December 2021 Benchmark Module ("**December 2021 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 2021 Benchmark Module. Unless otherwise defined herein, capitalized terms used in these FAQs have the meanings given to them in the December 2021 Benchmark Module, the 2021 Fallbacks Protocol, Supplement 90 to the 2006 ISDA Definitions (the "**2021 IBOR Fallbacks Supplement**"), Version 4.0 of the 2021 ISDA Interest Rate Derivatives Definitions (the "**2021 Definitions**") or the 2006 ISDA Definitions (as amended by the 2021 IBOR Fallbacks Supplement) (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 2021 BENCHMARK MODULE. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISER THEY DEEM APPROPRIATE PRIOR TO USING OR ADHERING TO THE DECEMBER 2021 BENCHMARK MODULE. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

Introduction

The December 2021 Benchmark Module is a Benchmark Module to the 2021 Fallbacks Protocol that enables parties to include new fallbacks for certain Relevant Benchmarks as set out in the December 2021 Benchmark Module in their Protocol Covered Documents. A party's adherence to the December 2021 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 2021 Benchmark Module (or any other Benchmark Module) do not include any LIBOR benchmarks and consequently adherence to the 2021 Fallbacks Protocol and the December 2021 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 a Relevant Benchmark;

(vi) an individual Rate Option should be read as references to an appropriate 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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13. Do the amendments made by the December 2021 Benchmark Module constitute a "Spread Provision" (as defined in the ISDA 2014 Collateral Agreement Negative Interest Protocol published on May 12, 2014 by ISDA)?

<u>Questions and Answers</u>

1. **What does the December 2021 Benchmark Module do?**

   The December 2021 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 the terms of, or a particular defined term included in, the 2021 IBOR Fallbacks Supplement or such equivalent provisions as they relate to that Covered ISDA Definitions Booklet (see Question 6 (*How are Protocol Covered Documents that incorporate Version 1.0, 2.0 or 3.0 of the 2021 Definitions amended by the December 2021 Benchmark Module?*) below for more information on how Protocol Covered Documents that incorporate pre-Version 4.0 of the 2021 Definitions are amended by the December 2021 Benchmark Module); and

   (ii) whose Protocol Covered Document otherwise references a Relevant Benchmark, to include in the terms of such Protocol Covered Document new fallbacks for that Relevant Benchmark.

   The amendments contemplated by the December 2021 Benchmark Module will be included in Protocol Covered Documents entered into between parties that have both adhered to the December 2021 Benchmark Module.

2. **What constitutes a Relevant Benchmark under the December 2021 Benchmark Module?**

   The Relevant Benchmarks included in the December 2021 Benchmark Module are the same benchmarks as those included in the 2021 IBOR Fallbacks Supplement: the bid rate for the New Zealand dollar bank bill benchmark rate (**BKBM Bid**), the forward rate agreement rate for the New Zealand dollar bank bill benchmark rate (**BKBM FRA**), the Norwegian krone interbank offered rate (**NIBOR**), the Indian rupee Mumbai inter-bank forward outright rate (**MIFOR**), the Philippine peso interbank reference rate which is the rate implied from U.S. dollar/Philippine peso swap and forward interbank transactions (**PHIREF**), the Malaysian ringgit wholesale unsecured interbank funding rate (**KLIBOR**), the Swedish krona Stockholm interbank offered rate (**STIBOR**) and the Swedish krona tomorrow/next fixing of the Stockholm interbank offered rate (**SIOR**). The December 2021 Benchmark Module enables parties to include new fallbacks for these Relevant Benchmarks in their Protocol Covered Documents.

The December 2021 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. What does the 2021 IBOR Fallbacks Supplement do?

The 2021 IBOR Fallbacks Supplement updates Rate Options for certain Relevant Benchmarks in the 2006 Definitions to include new fallbacks in the event of a permanent or temporary cessation of those Relevant Benchmarks. The Relevant Benchmarks are the same benchmarks as are covered by the December 2021 Benchmark Module (see Question 2 (*What constitutes a Relevant Benchmark under the December 2021 Benchmark Module?*) above). Each of the Relevant Benchmarks will, subject to Question 9 (*What happens if only certain tenors of a Relevant Benchmark are permanently discontinued?*), in the event of a permanent cessation of the Relevant Benchmark (or in the case of MIFOR and PHIREF, a permanent cessation of the relevant tenor of USD LIBOR), first fall back to a term adjusted risk-free rate for the relevant currency plus a spread (although MIFOR and PHIREF operate differently from the fallbacks for the other Relevant Benchmarks – see below).

Further fallbacks apply in respect of each of the updated Rate Options in the 2021 IBOR Fallbacks Supplement in the event that the term adjusted risk-free rate is permanently discontinued.

The 2021 IBOR Fallbacks Supplement also includes fallbacks in the event that a Relevant Benchmark is temporarily unavailable (i.e. the Relevant Benchmark has not been published on the relevant date but a permanent cessation has not occurred in respect of that Relevant Benchmark). Prior to the publication of the 2021 IBOR Fallbacks Supplement, the Rate Options for the Relevant Benchmarks in the 2006 Definitions generally only included a fallback to quotations from "Reference Banks" and this fallback would apply whenever the Relevant Benchmark was not published, regardless of whether this was a result of a temporary unavailability or a permanent cessation.

The 2021 IBOR Fallbacks Supplement therefore updates the relevant Rate Options to provide specific fallbacks depending on whether the Relevant Benchmark has been permanently discontinued or is temporarily unavailable. In the event of a temporary unavailability of the rate on the specified price source, the fallbacks provide that the parties should use the rate provided by an authorized distributor (including a rate provided on the original fixing date but after the cut-off time specified in the Rate Option by the authorized distributor originally referenced) or the administrator of the Relevant Benchmark itself and, if neither authorized distributors nor the administrator publish that rate, in all but one of the relevant Rate Options the rate formally recommended for use by the administrator of that Relevant Benchmark will apply. If the administrator of that Relevant Benchmark has not formally recommended a rate, a rate formally recommended for use by another specified entity, such as the competent authority or supervisor responsible for supervising that Relevant Benchmark or the administrator of that Relevant Benchmark, a central bank or, in some cases, a committee officially endorsed or convened for the purpose of recommending an alternative rate for that Relevant Benchmark, will apply. The precise entities that are specified for these purposes vary under different Rate Options. In each case, if no rate has been formally recommended, a commercially reasonable alternative rate will be determined by the Calculation Agent, taking into account any rate implemented by central counterparties and/or futures exchanges, in each case with trading volumes in derivatives or futures referencing the Relevant Benchmark that the Calculation Agent considers sufficient for that rate to be a representative alternative rate. Notably, in respect of SEK-SIOR-OIS-COMPOUND, to the extent neither authorized distributors nor the administrator publish the Relevant Benchmark, the last provided or published Relevant Benchmark will apply.

U.S. dollar LIBOR is an input used to calculate MIFOR and PHIREF. Therefore, in respect of Rate Options for MIFOR and PHIREF, the 2021 IBOR Fallbacks Supplement includes new fallbacks in the event of a permanent cessation or 'pre-cessation' of U.S. dollar LIBOR following a permanent cessation event or a 'pre-cessation' event (a public statement by the regulatory supervisor of U.S. dollar LIBOR that U.S. dollar LIBOR is or will be on a future specified date no longer representative of the underlying market that U.S. dollar LIBOR is intended to measure ("**Non-Representative**")). MIFOR and PHIREF Rate Options will fall back to rates which are calculated by reference to actual transactions in the U.S. dollar/Indian rupee foreign exchange swap market (in respect of MIFOR) and the U.S. dollar/Philippine peso foreign exchange swap market (in respect of PHIREF) and a U.S. dollar interest rate calculated by reference to the fallback for U.S. dollar LIBOR, "Fallback Rate (SOFR)" (i.e. term adjusted SOFR plus a spread) as set out in Supplement 70 to the 2006 Definitions, in place of U.S. dollar LIBOR. The fallback rate for MIFOR will be published by Financial Benchmarks India PVT Limited. The fallback rate for PHIREF will be published by the Bankers Association of the Philippines.

The fallback rates (i.e. the term-adjusted risk-free rate plus the spread) for BKBM Bid, BKBM FRA, NIBOR, KLIBOR, STIBOR and SIOR will be published by Bloomberg Index Services Limited.

Additionally, the 2021 IBOR Fallbacks Supplement updates the provisions introduced by Supplement 70 to the 2006 Definitions addressing fallbacks for Calculation Periods (or Compounding Periods) to which 'Linear Interpolation' is specified to apply and discontinued rates maturities to reflect the fallbacks for the Relevant Benchmarks covered by the 2021 IBOR Fallbacks Supplement.

See Diagram A in the Annex to the 2020 IBOR Fallbacks Protocol FAQs for a high-level summary of the fallbacks for the Relevant Benchmarks other than MIFOR and PHIREF.

4. Are equivalent amendments to those set out in the 2021 IBOR Fallbacks Supplement being made to the 2021 Definitions?

All of the new permanent cessation and temporary non-publication fallbacks set out in the 2021 IBOR Fallbacks Supplement and the related amendments therein have been reflected in the 2021 Definitions for the equivalent Floating Rate Options contained in the 2021 Definitions. These changes were made in Version 4.0 of the 2021 Definitions.

5. How does Supplement 70 to the 2006 Definitions relate to the 2021 IBOR Fallbacks Supplement and the 2021 Definitions?

Supplement 70 to the 2006 Definitions updated Rate Options for certain interbank offered rates, including LIBOR Rate Options, within the 2006 Definitions to include new fallbacks in the event of a permanent cessation (and, for LIBOR Rate Options, in the event of a pre-cessation) of those Rate Options. Supplement 70 also made further general changes to the 2006 Definitions in order to facilitate the inclusion of those new fallbacks, for example (i) including amendments to certain existing provisions in the 2006 Definitions to provide the framework for new triggers and fallbacks for Rate Options to be included in the 2006 Definitions, such as introducing definitions that provide for the cessation of a Rate Option (e.g. "Index Cessation Event" and "Index Cessation Effective Date"), (ii) introducing discontinued rates maturities provisions largely corresponding to those in the ISDA 2013 Discontinued Rate Maturities Protocol published by ISDA on October 11, 2013 and (iii) setting out fallbacks for Calculation Periods (or Compounding Periods) to which 'Linear Interpolation' is specified to apply.

The 2021 IBOR Fallbacks Supplement builds on the framework for the cessation of a benchmark that Supplement 70 established in the 2006 Definitions and uses definitions and provisions included in the 2006 Definitions pursuant to Supplement 70 to include the new triggers and fallbacks for the Relevant Benchmarks that are set out in the 2021 IBOR Fallbacks Supplement.

The substance of Supplement 70 was incorporated into Version 1.0 of the 2021 Definitions. See Question 6 (*How are Protocol Covered Documents that incorporate Version 1.0, 2.0 or 3.0 of the 2021 Definitions amended by the December 2021 Benchmark Module?*) below for more information on how Protocol Covered Documents that incorporate a version of the 2021 Definitions prior to Version 4.0 are amended by the December 2021 Benchmark Module.

6. **How are Protocol Covered Documents that incorporate Version 1.0, 2.0 or 3.0 of the 2021 Definitions amended by the December 2021 Benchmark Module?**

   Version 3.0 of the 2021 Definitions. The December 2021 Benchmark Module, in paragraph 1, sets out all of the amendments needed to be made to Version 3.0 of the 2021 Definitions to incorporate the provisions of the 2021 IBOR Fallbacks Supplement. This is not the same as replacing Version 3.0 of the 2021 Definitions with Version 4.0 of the 2021 Definitions because Version 4.0 of the 2021 Definitions includes additional changes that are not related to the 2021 IBOR Fallbacks Supplement. In order to limit the changes to only those required to provide for the new permanent cessation and temporary non-publication fallbacks that are set out in the 2021 IBOR Fallbacks Supplement, the changes are set out individually in paragraph 1 of the December 2021 Benchmarks. However, such amendments make reference to provisions in Version 4.0 of the 2021 Definitions because Version 4.0 of the 2021 Definitions already includes all of the provisions necessary to reflect the fallbacks for the Relevant Benchmarks covered by the December 2021 Benchmark Module.

   Version 1.0 and Version 2.0. Version 1.0 and Version 2.0 of the 2021 Definitions are updated in a similar way to Version 3.0 by incorporating all of the same amendments made to Version 3.0 of the 2021 Definitions as set out in paragraph 1 of the December 2021 Benchmark Module, *mutatis mutandis*, with the parties making any necessary changes to reflect the differences in section references etc. in Version 1.0 and Version 2.0 as compared to Version 3.0.

7. **What happens if an Index Cessation Event occurs with respect to a 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.

8. **What happens if a 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.

9. **What happens if only certain tenors of a 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.

10. **How does the 2021 IBOR Fallbacks Supplement address Calculation Periods or Compounding Periods to which 'Linear Interpolation' is specified to apply (for example, stub periods or other non-standard periods)?**

    See the Answer to Question 7 (*Does the IBOR Fallbacks Supplement address Calculation Periods or Compounding Periods to which 'Linear Interpolation' is specified to apply (for example, stub periods or other non-standard periods)?*) of the 2020 IBOR Fallbacks Protocol FAQs.

    Additionally, if either of INR-MIFOR or PHP-PHIREF-Bloomberg is the applicable Rate Option, Section 7.10 of the 2006 Definitions, as amended by the 2021 IBOR Fallbacks Supplement, deals separately with Calculation Periods (or Compounding Periods) to which 'Linear Interpolation' has been specified to apply and Section 7.11, as amended by the 2021 IBOR Fallbacks Supplement, deals with Calculation Periods (or Compounding Periods) to which 'Linear Interpolation' has *not* been specified to apply but which are shorter than the length of the Designated Maturity. MIFOR and PHIREF are dealt with separately because they are calculated based on the U.S. dollar/Indian rupee or U.S. dollar/Philippine peso (as applicable) foreign exchange swap market and U.S. dollar LIBOR. As the fallbacks to these two benchmarks operate differently to the fallback rates for the other Relevant Benchmarks covered by the December 2021 Benchmark Module, the provisions addressing Calculations Period (or Compounding Period) to which 'Linear Interpolation' apply or which are shorter than the Designated Maturity are also different for MIFOR and PHIREF (see also Question 11 (*Why do the 2021 IBOR Fallbacks Supplement and Version 4.0 of the 2021 Definitions include bespoke provisions for MIFOR and PHIREF?*) for more information on how MIFOR and PHIREF are addressed in the December 2021 Benchmark Module).

11. **Why do the 2021 IBOR Fallbacks Supplement and Version 4.0 of the 2021 Definitions include bespoke provisions for MIFOR and PHIREF?**

    U.S. dollar LIBOR is used as an input to calculate MIFOR and PHIREF. The cessation of U.S. dollar LIBOR (or U.S. dollar LIBOR becoming Non-Representative) will therefore affect the availability of MIFOR and PHIREF. As a result, the 2021 IBOR Fallbacks Supplement (as reflected in Version 4.0 of the 2021 Definitions) include bespoke provisions for MIFOR and PHIREF that provide for the fallbacks to be triggered by the cessation of U.S. dollar LIBOR or U.S. dollar LIBOR becoming Non-Representative.

12. Why is there wording in the bespoke provisions for PHIREF and KLIBOR in the 2021 IBOR Fallbacks Supplement and Version 4.0 of the 2021 Definitions specifying the fallbacks which apply if a fallback rate does not exist or has not previously existed in respect of certain tenors?

In September 2021, the Bankers Association of the Philippines announced that a number of PHIREF settings (including the 11:30 a.m. PHIREF settings of 1W PHIREF, 2M PHIREF and 1Y PHIREF) will permanently cease by January 1, 2022 and that no fallback rates will be provided by the Bankers Association of the Philippines for these PHIREF settings. Bank Negara Malaysia also announced in September 2021 that it would permanently discontinue the 2 month KLIBOR and 12 month KLIBOR tenors on January 1, 2023. Bloomberg is not expected to develop a fallback rate for either of these KLIBOR tenors. On the basis of these announcements, additional wording is included in the fallback provisions for both PHP-PHIREF-Bloomberg and MYR-KLIBOR-BNM in order to specify what would happen if an Index Cessation Effective Date were to occur in respect of a certain tenor and no fallback rate exists or has previously existed, as would currently be the case if the Designated Maturity is one week, two months or 12 months with respect to PHP-PHIREF-Bloomberg, or 2 months or 12 months with respect to MYR-KLIBOR-BNM. The 2021 IBOR Fallbacks Supplement and Version 4.0 of the 2021 Definitions provide that, in each of these scenarios, as well as for any other Designated Maturities in respect of which an Index Cessation Effective Date occurs and no fallback rate exists or has previously existed, a Calculation Agent-based fallback will apply.

13. Do the amendments made by the December 2021 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 Attachment to the December 2021 Benchmark Module provides that the amendments made by the December 2021 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 2021 Benchmark Module, the provisions of the December 2021 Benchmark Module will not prevent the Negative Interest Protocol from applying.