2021 Consultation on Fallbacks for GBP LIBOR® ICE Swap Rate® & USD LIBOR® ICE Swap Rate®

Responses are due Friday July 2, 2021. This deadline will not be extended.

Background

GBP LIBOR® ICE Swap Rate® and USD LIBOR® ICE Swap Rate® (ISRs)

ICE Benchmark Administration Limited (IBA)[1] publishes the ISRs, which are designed to represent the mid-price for the fixed leg of a fixed-for-floating swap transaction where the floating leg references a specified rate (such as GBP LIBOR or USD LIBOR), or swap spreads (the applicable mid-price minus a corresponding specified government bond yield) for a set of tenors at a specified time of the day. The ISRs are published using a waterfall methodology of inputs and are dependent on quoted prices and volumes for interest rate swaps referencing the relevant rate. In the case of GBP LIBOR ISR and USD LIBOR ISR, quotations for swaps referencing GBP LIBOR and USD LIBOR, respectively, are required and, therefore, publication of a representative GBP LIBOR or USD LIBOR, as applicable, is required in order to ensure the necessary input data is available.

Information about GBP LIBOR ISR and USD LIBOR ISR is available on the IBA website at https://www.theice.com/iba/ice-swap-rate.

Following the FCA's announcement[2] on March 5, 2021 regarding LIBOR's future cessation and/or loss of representativeness, IBA has indicated that it does not expect the necessary input data (i.e., eligible interest rate swap transactions referencing GBP LIBOR) for calculating GBP LIBOR ISR to be available after December 31, 2021. IBA therefore recently consulted[3] on its intention to cease publication of GBP LIBOR ISR for all tenors (from one to 30 years) immediately after publication on December 31, 2021. IBA has indicated that it will publish a feedback statement after it reviews the responses to its consultation.

While IBA has not yet consulted on any intention to cease publication of USD LIBOR ISR immediately after publication on June 30, 2023 (or on any other date), the FCA's announcement on March 5, 2021 is expected to have implications for USD LIBOR ISR as well. IBA has indicated that it expects to consult on the potential cessation of USD LIBOR ISR in due course.

---

[1] IBA is a benchmark administrator and licenses benchmark and other information (including LIBOR and the ISRs) to users for particular purposes. IBA reserves all rights in the ISRs and other information, in the methodologies and other information disclosed on IBA's website, and in the copyright in such information. None of IBA's benchmark or other information may be used without a written license from IBA and such benchmark and other information is provided solely for the purposes specified in the relevant license. LIBOR, ICE LIBOR and ICE Swap Rate are registered trademarks of IBA and/or its affiliates. All rights in these trademarks are reserved and none of these rights may be used without a written license from IBA and/or its affiliates, as applicable.

[2] https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf

[3] https://www.theice.com/publicdocs/ICE_Benchmark_Administration_Consults_on_Potential_Cessation__of_ICE_SWAP_Rate_based_on_GBP_LIBOR.pdf. The consultation originally closed for feedback on Friday, June 4, 2021 but IBA has extended the deadline until Friday June 25, 2021.

SONIA and SOFR ISRs

On December 14, 2020, IBA launched SONIA ISR, the settings for which are determined by the same waterfall of inputs as GBP LIBOR ISR but using eligible input data in respect of SONIA-linked interest rate swaps. SONIA ISR settings are available for the same tenors and at the same time as GBP LIBOR ISR.

Information about SONIA ISR is available on the IBA website at https://www.theice.com/iba/ice-swap-rate.

IBA has not launched a SOFR ISR but has indicated that it will consider doing so if and when eligible input data is available.

ICE Swap Rates in ISDA Documentation[4]

Section 7 of the 2006 ISDA Definitions contains various 'Rate Options' for GBP LIBOR ISR and USD LIBOR ISR. These Rate Options are primarily used as the floating rate in constant maturity swaps (CMS) and CMS-linked derivatives. They include:[5]

For GBP LIBOR ISR:

- GBP-ISDA-Swap Rate

For USD LIBOR ISR:

- USD-ISDA-Swap Rate
- USD-ISDA-Swap Rate-3:00
- USD-ISDAFIX3-Swap Rate[6]
- USD-ISDAFIX3-Swap Rate-3:00[7]

Sections 13 and 18 of the 2006 ISDA Definitions also reference GBP LIBOR ISR and USD LIBOR ISR for purposes of (i) determining whether the buyer of a GBP or USD swaption is in-the-money for the purposes of automatic exercise or fallback exercise and (ii) calculating the settlement amount for cash settled GBP and USD swaptions (and certain swap transactions to which optional early termination or mandatory early termination apply).

Currently, the contractual fallbacks that would apply upon a temporary or permanent cessation of GBP LIBOR ISR under (i) the GBP LIBOR ISR Rate Option require use of a 'Calculation Agent' determination and (ii) Sections 13 and 18 of the 2006 ISDA Definitions require use of a reference bank poll and, failing this, 'Calculation Agent' determination and the contractual fallbacks that would apply upon a temporary or permanent cessation of USD LIBOR ISR under

[4] The description below covers the 2006 ISDA Definitions but the 2021 ISDA Interest Rate Derivatives Definitions, which will take effect later in 2021, also contain the same substantive provisions, albeit in the form of the 2021 ISDA Interest Rate Derivatives Definitions.
[5] Note that the names of these Rate Options reflect the former names of the ISRs before they were administered by IBA.
[6] This represents the same rate as USD-ISDA-Swap Rate.
[7] This represents the same rate as USD-ISDA-Swap Rate-3:00.

(i) the USD LIBOR ISR Rate Options require use of a reference bank poll and (ii) Sections 13 and 18 of the 2006 ISDA Definitions require use of a reference bank poll and, failing this, 'Calculation Agent' determination. These fallbacks may function effectively upon a temporary cessation of the relevant ISR but they are not expected to be able to function effectively upon a permanent cessation of the relevant ISR.

LIBOR Fallbacks in ISDA Documentation

After several years of market consultation, ISDA recently published Supplement 70 to the 2006 ISDA Definitions (IBOR Fallbacks Supplement), which took effect on January 25, 2021. Among other things, the IBOR Fallbacks Supplement amends and restates the Rate Options for GBP LIBOR and USD LIBOR so that they contain updated fallbacks to a term-adjusted and spread-inclusive[8] version of SONIA and SOFR, respectively, published by Bloomberg, which will apply when the relevant LIBOR ceases or becomes non-representative (i.e., the first London Banking Day on or after January 1, 2022 for GBP LIBOR and the first London Banking Day on or after July 1, 2023 for USD LIBOR). These amendments apply to all transactions incorporating the 2006 ISDA Definitions that are entered on or after January 25, 2021. Over 14,000 entities have also adhered to the ISDA 2020 IBOR Fallbacks Protocol (IBOR Fallbacks Protocol) and therefore agreed that the terms of the IBOR Fallbacks Supplement apply to transactions with other adherents entered into prior to January 25, 2021 (including in both transactions that incorporate the 2006 ISDA Definitions and certain covered transactions that do not).

More information about the IBOR Fallbacks Supplement and the IBOR Fallbacks Protocol is available on the ISDA website at https://www.isda.org/2020/05/11/benchmark-reform-and-transition-from-libor/ and https://www.isda.org/protocol/isda-2020-ibor-fallbacks-protocol/.

The fallbacks in the IBOR Fallbacks Supplement do not apply to CMS, swaptions settlement or any other transactions that reference the GBP LIBOR ISR or USD LIBOR ISR because, as explained above, these transactions do not reference GBP LIBOR or USD LIBOR directly but instead reference different benchmarks (i.e., the ISRs) and therefore different provisions in the 2006 ISDA Definitions.

Work of the Alternative Reference Rates Committee (ARRC) and the Working Group on Sterling Risk-Free Reference Rates

Earlier this year, the Non-Linear Task Force (NLTF) of the Working Group on Sterling Risk-Free Reference Rates (Sterling RFR WG) in the UK and a Subcommittee of the Alternative Reference Rates Committee (ARRC) in the US published papers suggesting fallbacks that could apply for GBP LIBOR ISR and USD LIBOR ISR, respectively, if those benchmarks are

[8] The spreads for these fallbacks were set upon the FCA's March 5, 2021 announcement. They are available at https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation_Announcement_20210305.pdf.

unavailable and LIBOR in the relevant currency has permanently ceased or become non-representative (i.e., an 'Index Cessation Effective Date'[9] has occurred).

For GBP LIBOR ISR, the Sterling RFR WG NLTF's paper (NLTF Paper) suggests a fallback to SONIA ISR plus the spread that applies in the fallbacks described above for GBP LIBOR with a convexity adjustment to account for differences in payment frequencies between the fixed and floating legs of GBP LIBOR ISR and SONIA ISR. For USD LIBOR ISR, the ARRC Subcommittee's paper (ARRC Paper) suggests a similar fallback to a SOFR swap rate (such as SOFR ISR, if and when it is published) plus the spread that applies in the fallbacks described above for USD LIBOR with a convexity adjustment to account for differences in payment frequencies and day-count conventions between the fixed and floating legs of USD LIBOR ISR and a SOFR swap rate.

Please review the NLTF Paper at https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/supporting-transition-in-sterling-non-linear-derivatives-referencing-gbp-libor-ice-swap-rate.pdf.

Please review the ARRC Paper at https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/arrc-white-paper-on-suggested-fallback-formula-for-the-usd-libor-ice-swap-rate.

ISDA commissioned the Brattle Group to independently review the NLTF Paper and the ARRC Paper and the Brattle Group confirmed that the adjustments proposed in the papers are necessary for applying additional precision to the fallback calculation in order to account for a difference in day count convention and a difference in payment frequency between the LIBOR-based ISRs and the SONIA-based and SOFR-based ISRs. The Brattle Group also confirmed that the adjustments do not appear to result in economic changes other than those necessary for applying additional precision to the spread adjustments to be included in those fallbacks and making those spread adjustments consistent with the framework for the fallbacks in the IBOR Fallbacks Supplement. ISDA is relying on the Brattle Group's analysis and conclusions, but participants in this consultation should independently form their own views regarding the proposed adjustments.

Please review the Brattle Group's report here.

Published Fallbacks for GBP LIBOR ISR

On May 5, 2021, IBA started publishing GBP SONIA Spread-Adjusted ICE Swap Rate 'Beta' settings, which are calculated based on the suggested fallback methodology set out in the NLTF Paper. As noted on the IBA website, these Beta settings are solely for information and illustration purposes in order to enable stakeholders to evaluate the rate and provide feedback. They are not intended for, and IBA expressly prohibits their use for, any other purpose, including as a reference, index or benchmark in financial instruments, financial contracts or investment funds. IBA has indicated that it will announce in due course if and when GBP SONIA Spread-

[9] Based on the FCA's announcement on March 5, 2021, an Index Cessation Effective Date will occur for GBP LIBOR on the first London Banking Day on or after January 1, 2022 and an Index Cessation Effective Date will occur for USD LIBOR on the first London Banking Day on or after July 1, 2023.

Adjusted ICE Swap Rate settings will be made available for use as a fallback in financial instruments referencing GBP LIBOR ISR.

Information about the GBP SONIA Spread-Adjusted ICE Swap Rate is available on the IBA website at: https://www.theice.com/iba/ice-swap-rate.

IBA has indicated that it will consider publishing a similar fallback for USD LIBOR ISR based on the suggested fallback methodology set out in the ARRC Paper if and when it publishes SOFR ISR.

Implementation of Fallbacks in ISDA Documentation

In order to implement the suggestions in the NLTF Paper and the ARRC Paper, ISDA proposes to publish amendments to (1) the GBP LIBOR ISR and USD LIBOR ISR Rate Options listed above in Section 7 of the 2006 ISDA Definitions and (2) the relevant settlement provisions in Sections 13 and 18 of the 2006 ISDA Definitions to incorporate the fallbacks for the GBP LIBOR ISR and USD LIBOR ISR suggested in the NLTF Paper and the ARRC Paper respectively. As mentioned above and consistent with the papers, these fallbacks will apply if an 'Index Cessation Effective Date' has occurred for LIBOR in the relevant currency. If the relevant ISR is not available (because of either a temporary or permanent cessation) but an Index Cessation Effective Date for LIBOR in the relevant currency has not occurred, then the current fallbacks will apply. As noted above, these fallbacks require a reference bank poll for the USD LIBOR ISR Rate Option[10] or a Calculation Agent determination for the GBP LIBOR ISR Rate Option (or, for the purposes of Sections 13 and 18 of the 2006 ISDA Definitions, a reference bank poll and, failing that, Calculation Agent determination).

The fallbacks would first be to a fallback rate that is calculated in accordance with the methodology in the NLTF Paper or the ARRC Paper (as applicable) and published for reference in financial instruments (i.e., not in 'beta' or similar form) at the time the fallbacks apply. If such a published fallback rate is not available, then the fallbacks would be based on a calculation performed by the Calculation Agent in accordance with the methodology in the applicable paper.

ISDA has prepared drafts of these amendments that incorporate feedback from its working groups. These drafts are available via the following links:

- GBP ISR Rate Option
- GBP ISR Settlement Provisions (with changes to current provisions in redline)
- USD ISR Rate Options
- USD ISR Settlement Provisions (which also includes GBP ISR Settlement Provisions (assuming that these have been implemented previously), with changes to current provisions in redline; a redline reflecting only the incremental changes to the USD ISR Settlement Provisions is available here)

[10] If the ARRC Subcommittee updates its recommendation so that a Calculation Agent determination would instead apply in this scenario, then ISDA would update the draft amendments accordingly.

These drafts are in near final form but ISDA may need to make technical, administrative and/or stylistic changes before they are published.

Based on feedback to this consultation and in accordance with the criteria below, ISDA may publish these amendments as a Supplement to the 2006 ISDA Definitions (the substance of which would then be translated into the 2021 ISDA Interest Rate Derivatives Definitions). Upon publication of such a Supplement, *all* transactions incorporating the 2006 ISDA Definitions that are entered into on or after the effective date of the Supplement (i.e., the date on which the 2006 ISDA Definitions are amended) will include the amended terms (i.e., the updated fallback provisions).

Transactions entered into prior to the effective date of the Supplement (so called 'legacy derivative contracts') will continue to be based on the 2006 ISDA Definitions as the 2006 ISDA Definitions existed at the time of trading (i.e., before they were amended pursuant to the Supplement), and therefore will not include the updated fallback provisions. However, ISDA also intends to publish template language that counterparties could use to negotiate bilateral amendments for incorporation of the amended terms, and therefore the fallback provisions, in legacy derivative contracts.

If ISDA receives sufficient support (as described below) for the proposed amendments but such support does not meet the criteria for publication of a Supplement, then ISDA will publish template language that counterparties could use to negotiate bilateral amendments for incorporation of the amended terms, and therefore the fallback provisions, in both new and legacy derivative contracts. Counterparties who continue to enter new transactions that reference GBP LIBOR ISR and/or USD LIBOR ISR but do not agree to the amendments would continue to have exposure to the existing fallbacks (i.e., Calculation Agent determination for GBP LIBOR ISR Rate Option or a reference bank poll for USD LIBOR ISR Rate Option and, for the purposes of Sections 13 and 18 of the 2006 ISDA Definitions, a reference bank poll and, failing that, Calculation Agent determination) in all cases if GBP LIBOR ISR or USD LIBOR ISR, as applicable, is not available.

If it receives sufficient support for either approach above, ISDA will publish the relevant documentation for GBP LIBOR ISR fallback provisions as soon as possible after the conclusion of this consultation. However, ISDA will not be able to publish the relevant documentation for USD LIBOR ISR fallback provisions until a SOFR swap rate is published in a form that can be referenced in financial instruments (i.e., not in a 'beta' or similar form).

Disclaimer

ISDA is issuing this consultation to facilitate implementation of the suggestions in the NLTF Paper and the ARRC Paper. While ISDA has taken steps to validate the proposed fallbacks suggested by those papers, including by asking the Brattle Group to test and assess the proposed fallbacks, ISDA has not and will not be undertaking a substantive review of the proposed fallbacks, the processes that led to these proposed fallbacks or the use of these proposed fallbacks. ISDA is issuing this consultation solely for purpose of determining whether the market broadly supports the proposed fallbacks.

Question

Please note that ISDA has provided specific criteria below so that respondents understand how ISDA will use consultation responses to determine how to implement fallbacks for the ISRs.

Respondents should review all of the information above and the linked documents, including in particular the NLTF Paper and the ARRC Paper, in addition to whatever other information they deem relevant, in formulating their answer to the question below.

By participating in this consultation, you agree not to use this process for any anticompetitive purpose, and further agree and warrant that you will not engage in any conduct that would cause any other party participating in this consultation to be in violation of any competition or antitrust law or regulation. ISDA has taken and will continue to take safeguards and protections to ensure that the use of the results of this consultation comply with applicable laws and regulations.

Do you agree with the ISR fallbacks provisions set out in the draft amendments?

Yes ○

No ○

If you selected "No", please indicate whether you would be unavoidably harmed by, and/or unable to use, the fallback provisions.

We welcome additional explanation for your response but you are not required to provide any.

Please feel free to submit technical feedback to the draft fallback provisions directly to BenchmarkReform@isda.org.

Respondent Name (will not be disclosed):____

Respondent Country:____

Respondent Type (please select one):

Bank/broker-dealer ○

Market infrastructure (e.g., central counterparty) ○

Asset manager ○

Energy/commodity firm ○

Hedge fund ○

Insurance company ○

Local or regional government entity, supranational or government sponsored entity ○

Pension fund ○

Other end user (e.g., corporate) ○

Professional services firm or trade association ○

Respondent jurisdictions and types will be used for determining whether the consultation is successful, as explained below, and will be published on an anonymized and aggregated basis.

Responses are due __Friday, July 2, 2021__. This deadline will not be extended. Please email your response to FallbackConsult@isda.org and clearly indicate that you are submitting a response in the subject line of your email. For your convenience, you can use this form for your responses (but you are not required to do so).

Respondents can submit questions to FallbackConsult@isda.org.

__Criteria and Ramifications__[11]

If the criteria set forth below are satisfied, ISDA intends to publish a Supplement to incorporate the GBP LIBOR ISR fallback provisions and a Supplement to incorporate the USD LIBOR ISR fallback provisions (in accordance with the timing described above), as well as template language that counterparties could use to negotiate bilateral amendments for incorporation of the amended terms in legacy derivative contracts. Counterparties that do not want to use these fallbacks in transactions entered into after the effective date of the relevant Supplement would need to bilaterally negotiate terms outside of the standard ISDA Definitions.

- At least 25 market participants (which do not include professional services firms or trade associations[12]) submit responses. Any responses that do not clearly indicate "Yes" or "No" will not be counted in this number. Affiliated entities will be counted as one market participant for purposes of this count and for calculating the percentages below.

[11] Representatives from the ARRC and the Sterling RFR WG NLTF have reviewed these criteria and ramifications.
[12] Members of trade associations should submit their own responses to this consultation.

- At least 25% of responses are from market participants *other than* bank/broker-dealers and infrastructure providers.
- **At least 65% of respondents select "Yes" and at least 25% of those who select "Yes" are not bank/broker-dealers or infrastructure providers.**
- Respondents who select "No" *and* indicate that they would be unavoidably harmed by, and/or unable to use, the fallback provisions do not represent a significant portion of a particular segment of the market (e.g., all insurance companies who respond, all corporates who respond).

If the criteria set forth above are not satisfied but the following criteria are satisfied, ISDA intends to publish template language that counterparties could use to negotiate bilateral amendments for incorporation of the amended terms, and therefore the fallback provisions, in both new and legacy derivative contracts.

- At least 15 market participants (which do not include professional services firms or trade associations[13]) submit responses. Any responses that do not clearly indicate "Yes" or "No" will not be counted in this number. Affiliated entities will be counted as one market participant for purposes of this count and for calculating the percentages below.
- At least 10% of responses are from market participants *other than* bank/broker-dealers and infrastructure providers.
- **At least 50% of respondents select "Yes" and at least 10% of those who select "Yes" are not bank/broker-dealers or infrastructure providers.**
- Respondents who select "No" *and* indicate that they would be unavoidably harmed by, and/or unable to use the fallback provisions do not represent a significant portion of a particular segment of the market (e.g., all insurance companies who respond, all corporates who respond).

[13] Members of trade associations should submit their own responses to this consultation.