transactions entered into after the ‘implementation date’.

**10. Which new concepts from the 2021 Definitions does the December 2023 Benchmark Module insert in Protocol Covered Documents that (i) incorporate a Covered ISDA Definitions Booklet that is not the 2021 Definitions or (ii) contain a generic reference to the Relevant Benchmark without referring to a Covered ISDA Definitions Booklet?**

Pursuant to the December 2023 Benchmark Module, certain concepts from the 2021 Definitions are included in Protocol Covered Documents that (i) incorporate a Covered ISDA Definitions Booklet that is not the 2021 Definitions or (ii) contain a generic reference to the Relevant Benchmark without referring to a Covered ISDA Definitions Booklet. These include:

- (i) a concept of “Administrator”;
- (ii) a concept of “Administrator/Benchmark Event”. For more information on the concept of Administrator/Benchmark Event, please see Question 11 (*What is an Administrator/Benchmark Event and why has it been included in the December 2023 Benchmark Module?*) below;
- (iii) a concept of “Applicable Fallback Effective Date”. As the 2021 Definitions include the concepts of an Index Cessation Effective Date and an Administrator/Benchmark Event Date as a trigger for relevant fallbacks to apply in respect of a Floating Rate Option, the 2021 Definitions include a concept of “Applicable Fallback Effective Date” to refer to both terms; and
- (iv) a concept of “Fixing Day”. The 2021 Definitions include a Fixing Day concept, which is defined in respect of each Floating Rate Option as the relevant date on which parties should observe that Floating Rate Option.

#### **11. What is an Administrator/Benchmark Event and why has it been included in the December 2023 Benchmark Module?**

The 2021 Definitions include the concept of “Administrator/Benchmark Event”. An Administrator/Benchmark Event occurs on a counterparty-specific basis when either party to a transaction is not, or will not be, permitted to use any benchmark under any applicable law or regulation. The 2021 Definitions also include the related definition of “Administrator/Benchmark Event Date”, which is defined as the date from which the relevant party is not permitted to use the benchmark under any applicable law or regulation. If both parties to a transaction are not otherwise prohibited from using a benchmark under an applicable law or regulation, an Administrator/Benchmark Event will not apply for purposes of that transaction. If, however, one of the parties also transacts with another counterparty which is subject to a relevant regulatory prohibition, then Administrator/Benchmark Event will apply in respect of that separate transaction. The inclusion of the Administrator/Benchmark Event and Administrator/Benchmark Event Date concepts in the 2021 Definitions addresses requirements under the EU Benchmarks Regulation, specifically the express prohibition in the EU Benchmarks Regulation on the use of benchmarks unless they are appropriately authorized or registered. However, the relevant terms as defined in the 2021 Definitions are widely drafted to encompass any similar applicable law or regulation. The concept of Administrator/Benchmark Event

applies to all transactions referencing the Relevant Benchmark that are documented under the 2021 Definitions. Consequently, Administrator/Benchmark Event is included in the December 2023 Benchmark Module to limit the basis between the fallbacks that will apply pursuant to the December 2023 Benchmark Module for the Relevant Benchmark in a Protocol Covered Document that does not incorporate the 2021 Definitions and the fallbacks that will apply in a Protocol Covered Document that references the Relevant Benchmark and incorporates the 2021 Definitions.

**12. What are the Supplement 70 General Provisions and the Supplement 90 General Provisions and why are they applied to certain Protocol Covered Documents by the December 2023 Benchmark Module?**

Supplement number 70 to the 2006 Definitions (“**Supplement 70**”) and Supplement number 90 to the 2006 Definitions (“**Supplement 90**”) were published by ISDA in order to update Rate Options for certain relevant IBORs in the 2006 Definitions to include new triggers and fallbacks in the event of a permanent or temporary cessation of those relevant IBORs.

Each of Supplement 70 and Supplement 90 includes certain provisions which provide an operative framework for the new triggers and fallbacks in respect of the relevant IBORs, and, in addition, include provisions relating to linear interpolation and discontinued rates maturities. The December 2023 Benchmark Module defines such provisions as the “Supplement 70 General Provisions” and the “Supplement 90 General Provisions” and provides that Protocol Covered Documents that reference a Covered ISDA Definitions Booklet that is not the 2021 Definitions shall be amended to include the Supplement 70 General Provisions and the Supplement 90 General Provisions. This results in such Protocol Covered Documents being amended to incorporate the relevant provisions for the purposes of including triggers and fallbacks for the Relevant Benchmark. For more information on Supplement 70, please see the FAQs published by ISDA [here](#). For more information on Supplement 90, please see the FAQs published by ISDA [here](#).

**13. What happens if an Index Cessation Event occurs with respect to the Relevant Benchmark?**

See the Answer to Question 5 (*What happens if an Index Cessation Event occurs with respect to a Relevant IBOR*) of the 2020 IBOR Fallbacks Protocol FAQs.

**14. What happens if the Relevant Benchmark permanently ceases to be available?**

See the Answer to Question 5.E (*What happens if a Relevant IBOR is discontinued on the day on which it is ordinarily observed?*) of the 2020 IBOR Fallbacks Protocol FAQs.

**15. What happens if only certain tenors of the Relevant Benchmark are permanently discontinued?**

See the Answer to Question 6 (*What happens if only certain tenors of a Relevant IBOR are permanently discontinued or, in respect of LIBOR, become Non-Representative?*) of the 2020 IBOR Fallbacks Protocol FAQs.

**16. Do the amendments made by the December 2023 Benchmark Module constitute a “Spread Provision” (as defined in the ISDA 2014 Collateral Agreement Negative Interest Protocol published on May 12, 2014 by ISDA)?**

Paragraph 7 of the December 2023 Benchmark Module provides that the amendments made by the December 2023 Benchmark Module do not constitute a “Spread Provision” (as defined in the ISDA 2014 Collateral Agreement Negative Interest Protocol published on May 12, 2014 by ISDA) (the “**Negative Interest Protocol**”). Therefore, if parties have adhered to both the Negative Interest Protocol and the December 2023 Benchmark Module, the provisions of the December 2023 Benchmark Module will not prevent the Negative Interest Protocol from applying.