Questions

Instructions for submitting responses is available here. The deadline to respond is July 12, 2019.

During the consultation period, ISDA will publish a webinar to introduce the consultation. This will be during the week of May 20, 2019. You can also submit questions to fallbackconsult@isda.org at any time during the consultation period.

Note to Recipients: 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.

In addition to the questions below, please feel free to comment on all aspects of the topics discussed above. Please also comment on whether additional information would be helpful to understand and analyze the topics discussed above.

As described above, the UK FCA has suggested that the "end-game" for LIBOR may include an assessment by the FCA that one or more LIBOR panels have shrunk so significantly that it no longer considers the relevant rate capable of being representative.

1. Would you be content to have any contracts that continue to reference the Covered IBOR after the supervisor of the Covered IBOR's administrator makes a statement that the Covered IBOR is no longer representative? If so, why and under what circumstances?

2. What actions would you take if the supervisor of a Covered IBOR administrator makes a statement that a Covered IBOR is no longer representative but the Covered IBOR continues to be published? Please differentiate between ceasing use of that Covered IBOR in *new* derivative contracts and negotiating amendments to *existing* derivative contracts. Please comment on LIBOR in particular and explain whether your answers differ across Covered IBORs. Would the facts and circumstances surrounding the supervisor's assessment and statement affect your actions? If so, how?

3. Do you expect to amend or close out your derivative contracts referencing Covered IBORs prior to the possibility of a statement that a Covered IBOR is no longer representative? Please specifically comment on whether you expect to have exposure to LIBOR post-2021.

4. Do you expect any impediments to taking the steps you would want to take? How could ISDA mitigate these impediments? What other entities could mitigate these impediments and how could they do so?

ISDA IBOR Fallbacks

5. Would it be appropriate to include a pre-cessation trigger regarding ‘representativeness’ with the triggers for permanent cessation in the amendments to the 2006 ISDA Definitions and in the protocol that ISDA intends to publish to introduce the IBOR fallbacks? Please explain your answer.

6. Is inclusion of the trigger necessary to enhance existing controls and mechanisms already in place contractually and/or under existing law or are these controls and mechanisms sufficient?

7. What problems could arise if such a trigger were not included in amendments to the 2006 ISDA Definitions and in the protocol that ISDA intends to publish to introduce the IBOR Fallbacks? Please specifically consider and comment on (a) the potential for a CCP to exercise its discretion to change a reference rate if it determines that a Covered IBOR is no longer sufficiently robust or no longer fit for purpose; (b) management of a legacy portfolio of derivatives referencing an IBOR if use in new contracts is also prohibited by regulation (at least for entities in certain jurisdictions); and (c) derivatives that hedge cash instruments that may have pre-cessation triggers and fallbacks.

8. What problems could arise if such a trigger were included? Please also consider derivatives that hedge cash instruments that do not have pre-cessation triggers and fallbacks. Please consider the implications of linking the fallbacks for the permanent cessation of a Covered IBOR with the agreement to convert the Covered IBOR to the corresponding adjusted RFR plus a spread upon a pre-cessation trigger.

9. Do you think inclusion of a pre-cessation trigger would positively or negatively affect industry take up of the permanent cessation fallbacks? Please specifically comment on adherence to the protocol to amend legacy derivative contracts.

10. What problems could arise if such a trigger were not included in amendments to the 2006 ISDA Definitions and in the protocol that ISDA intends to publish to implement the IBOR Fallbacks?

As an alternative, ISDA could potentially publish a protocol including pre-cessation triggers and related fallbacks that allows adherents to (a) exclude certain transactions, (b) only include certain transactions, (c) require both counterparties to agree to include the pre-cessation trigger and related fallback through a "matching" function and/or (d) allow both counterparties to agree to exclude the pre-cessation trigger and related fallback through a "matching" function. Additional variations of the foregoing may also be possible. Any amendments made pursuant to such a protocol would apply <u>in addition to</u> the permanent cessation triggers and ISDA IBOR fallbacks and would be implemented in a way that does <u>not</u> add optionality to inclusion of those fallbacks upon the occurrence of a permanent cessation of a Covered IBOR in existing transactions between adhering parties.

11. Would such a protocol be helpful to address concerns regarding 'non-representative' benchmarks? If so, which of the approaches listed above (and/or variations of these approaches) do you prefer?

12. Please comment on the relative disadvantages and advantages of such a protocol as compared to inclusion of a pre-cessation trigger in the 2006 ISDA Definitions and the protocol that ISDA intends to publish to implement the IBOR Fallbacks without any ability to elect for or against inclusion of such a pre-cessation trigger.

13. Would you prefer using such a protocol as opposed to template language for bilateral incorporation in derivative contracts to address concerns regarding ‘non-representative’ benchmarks, and other pre-cessation concerns you may have?

14. Do you have any other suggestions for flexible solutions to include pre-cessation triggers and corresponding fallbacks in derivative contracts on a *voluntary* basis that are less burdensome than template language for bilateral incorporation?

If the Covered IBOR continues after counterparties convert to the adjusted RFR plus a spread, the counterparties would be able to determine whether they are receiving/paying more or less on the basis of the adjusted RFR plus the spread by comparison with the unrepresentative Covered IBOR that continues to be published.

15. Would it be appropriate to use the adjusted RFR plus a spread under these circumstances or could it be problematic? Please explain.

16. Is there a way to mitigate against any concerns regarding the fact that counterparties could determine this?

17. If you would not want to replace references to the Covered IBOR with references to the adjusted RFR plus a spread under these circumstances, what other amendments to existing derivative contracts would you want to make following such a statement?

If the supervisor of the administrator made a statement that a Covered IBOR is no longer representative and, as a result, derivative contracts are amended to reference the adjusted RFR plus a spread calculated by reference to historical data at the time the relevant regulator makes such a statement, and the Covered IBOR is subsequently permanently discontinued following an 'index cessation event' (as set out on pages 2 to 3 above), the spread that would apply for the permanent cessation fallbacks would differ from the spread that applied for the pre-cessation fallbacks (i.e. because the spread would be fixed at different times by reference to historical data available, in the case of the pre-cessation trigger, when the non-representativeness statement is made and, in the case of the permanent cessation trigger, when the statement regarding permanent cessation is made).

18. In this scenario, should the spread adjustment following permanent discontinuation of the Covered IBOR automatically change to the 'permanent cessation' spread (*i.e.*, a spread calculated by reference to historical data at the time the announcement is made in respect of permanent cessation)? Alternatively, should it remain at the spread adjustment for the 'pre-cessation' event?[1]

[1] This is the approach in the ARRC's template fallback language for cash products.

19. Would it be problematic to have multiple spread adjustments apply based on when the fallbacks took effect (*i.e.*, prior to cessation or upon cessation)?

20. If adherents to a protocol of the type described in questions 11-14 above exclude a pre-cessation trigger for fallbacks in certain contracts and/or with certain counterparties, should they agree that the spread adjustment related to the pre-cessation trigger would nevertheless apply if a permanent cessation occurs?