INTERVIEW
HKMA deputy CEO on benchmark reform

BREXIT
Impact on governing law and jurisdiction clauses

ROUNDTABLE
Derivatives market outlook in Asia-Pacific

IQ

ISDA® Quarterly

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*ASIAN OPTIONS

With many local IBORs continuing to exist in Asia-Pacific, what needs to happen to bolster liquidity in new risk-free rates?

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Transaction Data

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Market Risk Activity

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Preparing for the Two Bs

Both Brexit and benchmark reform emerged as headline issues relatively close together – June 2016 for the Brexit referendum and July 2017 when the UK Financial Conduct Authority revealed that LIBOR might not exist after the end of 2021. They are now also approaching their denouement in lockstep: both will require a big push by firms in the remaining months of 2020 in order to be ready for the changes they will bring in 2021 and beyond.

In this issue of **IQ**, we pick up on both of those topics. As part of our cover package focusing on Asia-Pacific, we explore the progress firms in the region have made on LIBOR transition, as well as efforts to build liquidity in alternatives to local interbank offered rates (IBORs). As big users of LIBOR, Asian institutions have large legacy exposures – and, as some regulators in the region are warning, prompt action is needed now to deal with them.

The rollout of new, robust fallbacks will help reduce the systemic disruption that would likely occur in the event an IBOR ceases to exist, and ISDA will shortly publish a supplement and protocol to incorporate fallbacks into derivatives contracts that reference key IBORs. According to a statement from the ISDA board of directors in July, the protocol will be the "most efficient way for participants in the vast majority of non-cleared derivatives markets to mitigate against the risks associated with the discontinuation of a key IBOR".

When it comes to Brexit, one of the open questions relates to disputes on derivatives transactions where the parties have opted for their ISDA Master Agreement to be governed by English law and subject to the jurisdiction of English courts. Specifically, there is still some uncertainty over the recognition and enforcement of English court judgements in Europe after the end of the Brexit transition period on December 31, 2020.

In this issue, we look at this question from a variety of perspectives. As well as an analysis of possible scenarios for how European states will treat English court jurisdiction clauses and judgements post-transition, we also begin a series of articles exploring the options derivatives participants have for the resolution of disputes.

Whether ramping up LIBOR transition efforts, implementing new fallbacks or exploring the impact of different scenarios after the Brexit transition period, much of the hard work and preparation needs to occur now. To support members, ISDA will continue to publish information and analysis on its website (www.isda.org/fallbacks, www.isda.org/tag/brexit), and, where possible, develop industry solutions to ease implementation challenges.

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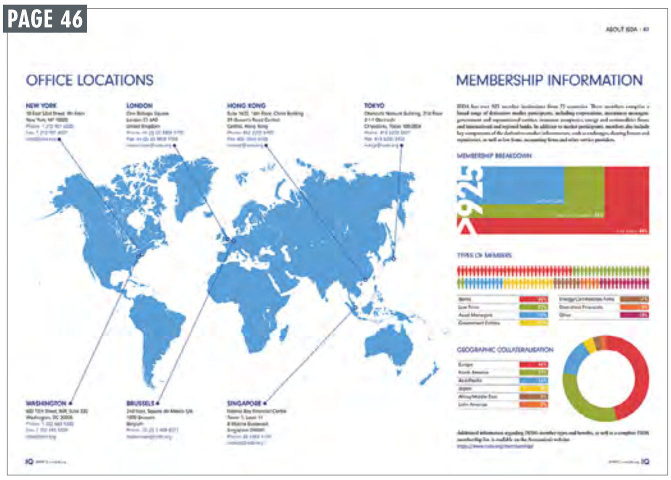

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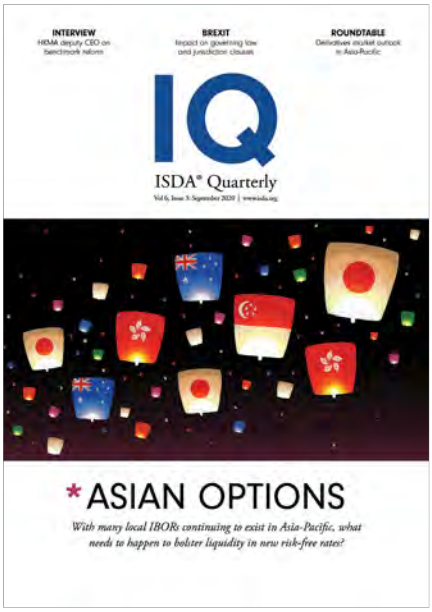

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"Banks should step up outreach efforts and educate their clients about LIBOR transition early. This could help to minimise misunderstanding and costly litigation in the future"

Howard Lee, Hong Kong Monetary Authority

The Fallbacks Timetable

ISDA will shortly publish amendments to the ISDA 2006 Definitions plus a protocol. ***Scott O'Malia*** *sets out the timetable for implementation*

Introducing robust fallbacks for derivatives contracts is a vitally important step in mitigating the systemic risk that could arise from the cessation of a key interbank offered rate (IBOR). After nearly four years of work, ISDA is now on the cusp of publishing a supplement to the 2006 ISDA Definitions plus a related protocol that will make those fallbacks a reality.

The changes made by the supplement mean the new fallbacks will automatically apply to all new cleared and non-cleared derivatives that reference the 2006 Definitions from the point the supplement takes effect. ISDA will also launch a protocol that will give firms the choice to incorporate the fallbacks into their legacy non-cleared derivatives trades with other adhering parties. Amendments made by this protocol will take effect at the same time as the supplement.

So, when will all this happen? The timetable hinges upon ISDA receiving a positive business review letter from the US Department of Justice (DoJ) and then finalising work with competition authorities in other jurisdictions. Although ISDA has been in regular contact with competition authorities over the past few years, we have no control over the timing of this feedback.

ISDA has run multiple consultations over the past two years to reach industry consensus on the fallback methodology. This framework is aimed at mitigating the structural differences between IBORs and the risk-free rates that serve as the basis for the fallbacks, and to ensure trades referenced to an IBOR continue to meet their original objectives to the greatest extent possible once a fallback kicks in. It's important competition authorities are comfortable with the methodology developed through the consultation process.

Once we hear from the competition authorities, we'll give market participants approximately two weeks' notice of the official launch date. During this short period, firms will be able to adhere to the protocol 'in escrow'. In other words, parties will be able to sign up on a binding but non-public basis so their adherence takes effect as soon as the protocol launches. As there is no regulation requiring institutions to incorporate new fallbacks into legacy trades, having backing for the protocol from day one will hopefully establish strong support for use of the fallbacks, even without a regulatory edict.

The supplement and protocol will officially launch after this escrow period. As with all ISDA protocols, the IBOR Fallbacks Protocol will be voluntary – firms could alternatively choose to make changes to their legacy contracts on a bilateral basis, or opt to keep their outstanding trades unchanged. However, in a statement published in July, the ISDA board expressed its support for broad adherence, noting that this is the most efficient way for most derivatives participants to mitigate against the risks associated with the discontinuation of a key IBOR.

> "With the clock ticking to the end of 2021, it's important that firms have a safety net in place"

The supplement and protocol will then take effect approximately three months later – ideally avoiding the traditional code freeze period introduced by financial institutions in December. Putting the times for each of those phases together, the effective date will not occur before the second half of January 2021.

From that point on, the new fallbacks will automatically take effect if an IBOR is permanently discontinued or if LIBOR is determined by the UK Financial Conduct Authority to be non-representative.

Hopefully, this will be one of the last times such a significant change to the ISDA Definitions is made by publishing a separate supplement in paper/PDF form. ISDA is currently overhauling the 2006 Definitions to reflect the changes that have occurred in market practice and technology over the past 14 years. As part of that, we're developing a new web-versioning platform that will allow the forthcoming 2020 ISDA Interest Rate Derivatives Definitions to be restated in their entirety each time they are updated. This will enable users to view the fully consolidated set of definitions that existed at any particular point, without having to manually aggregate multiple, separate supplements.

For now, the changes to benchmark fallbacks and certain other benchmark reform initiatives will have to be introduced the traditional way via a supplement. Of the 70 or so supplements to the definitions published since 2006, this is arguably one of the most critical. With the clock ticking to the end of 2021, it's important that firms have a safety net in place – something the fallbacks can provide.

Scott O'Malia
ISDA Chief Executive Officer

Industry Associations Commit to Digital Future

ISDA has joined with seven other industry associations to commit to leading the push to an automated, interconnected infrastructure for financial markets.

In a letter to standard-setters in July, the associations pledged their commitment to provide leadership and support to members in developing a digital future by defining a series of principles and objectives across three core areas: standardisation, digitisation and distribution.

The other signatories to the letter were the Association of German Banks, the Australian Financial Markets Association, International Capital Market Association, the International Islamic Financial Market, the International Securities Lending Association, LBMA and UK Finance.

Many firms have been looking to new technologies to bring greater efficiency and lower costs to their business – a task made more urgent by the coronavirus pandemic, which highlighted challenges associated with the existing infrastructure and the reliance on paper documents and notices. However, scalable and interoperable automation is only achievable with the development and adoption of industry wide standards, and the ability of those standards to be adopted broadly, consistently and in digital form, the letter states.

In order to realise greater standardisation, the associations pledged to support the development of common, interoperable industry standard models, promote greater alignment of regulatory and data standards, and develop standardised and simplified legal documentation

"The benefits of doing so are self-evident. The adoption of common data and process standards across the industry will allow for the consistent aggregation of global financial data and more comprehensive risk assessment of supervised firms, promoting greater confidence in the integrity of financial markets," the associations wrote.

As part of the principles on digitisation, the associations committed to exploring the possibility of making industry documentation available in digital formats and supporting the development of legal agreement data models to ensure contractual terms connect seamlessly with the systems and processes designed to implement them.

The groups also pledged to distribute new standards on an industry wide, commercially reasonable basis where possible, and to establish inclusive governance frameworks to oversee the development, operation and maintenance of any mutualised technology standard.

Rather than make tactical investments in existing technology infrastructure in response to specific issues and challenges as they arise, the groups called on the industry to take an alternative, more holistic approach.

"Through the adoption of these principles and objectives, we are embracing transformational change and adopting an ambitious strategy for defining a digital future for financial markets, fostering an environment for technological innovation and building a safer, more robust global financial system," the letter states.

Read the letter on the digital future for financial markets: bit.ly/33o89F4

ISDA and ISLA Agree to Collaborate on Digital Initiatives

ISDA and the International Securities Lending Association (ISLA) have agreed to collaborate to deliver digital solutions to their respective memberships in a consistent and cost-effective way. The two associations will cooperate at all levels to expand electronic contract opinions and to apply the Common Domain Model (CDM) to help facilitate greater automation in the derivatives and securities lending markets.

As part of the agreement, the ISDA e-contract opinions will be updated to cover securities financing transactions (SFTs) as well as derivatives, and will be made available to members of both associations. An increasing number of derivatives, SFTs and repo transactions are being executed and confirmed electronically and the coronavirus pandemic has further heightened interest in e-contracts.

ISLA will also work to model and code specific SFT components for inclusion in the CDM, creating greater alignment between derivatives and securities lending markets. ISLA will join ISDA's CDM governance executive committee, which oversees strategy for the adoption of the CDM, as well as the architecture and review committee, which is responsible for developing technical guidance and reviewing proposed changes to the model.

"By working together to develop cost-effective and scalable mutualised solutions, we will be able to provide real and lasting value to our memberships," says Scott O'Malia, ISDA's chief executive.

Bloomberg Begins Publication of IBOR Fallbacks

Bloomberg Index Services Limited (BISL) announced in July that it had started to calculate and publish fallbacks for derivatives that reference certain key interbank offered rates (IBORs).

ISDA will soon publish amendments to its standard interest rate derivatives definitions to incorporate the new fallbacks, which will be adjusted versions of the risk-free rates (RFRs) identified in each jurisdiction. Adjustments are necessary because there are structural differences between IBORs and RFRs. Unlike RFRs, IBORs are available in multiple tenors and also incorporate a bank credit risk premium and other factors. ISDA has run multiple consultations over the past two years to reach consensus on an adjustment methodology.

Following a request for proposal and in-depth selection process in 2019, Bloomberg was selected by ISDA to calculate and publish the fallbacks. Calculations published by BISL include the adjusted RFR (compounded in arrears), the spread adjustment and the 'all in' IBOR fallback rates for the Australian dollar Bank Bill Swap Rate, Canada's CDOR, Swiss franc LIBOR, EURIBOR, euro LIBOR, sterling LIBOR, HIBOR, euroyen TIBOR, yen LIBOR, TIBOR and US dollar LIBOR.

"The introduction of robust new fallbacks for derivatives contracts will significantly reduce the systemic risk posed by a permanent cessation of a key IBOR. Publishing indicative spread adjustments and all-in fallback rates now will help firms as they prepare to implement the new fallback methodology," says Scott O'Malia, ISDA's chief executive.

"The introduction of robust new fallbacks for derivatives contracts will significantly reduce the systemic risk posed by a permanent cessation of a key IBOR"

Scott O'Malia, ISDA

The adjusted RFRs, spread adjustments and all-in fallback rates are available through various distribution channels, including the Bloomberg terminal, where the data is displayed on FBAK<GO>. The data is also publicly available on the Bloomberg website on a delayed basis.

"We are pleased to partner with ISDA to support the markets through the calculation and distribution of IBOR fallbacks. This is an important move forward as we continue to help our clients with their IBOR transition efforts," says Umesh Gajria, global head of index linked products at Bloomberg.

As ISDA prepares to publish a supplement to the 2006 ISDA Definitions and a related protocol to incorporate the new fallbacks, the ISDA board of directors published a statement in July urging all market participants that have non-cleared derivatives exposure to LIBOR and other IBORs to adhere to the protocol when it is published.

"These fallbacks will be critical to ensure that derivatives contracts continue to reference clear, transparent and consistent rates if the IBOR they currently reference is discontinued or, in the case of LIBOR, becomes non-representative," the board stated.

"The IBOR Fallbacks Protocol is the most efficient way for participants in the vast majority of non-cleared derivatives markets to mitigate against the risks associated with the discontinuation of a key IBOR, and is a critical part of addressing both individual firm risks and systemic risks associated with the expected discontinuation and/or non-representativeness of LIBOR in particular," the board added. IQ

ISDA Launches RFR Adoption Indicator

ISDA has launched a new indicator to monitor the adoption of alternative risk-free rates (RFRs) in derivatives trading. Developed in conjunction with Clarus Financial Technology, the indicator will provide a monthly snapshot of RFR trading activity in interest rate derivatives (IRD) markets, based on global cleared over-the-counter and exchange-traded derivatives data from seven central counterparties spanning six currencies.

The indicator is intended to help derivatives market participants keep tabs on progress to shift to RFRs ahead of the end of 2021, when the UK Financial Conduct Authority has said it will no longer compel or persuade banks to make LIBOR submissions.

The indicator tracks the percentage of cleared IRD trading activity that references RFRs, measured by DV01. DV01 is a gauge of risk that represents the valuation change in a derivatives contract resulting from a parallel one basis point shift in the swaps curve.

ISDA and Clarus have developed several sub-indicators to provide additional granularity based on currencies, tenor and over-the-counter versus exchange-traded IRD, as well as notional amount traded. Based on these indicators, 30.4% of sterling denominated IRD DV01 was referenced to RFRs in August 2020, the highest proportion of the six currencies tracked.

Total DV01 of RFR-linked IRD across all six currencies was $1.4 billion in August 2020, unchanged from the previous month but higher than the $1.3 billion recorded in June. The overall RFR Adoption Indicator rose from 4.7% in June to 6.8% in July, dropping to 6.4% in August. IQ

ISDA Create Extends to New Documents

Three new documentation modules are being made available on ISDA Create, the online platform developed by ISDA and Linklaters to automate the process of producing and agreeing documentation. The three new modules are being added during 2020 and will join the existing initial margin (IM) service, which allows users to put in place the documentation necessary to meet regulatory IM requirements.

"The office closures and extensive remote working introduced as part of the response to the coronavirus pandemic have underlined the challenges associated with drafting and agreeing physical documents. With the launch of these new modules on ISDA Create, users will be able to negotiate more of their derivatives documentation online, making the process much more efficient," says Katherine Tew Darras, general counsel at ISDA.

The first module to be added to ISDA Create comprises generic amendment agreements to ISDA published documents. These forms, which are adapted from the March 2003 ISDA published form, allow users to complete any amendment to one or more ISDA published documents. There are many potential use cases for these amendment agreements, including by asset managers, which regularly alter the terms of their umbrella agreements. The new module enables them to add or remove clients or make customised client-specific amendments completely online.

The second module includes the recently published long-form EONIA Bilateral Template Amendment Agreement, which enables parties to update references to EONIA in their documentation, given the expected permanent cessation of that rate in January 2022. Other interest rate benchmark reform documents are being added to this module as they become available. These include the suite of template provisions that will accompany the forthcoming interbank offered rates fallbacks protocol, as well as short-form agreements to allow participants to replace euro- and US dollar-denominated interest rates in their bilateral credit support annexes with €STR and SOFR, respectively.

"With the launch of these new modules on ISDA Create, users will be able to negotiate more of their derivatives documentation online, making the process much more efficient"

Katherine Tew Darras, ISDA

The third module comprises schedules to the 1992 ISDA Master Agreement (Multicurrency – Cross Border), the ISDA 2002 Master Agreement, and the 2002 forms of the Master Agreement under French and Irish law. The 1992 ISDA Master Agreement (Multicurrency – Cross Border) and the ISDA 2002 Master Agreement will be available in the fourth quarter of 2020, with the ISDA 2002 Master Agreement under French and Irish law following soon after.

"Since the launch of ISDA Create in January 2019, more than 60 buy- and sell-side firms have joined the platform. In addition, more than 200 market participants are currently testing ISDA Create. Those users have been asking us to extend the benefits of online negotiation to other 'business as usual' ISDA documentation, including the schedule to the ISDA Master Agreement," says Doug Donahue, partner at Linklaters. IQ

ISDA Launches Clause Library

ISDA has launched a new drafting tool called the ISDA Clause Library to introduce greater standardisation in how firms negotiate and agree clauses within their ISDA documentation.

The aim is to cut down on instances of differently worded clauses that essentially achieve the same outcome, making contract negotiation more efficient and improving the consistency and accuracy of legal agreement data. Increased standardisation is also a necessity for the digitisation of legal documentation and the development of smart contracts, offering the potential for further automation of derivatives processes.

"For three decades, ISDA has focused on developing standard documentation like the ISDA Master Agreement to bring consistency and efficiency to the derivatives market. With the ISDA Clause Library, we're now taking the next step by promoting standardisation of language within certain clauses following consultation and by building a consensus across the industry," says Katherine Tew Darras, general counsel at ISDA.

The ISDA Clause Library sets out standard drafting options for frequently negotiated provisions within the ISDA Master Agreement, as well as the most common variants of these provisions. It is available in the ISDA bookstore and is designed to be used in conjunction with both the 1992 (Multicurrency – Cross Border) and 2002 forms of the Master Agreement under English, New York, French and Irish law.

"The ISDA Clause Library will provide members with immediate benefits through quicker negotiation and client on-boarding. Longer term, digitising and integrating ISDA documentation with data and operational processes will create a more automated and efficient operational and risk management infrastructure," says Scott O'Malia, ISDA's chief executive. IQ

Survey Explores Virus Liquidity Impact

The sharp decline in derivatives market liquidity as the coronavirus pandemic spread in February and March was driven by a variety of factors, including the reduced risk appetite of banks and a sudden need for short-term funding by corporates, according to a report by Greenwich Associates in conjunction with ISDA.

The report, which was published in June and was based on a survey of 172 buy- and sell-side market participants, explores the market dynamics that led to the disruption in liquidity, the impact it had, and the government measures that were most effective in reversing the situation.

Respondents to the survey reported a decline or large decline in liquidity across product sets as a result of the virus, with block trading activity in non-cleared interest rate swaps particularly hard hit. Liquidity issues were reported in multiple regions, although the impact doesn't appear to be uniform – for example, 96% of market participants in the UK pointed to a decline or large decline in interest rate swap liquidity before central bank intervention, versus 76% in the US.

"Liquidity in the swaps market and in other global markets came under extreme pressure in late February and early March 2020 as the true nature of the COVID-19 crisis began to unfold around the world. Credit fears on the back of widespread business shutdowns and work-from-home orders drove markets into a panic," says report author Kevin McPartland, head of research for market structure and technology at Greenwich Associates.

While the spread of the coronavirus pandemic and concern about the economic impact was clearly the root cause of the market turmoil, survey respondents pointed to a number of specific economic and financial catalysts for the deterioration in liquidity. The top financial factor was perceived to be the reduced risk appetite of banks. This was closely followed by the sudden need for short-term funding by corporates, as firms looked to shore up balance sheets amid the coronavirus lockdowns.

Market participants responded by trading in smaller sizes, as well as relying more on trading over the phone – a tactic identified by 31% of buy-side respondents.

For their part, sell-side firms reported a number of obstacles that hindered their ability to provide liquidity in derivatives markets, including one-way flow, increased volatility, the breakdown of common basis trading strategies and high short-term funding costs. These varied depending on region, with the cost of short-term funding cited as a bigger issue in Asia and the EU than in the UK and US. Together, these forced a widening of bid-offer spreads, which was cited as a response to the crisis by 49% of sell-side institutions.

"This is unsurprising and a standard reaction to uncertain market conditions. To explain why, when examining what liquidity providers saw as their biggest obstacles to providing liquidity, it was noted by more than half that volatility became too high for their trading strategies to work effectively. This leads to spread widening," the report states.

Government intervention was seen as an important factor in restoring market liquidity, with 60% of UK participants reporting an improvement or large improvement in interest rate swap liquidity following the central bank action. More than two thirds of all respondents characterised US Federal Reserve and US Treasury action as effective or extremely effective, with the Fed's temporary repo facility for foreign and international monetary authorities cited as the most important government intervention.

"By all accounts, government interventions around the world yielded the hoped-for result. The simple fact is that markets quickly calmed and liquidity improved once the Treasury and the Fed effectively stated they would do anything to keep markets afloat," the report finds.

> "Liquidity in the swaps market and in other global markets came under extreme pressure in late February and early March 2020 as the true nature of the COVID-19 crisis began to unfold around the world"
>
> **Kevin McPartland, Greenwich Associates**

Asked about returning markets to 'normal', 74% of respondents said this will be driven primarily by the continuous decline in new virus cases around the world, while other important factors included a sharp increase in testing and protective equipment availability, a continuous decline in virus-related deaths worldwide, and the lifting of government restrictions on private businesses and social distancing.

"Despite the liquidity challenges, it's important to note that derivatives markets continued to function. Banks played an important role in supporting the transmission of central bank interventions to the real economy, providing critical stability. Key infrastructures, including clearing houses and trading venues, operated largely without issue and markets remained open in all but a couple of cases," says Scott O'Malia, chief executive of ISDA.

To some extent, the stability can be attributed to the regulatory reforms of the past decade. When asked about the impact of those reforms, the top response was that they ensured the banking system was sufficiently capitalised to weather the crisis. The second most cited response was that they reduced the capacity of banks to provide liquidity and to extend their balance sheets to business.

"As markets start to normalise, regulators will likely start to look closely at the period of disruption to determine if a policy response is necessary. Analysis like this is an important starting point in understanding what happened and why, and in ensuring that derivatives markets remain safe and efficient," says O'Malia. IQ

THE COVER PACKAGE

Asian Options

Many jurisdictions in Asia-Pacific are pursuing a multi-rate approach to benchmark reform, with local interbank offered rates co-existing alongside alternative risk-free rates

The derivatives industry is busily working towards the end-of-2021 deadline to transition away from LIBOR, but the interbank offered rates (IBORs) in many Asian jurisdictions will continue to exist alongside alternative risk-free rates (RFRs). This means firms in Asia-Pacific still need to shed their exposures to LIBOR, but will be able to choose between local IBORs and RFRs.

There is good reason for this, as regulators and administrators have determined that certain reformed IBORs are sufficiently robust to continue publication, so benchmarks such as HIBOR and TIBOR will continue to exist alongside RFRs like HONIA and TONA. This allows market participants to opt for whichever benchmark they feel is more appropriate for their transactions, but it also means it will likely take longer for liquidity to build in the RFRs.

This issue of **IQ** explores the progress that has been made in certain Asia-Pacific jurisdictions, and the factors that might help to drive RFR liquidity. For example, as heavy users of cross-currency swaps, institutions in Asia-Pacific may ultimately prefer both legs of their swaps to reference RFRs as US dollar LIBOR is replaced with SOFR, bolstering liquidity in local RFRs (see pages 12-17).

Of course, the coronavirus pandemic has forced firms across Asia-Pacific to readjust priorities and focus on maintaining critical operations in 2020. But, as Howard Lee, deputy chief executive of the Hong Kong Monetary Authority, points out, time is now of the essence and market participants must be operationally ready for LIBOR transition (see pages 18-21).

There's plenty more going on in the region that will keep everyone busy for the foreseeable future. In our roundtable, senior market participants consider the regulatory changes scheduled for implementation over the coming years, the prospects for growth in the region and the promise of advanced technologies (see pages 22-28). In short, the new normal is likely to be very busy. IQ

"Time is of the essence, and market participants should get operationally ready for transitioning from LIBOR to alternative reference rates. We would strongly encourage firms to take concrete action"

Howard Lee, deputy chief executive, Hong Kong Monetary Authority

* A Multi-rate Approach

A number of Asia-Pacific jurisdictions have identified risk-free rates that can serve as alternatives to interbank offered rates, but with local IBORs continuing to exist in many cases, the challenge will be to develop liquidity in products linked to the new rates

With LIBOR expected to expire after the end of 2021, the coming months will be critical in terms of building liquidity in the rates that will serve as substitutes and putting transition plans into practice. As big users of LIBOR, institutions in Asia-Pacific – as elsewhere – have their work cut out to expand trading activity in products linked to new risk-free rates (RFRs) like SOFR, make the necessary changes to systems and processes, and reduce the volume of new trades linked to LIBOR – and there's not much time left.

But there's also a broader initiative in Asia to select liquid, risk-free alternatives to the local interbank offered rates (IBORs). Unlike LIBOR, though, the existing IBORs will largely continue to exist alongside the RFRs that have been identified in each jurisdiction. This means market participants can choose whatever rate best suits their needs, but it also runs the risk of splitting liquidity, making it more challenging to build trading activity in the nascent RFRs.

END OF LIBOR

LIBOR is expected to cease publication after the end of 2021, but IBORs in many Asian jurisdictions will continue to be published alongside the RFRs

"In a number of cases, local administrators and regulators have determined that prevailing reformed IBORs are sufficiently robust to continue to exist, so have opted for a multi-rate approach. This means trading in Asia is likely to be bifurcated between IBORs and RFRs for some time," says Jing Gu, head of legal, Asia-Pacific, at ISDA.

Initiatives are under way in several jurisdictions to support the growth of liquidity in products referenced to the local RFRs. Further momentum is also expected to emerge as a result of developments overseas involving the RFRs identified as alternatives to LIBOR – for example, the shift by central counterparties to SOFR discounting and price alignment interest for cleared US dollar interest rate derivatives in October, which is expected to drive further trading activity in SOFR. As regular users of cross-currency swaps to convert US dollar borrowings into local rates, Asian firms may prefer for both legs of the swap to reference RFRs as SOFR becomes more prevalent than US dollar LIBOR, providing a fillip to local RFRs.

In addition, regulators in the region have made clear they expect market participants to adopt robust new fallbacks based on RFRs for all derivatives, irrespective of whether they reference LIBOR or local currency IBORs (see box). The implementation of fallbacks will give firms contingent exposure to the RFRs, potentially creating an incentive to migrate new trades to these rates.

Nonetheless, while progress has been made globally to transition to RFRs, there is still much to be done. According to the ISDA-Clarus RFR Adoption Indicator, 6.4% of cleared over-the-counter and exchange-traded interest rate derivatives trading activity (measured in DV01) in six currencies referenced RFRs in August. The indicator measures Australian dollar, euro, sterling, Swiss franc, yen and US dollar, but derivatives linked to other Asian-currency RFRs are also believed to be at relatively low levels of liquidity compared to IBORs.

"Products referenced to the Asian currency RFRs are trading in comparatively low volumes currently. That reflects the fact these rates have historically traded infrequently, if at all, and it takes time to build impetus. With local IBORs continuing to exist, the question is how to drive liquidity to these rates. Education and raising awareness of benchmark reform will continue to be a priority," says Gu.

While there are similarities across the region, there are also differences in how the key markets – Australia, Hong Kong, Japan and Singapore – are approaching the issue.

Illustration: James Fryer

Australia

Australia's financial institutions have historically used LIBOR and the Bank Bill Swap Rate (BBSW) – a local credit-based, term benchmark – as the primary reference rates for cash and derivatives instruments. According to feedback to a letter to the chief executives of major Australian financial institutions, sent by the Australian Securities and Investments Commission (ASIC) in May 2019, aggregate notional exposure to LIBOR is approximately A$10 trillion ($7.1 trillion), of which 40% is expected to mature after the end of 2021.

The feedback, published by ASIC, the Australian Prudential Regulation Authority and the Reserve Bank of Australia (RBA) in April 2020, noted that the levels of preparation for transition from LIBOR varied across institutions, with some yet to start work in earnest.

"Given that LIBOR will not be supported beyond 2021, and the scale of the work involved in transitioning to alternative benchmarks, prompt action is imperative," the authorities wrote. Due to concerns about liquidity in the alternative reference rates, firms are continuing to write contracts that are referenced to LIBOR, they added.

Institutions that received the letter were given individual feedback on their transition preparations, along with recommendations on how to progress. The regulators will also continue to work to increase awareness of the need to prepare for LIBOR cessation and encourage institutions to start transition. "This engagement aims to mitigate potential stability risks to the wider market by reaching a broad range of institutions to include those that have not yet been engaged on the issues," the letter states.

While Australian firms are being urged by regulators to prepare for the end of LIBOR, BBSW will continue to be published. The bank bill market represents a substantial share of bank balance sheets in Australia, and officials have concluded it is supported by a sufficient number of transactions to maintain a robust benchmark.

The expected continuation of BBSW means trading in products linked to the RBA cash rate (known as AONIA) – an RFR that measures the weighted average interest

> "Products referenced to the Asian currency RFRs are trading in comparatively low volumes currently. That reflects the fact these rates have historically traded infrequently, if at all, and it takes time to build impetus"
>
> **Jing Gu, ISDA**

→ rate at which overnight unsecured funds are transacted in the domestic interbank market – has been fairly limited so far, although transactions are occurring, including AONIA-linked bond issuance from the South Australian Government Financing Authority and an AONIA-linked residential mortgage-backed securities transaction from Commonwealth Bank of Australia (CBA) in 2019.

"In Australia, as in many markets, there remains demand for a credit-encompassing benchmark, but we are fortunate to have a robust benchmark in BBSW that has been made more robust by recent reforms. It may be used in fewer contracts going forward, but I don't foresee BBSW being discontinued. Of course, the challenge is that there is then less incentive to switch to an alternative rate, and we have so far seen limited issuance in AONIA. Ideally, you'd reach an equilibrium where both rates continue with a healthy level of activity, but this may take some time," says Pieter Bierkens, chair of the IBOR Transformation Australian Working Group and group interest rate benchmark reform lead at CBA.

One factor that may be significant when it comes to the pace of transition in Australia is the large proportion of debt that is issued in foreign currency and swapped back to local rates using cross-currency swaps. When LIBOR eventually ceases publication and is replaced by RFRs, market participants will face a choice between continuing to reference BBSW or switching to AONIA for the Australian leg of the cross-currency swap. While an IBOR-RFR cross-currency swap is possible, Bierkens believes most firms will seek to use RFR-RFR cross-currency swaps.

"Cross-currency swaps make up a relatively large proportion of the Australian market, and a logical way for this market to develop would seem to be towards RFR-RFR contracts, which avoids the introduction of some of the basis risk in these contracts. When the US market leaves LIBOR behind for good, I do think this will spur more activity in the AONIA market beyond just cross-currency swaps," says Bierkens.

Hong Kong

Like Australia, local financial institutions in Hong Kong have predominantly used a combination of LIBOR and the local currency interbank offered rate, HIBOR. According to a survey by the Hong Kong Monetary Authority (HKMA), the Hong Kong banking sector's derivatives exposure to HIBOR totalled HK$12.1 trillion ($1.5 trillion) at the end of March 2020. Derivatives exposure to LIBOR was nearly three times that amount at HK$34.7 trillion, of which HK$18.1 trillion, or 52.2%, will mature after the end of 2021.

That number has actually increased over the past six months. An earlier survey put LIBOR derivatives exposure at HK$34.6 trillion at the end of September 2019, with HK$16.1 trillion due to mature after the end of 2021. That survey also addressed the challenges in preparing for transition. The key obstacles that were identified by industry participants include comparatively low liquidity in products referencing RFRs, the lack of a well-established term structure for alternative rates, lower awareness of benchmark reform among non-financial counterparties, and limited guidance to help smaller institutions prepare for the transition.

In a circular to the chief executives of authorised institutions (AIs) on July 10, the HKMA expressed concern that risks associated with benchmark reform are continuing to build up in the system, and reiterated the global message that the end-of-2021 deadline for LIBOR transition has not changed, in spite of the impact of the coronavirus pandemic. However, the regulator noted that banks had made some progress in preparing for the change, with 61% of AIs now having a bank-wide transition plan

"Cross-currency swaps make up a relatively large proportion of the Australian market, and a logical way for this market to develop would seem to be towards RFR-RFR contracts, which avoids the introduction of some of the basis risk in these contracts"

Pieter Bierkens, CBA

in place versus 38% six months earlier.

In line with other jurisdictions, the HKMA also set some key transition milestones for the industry, including a requirement for AIs to be in a position to offer products referencing alternative rates to LIBOR from January 1, 2021, and to cease issuance of new LIBOR-linked products that will mature after 2021 by June 30, 2021. Adequate fallback provisions should also be included in all newly issued LIBOR-linked contracts that will mature after 2021 from January 1, 2021.

While Hong Kong institutions are being urged to transition from LIBOR as a priority, HIBOR will continue to exist alongside HONIA, the rate identified by the Treasury Markets Association (TMA) as the territory's alternative reference rate. The TMA's Working Group on Alternative Reference Rates has proposed technical changes to HONIA to bring it into line with international standards, but liquidity in swaps linked to HONIA is currently very limited.

6.4%

The proportion of cleared interest rate derivatives trading activity in six currencies that referenced RFRs in August 2020, according to the ISDA-Clarus RFR Adoption Indicator

"As the existing benchmark, HIBOR is working well and is extensively used by market participants in mortgages and corporate loans. The multi-rate approach will allow more time to adjust and adapt to the new benchmark, HONIA. This has become more pertinent now due to the distraction from COVID-19. However, the existence of two benchmarks can potentially bifurcate the market and affect the liquidity," says Justin Chan, head of Greater China, Asia Pacific, at HSBC.

The HKMA has been clear in stating that there are no plans to discontinue HIBOR (see pages 18-21), but the survey of transition obstacles highlighted uncertainty over the status of HIBOR versus HONIA as the local interest rate benchmark over the longer term, suggesting some hesitation over which of the two rates to use as a reference. Ultimately, though, increased adoption of RFRs in the US and elsewhere may drive more trading activity in HONIA, as Hong Kong institutions opt to use RFRs on both legs of their cross-currency swap transactions.

"The multi-rate approach offers us time to observe what happens in other markets on their transition. If other major markets all migrate successfully into the alternative reference rates and people see the benefits of this, they will naturally migrate to HONIA too," says Chan.

Singapore

In Singapore, the Swap Offer Rate (SOR) is an FX swap-implied interest rate benchmark used for the pricing of derivatives and key institutional cash markets like corporate loans and floating rate notes. However, US dollar LIBOR is a major input for the calculation of SOR, so the discontinuation or non-representativeness of LIBOR after the end of 2021 creates a natural deadline for the market to transition to the Singapore Overnight Rate Average (SORA). SORA is an RFR based on the weighted average of all overnight borrowing and lending transactions in the interbank market and has been published by the Monetary Authority of Singapore (MAS) since 2005.

In August 2019, the Association of Banks in Singapore (ABS) and the Singapore Foreign Exchange Market Committee (SFEMC) issued a consultation report that identified SORA as the alternative benchmark to SOR and set out a plan for transition. This roadmap envisaged a phased transition over a two-year period, starting with the deepening of new SORA-based markets, and thereafter the transition of SOR-based legacy contracts.

"This will entail strong industry wide cooperation and coordination on a range of initiatives, such as developing industry best practices and market conventions to promote the take-up of SORA-based products in financial markets, and conducting outreach and education across various end users to raise awareness," the ABS and SFEMC stated.

Coinciding with the publication of the roadmap, the MAS established the Steering Committee for SOR Transition to SORA (SC-STS) to oversee the change. The SC-STS is responsible for providing strategic direction on industry proposals to develop new products and markets based on SORA, and will also engage with stakeholders to seek feedback and raise awareness on issues related to the transition.

"We have seen liquidity in SORA derivatives gradually building up as banks develop their systems and curves get built up. As with any new market, the expectation is that liquidity will build as more market participants get involved and comfort levels increase among those that are already active," says Daniel Koh, global head of treasury markets at Standard Chartered Bank and chair of the derivatives sub-group of the SC-STS.

The derivatives sub-group has worked closely with ISDA and the industry to develop market conventions, definitions, compounding formulae and term sheets to support the trading of SORA derivatives. The first overnight index swap derivatives trade referencing SORA was executed between Standard Chartered and OCBC in →

"SOR will eventually get phased out – there is no doubt about that – so as the SORA market develops, we expect the industry will naturally gravitate towards it"

Daniel Koh, Standard Chartered Bank

→ late 2019, and other products have followed, including SORA-based floating rate notes and loans.

The development of market infrastructure is also expected to act as a catalyst to greater adoption of the new rate. In May, LCH began clearing SORA overnight index swaps and basis swaps between SORA and SOR. "The ability to clear will greatly help to facilitate the development of the derivatives trading market, as this leads to increased efficiency from a capital and operational perspective," says Koh.

Given the calculation of SOR relies on US dollar LIBOR, the end of 2021 remains the backstop after which the incumbent rate can no longer be relied upon. The SC-STS is therefore committed to maintaining momentum in the transition so market participants are accustomed to using SORA for both new and legacy contracts well before SOR becomes unsustainable.

Unlike some other jurisdictions in the region, Singapore also plans to phase out SIBOR – a key interest rate benchmark used mostly in loans to small- and medium-sized enterprises and retail customers – in order to concentrate liquidity in SORA. Given uncertainty over the long-term sustainability of a reformed SIBOR, the ABS, SFEMC and SC-STS issued a consultation report in July recommending a phased discontinuation of SIBOR through to 2024.

"SOR will eventually get phased out – there is no doubt about that – so as the SORA market develops, we expect the industry will naturally gravitate towards it. We have set ourselves timelines and targets over the next few quarters, working backwards from the end of 2021, when we know US dollar LIBOR and hence Singapore dollar SOR will most likely no longer be in existence. By and large, we will try to beat these targets, and we will do this by collectively encouraging and pushing each other to get things ready," says Koh.

Japan

Japan is another jurisdiction that has opted for a multi-rate regime. While yen LIBOR is expected to cease after the end of 2021, TIBOR and euroyen TIBOR will continue to exist alongside TONA, an uncollateralised overnight call rate identified as the alternative RFR.

"As a multi-rate regime, financial institutions will be able to choose the interest rate benchmark that is best suited to the characteristics of the financial instruments they are trading. However, people are still referencing

FALLBACKS FOR ASIA'S RATES

ISDA will shortly finalise new robust fallbacks for derivatives that reference LIBOR and other key interbank offered rates (IBORs). These fallbacks would take effect following a permanent cessation of an IBOR (or, for LIBOR only, following a determination by the UK Financial Conduct Authority (FCA) that LIBOR is no longer representative of its underlying market, even if it continues to be published).

In the Asia-Pacific region, Australia's Bank Bill Swap Rate, Hong Kong's HIBOR and Japan's TIBOR, euroyen TIBOR and yen LIBOR will be covered, with adjusted versions of AONIA, HONIA and TONA set as the fallbacks. ISDA will also implement fallbacks for Singapore's Swap Offer Rate (SOR) and the Thai Baht Interest Rate Fixing (THBFIX). Both use US dollar LIBOR as an input for their calculation, so fallbacks for these rates will take effect if US dollar LIBOR ceases to exist or is deemed by the FCA to be non-representative.

In the case of derivatives referencing SOR, the fallback will be an adjusted SOR (as opposed to the Singapore Overnight Rate Average, or SORA, which has been identified as the preferred alternative risk-free rate in Singapore). According to industry feedback, an adjusted SOR is more similar to SOR and will therefore reduce the risk of value transfer and receive greater market support. The adjusted SOR will be calculated using actual transactions in the US dollar/Singapore dollar FX swap market and an adjusted SOFR published by Bloomberg (the fallback for US dollar LIBOR).

ISDA will shortly publish a supplement amending the 2006 ISDA Definitions to incorporate the new fallbacks. A protocol will also be published that will enable market participants to choose to incorporate the revisions into their legacy non-cleared derivatives trades with counterparties that also opt to adhere to the protocol.

their contracts to yen LIBOR and TIBOR, and there is very little activity in TONA," says Tomoko Morita, senior director and head of the Tokyo office at ISDA.

The Cross-industry Committee on Japanese Yen Interest Rate Benchmarks was established in August 2018 to guide the benchmark reform process in Japan, and the committee last year conducted a public consultation on the appropriate choice and usage of Japanese yen interest rate benchmarks. While trading in products linked to TONA has so far been fairly limited, the consultation revealed widespread support in bond and loan markets for a term version of the rate as an alternative to yen LIBOR. In February 2020, the committee appointed QUICK Corp as the calculation and publication agent for a term TONA.

Liquidity in TONA overnight index swaps is necessary in order to develop a term rate, but it is hoped several industry initiatives will help spur further activity in TONA.

"Many large financial institutions in Japan have already started developing technological capabilities to trade TONA products. I expect many of them would become ready for TONA from the second half of 2020 to the first half of 2021. Market-wide infrastructures globally will become more established for RFR trading in the second half of this year as ISDA finalises fallback language and central counterparties complete their big-bang conversions to RFRs," says Taro Matsuura, chair of the Cross-industry Committee on Japanese Yen Interest Rate Benchmarks and managing director of the corporate planning division at MUFG Bank.

In particular, the publication of fallback language could help to raise awareness about LIBOR cessation in Japan and the use of TONA as an alternative reference rate for yen. "With the release of new fallback language, there will be more certainty of where the market is moving. As there is a high probability that yen LIBOR derivatives contracts with the new fallbacks will eventually reference TONA, it may encourage participants to adopt TONA more broadly now," says ISDA's Morita.

As in Australia, the widespread reliance on cross-currency swaps in Japan might also act as a catalyst as overseas market participants increasingly switch from LIBOR to RFRs like SOFR. "As it will become more difficult at some point to trade cross-currency swaps referencing LIBOR, it is my expectation that we will observe rather strong demand for RFR-based cross-currency swaps to accommodate a variety of hedging needs for currency exposures out of Japan," says MUFG's Matsuura.

Meanwhile, efforts in various markets including the US to explore methodologies for a credit-sensitive spread that could be added to RFRs could help spur use of TONA in cash products, says Matsuura. "While the Japanese yen market has adopted a multi-rate approach, TONA might be used in a variety of cash products. Going forward, establishing conventions for RFR-based cash transactions will therefore be a theme – ie, how best to add on a credit and liquidity risk premium for term funding in cash transactions referencing TONA."

Across the Asia-Pacific region, the immediate priority is preparing for the likely cessation of LIBOR from the end of 2021. But the situation with LIBOR has highlighted that it can't be taken for granted that existing benchmarks will always be available.

"Asian institutions have significant LIBOR exposures, so it is critical that firms put transition plans into practice and switch to alternatives ahead of the end of 2021. With some jurisdictions taking a multi-rate approach, there is not the same urgency to transition from local IBORs like BBSW, HIBOR and TIBOR. However, it's important that alternative reference rates are available. The focus for industry working groups and regulators will be to develop further liquidity in products linked to these rates," says ISDA's Gu. IQ

"Many large financial institutions in Japan have already started developing technological capabilities to trade TONA products. I expect many of them would become ready for TONA from the second half of 2020 to the first half of 2021"

Taro Matsuura, MUFG Bank

* Building Momentum

*Firms have had their hands full dealing with the market and economic fallout from the coronavirus pandemic, but it's critical that market participants escalate their efforts to prepare for the shift away from LIBOR, says **Howard Lee**, deputy chief executive at the Hong Kong Monetary Authority*

IQ: What was the Hong Kong Monetary Authority's (HKMA) approach to maintaining financial stability in response to the coronavirus pandemic?

Howard Lee (HL): Despite the recent volatility in the stock market, the Hong Kong dollar exchange rate has remained stable and on the strong side of the convertibility zone. Interest rates have stayed low. Financial markets have also been operating in a smooth and orderly manner. There has not been a noticeable sign of fund outflow from either the Hong Kong dollar or the banking system. In fact, the strong-side convertibility undertaking has been repeatedly triggered since April, leading to a net inflow of funds amounting to about HK$130 billion.

If the economic situation continues to deteriorate, Hong Kong banks may see a pick-up in insolvencies. Nonetheless, Hong Kong's banking system should be able to withstand potential shocks. Banks have a strong capital position (the capital adequacy ratio is currently at 20%), abundant liquidity (the liquidity ratio is at 160%), good asset quality (the classified loan ratio is at 0.6%), and a solid track record in operational resilience. The HKMA also conducts regular supervisory stress tests, and the latest results show the banking sector would remain resilient under extreme shocks to the economy and financial markets.

Given distress in the corporate sector, the HKMA has offered policy accommodation to enhance the ability of banks to support the real economy and ease the cashflow pressures faced by corporates and individuals. We have cut the countercyclical capital buffer ratio of banks twice since October last year, by a total of 1.5 percentage points, and clarified supervisory expectations on the use of liquidity buffers. We have also introduced a number of measures to increase overall liquidity in the banking system. Finally, we are in close dialogue with banks to encourage them to continue to provide credit – for example, via the banking sector small- and medium-sized enterprises (SME) lending coordination mechanism established in October

"While the sell-off in March led to significant stress in financial markets, the banking sector has so far been able to absorb the shocks, as banks have more capital and liquidity than at the onset of the global financial crisis"

eight rounds of housing macroprudential measures since 2009, and steadily increased the countercyclical capital buffer rate to 2.5% after its introduction in 2016. In addition, fiscal prudence and substantial FX reserves contributed to investors' strong confidence in Hong Kong's financial system.

The March episode has also shown that liquidity is paramount and policy support measures need to be speedy and adequate. Central banks around the world have taken swift and bold action to stabilise markets by offering funding facilities, security purchases and central bank swap lines. In Hong Kong, the HKMA also introduced a series of liquidity support measures, such as reducing the issuance size of exchange fund bills and setting up a US dollar liquidity facility to ensure the continued smooth operation of Hong Kong dollar markets. Without such action, the initial shock could have potentially led to a negative feedback loop between asset prices and liquidity that would have had disastrous consequences for the financial system.

IQ: Market participants reported a sudden drop in liquidity in March, even in relatively vanilla products. Was this a concern for the HKMA?

HL: Market liquidity tends to drop suddenly in extremely stressful periods, when market makers become risk-adverse and reluctant to provide quotes for financial products given the uncertainties. Nonetheless, we have not seen any significant change in the liquidity of the Hong Kong dollar interbank money and FX markets so far this year. In general, our markets have been functioning in a fairly smooth and orderly manner.

2019. A number of relief measures for corporate and retail customers have been rolled out, such as principal payment holidays for SMEs and residential mortgages, and a special 100% loan guarantee was launched under the SME financing guarantee scheme of the Hong Kong Mortgage Corporation, a subsidiary of the HKMA.

IQ: What lessons can be learned from the crisis, both in terms of the regulatory and market response?

HL: While the sell-off in March led to significant stress in financial markets, the banking sector has so far been able to absorb the shocks, as banks have more capital and liquidity than at the onset of the global financial crisis. In Hong Kong, financial markets have operated smoothly and the banking system has remained sound and stable. This underscores the importance of having strong buffers in the banking system and building them up during the up-cycle. For example, the HKMA has introduced

IQ: What impact will the coronavirus outbreak have on the initiative to transition from LIBOR and other interbank offered rates (IBORs) to risk-free rates (RFRs)?

HL: Over the past few months, industry efforts have focused on maintaining critical operations and managing cashflows. Under such circumstances, it is understandable that some industry participants might have temporarily readjusted their business priorities. However, as jurisdictions gradually relax restrictions and economies start to reopen, we expect the industry will regain momentum and continue its hard work in preparing for the transition from LIBOR.

"Time is of the essence, and market participants should get operationally ready for transitioning from LIBOR to alternative reference rates. We would strongly encourage firms to take concrete action"

IQ: What should firms be doing now to prepare for a possible cessation of LIBOR after the end of 2021?

HL: Time is of the essence, and market participants should get operationally ready for transitioning from LIBOR to alternative reference rates. We would strongly encourage firms to take concrete action, and implement a robust transition programme to facilitate the adoption of RFRs as early as possible.

Given the scale and complexity of the task, it is important that market participants understand what the transition will mean for their business operations and undertake detailed risk assessments. As a starting point, firms should take stock of their LIBOR exposures and identify all contracts that reference LIBOR. This is critical, as the transition will likely impact various functions of the firm.

Furthermore, as part of their transition plan, firms should develop the necessary operational and system capability to support a smooth and timely transition. We would also encourage firms to proactively engage with their counterparties, and make sure that appropriate fallback provisions are in place in their LIBOR contracts.

IQ: How would you describe the level of readiness in Hong Kong? Are certain sectors more advanced in terms of LIBOR transition than others?

HL: It is encouraging to see that momentum in Hong Kong is growing. But like many other jurisdictions, there is still a gap in the level of readiness between banks and their clients (eg, corporates). Client education is therefore vital. Banks should step up outreach efforts and educate their clients about LIBOR transition early. This could help to minimise misunderstanding and costly litigation in the future.

IQ: What is the HKMA planning to do to encourage LIBOR transition? A recent survey by the HKMA identified taxation, accounting, regulatory and conduct risk issues as among the key challenges in preparing for transition. Does the HKMA plan to work with other regulators/agencies to address these issues?

HL: The HKMA has been working closely with the Treasury Markets Association's (TMA) Working Group on Alternative Reference Rates in raising market awareness of the accounting, tax and regulatory issues that may arise from the transition. To identify such issues, the working group has included representatives from the accounting and legal professions. So far, we have made progress in addressing some of the issues.

For example, the HKMA issued a circular to banks in March 2019, clarifying that genuine amendments to existing derivatives contracts that are made as a result of interest rate benchmark reform will not be considered new contracts from the perspective of the HKMA's margin requirements. This could help remove uncertainty in transitioning derivatives contracts from IBORs to RFRs.

The HKMA will continue to work with foreign regulators and relevant standard-setting bodies such as the Basel Committee on Banking Supervision to address the regulatory issues. Through the Financial Stability Board's (FSB) Official Sector Steering Group (OSSG), we will also provide input to the International Accounting Standards Board on necessary amendments to accounting standards. Finally, OSSG members including the HKMA are reaching out to tax authorities to alert them to the potential tax impact of the transition. We hope all these efforts will pave the way for a smooth transition.

IQ: Hong Kong has opted for a multi-rate approach, with HIBOR continuing to exist alongside HONIA. Why was this approach taken?

HL: In Hong Kong, HIBOR has been in place for many years and is still widely recognised by market participants as a credible and reliable benchmark. While HONIA serves as an alternative to HIBOR, there is no plan to discontinue HIBOR. With HONIA and HIBOR co-existing in the market, market participants are free to choose between them.

This multi-rate approach has also been adopted by many other jurisdictions and is consistent with the FSB's discussion.

IQ: The recent HKMA survey highlighted uncertainty over the status of HIBOR versus HONIA as the local interest rate benchmark over the longer term. What might threaten the long-term viability of HIBOR?

HL: The results of the recent HKMA survey reported some of the uncertainties and challenges identified by respondents in preparing for the transition. However, as I have already mentioned, there is no plan to discontinue HIBOR, which will exist alongside HONIA. So, whether market participants choose to use HIBOR or HONIA will depend on industry preference.

While it will take time for a HONIA market to develop, it is possible that when market participants gradually switch to the new RFRs (eg, SOFR), they may choose to reference equivalent overnight RFRs in both legs of a cross-currency swap transaction. This may, in turn, create more demand for HONIA in the financial market.

"Banks should step up outreach efforts and educate their clients about LIBOR transition early. This could help to minimise misunderstanding and costly litigation in the future"

IQ: How should firms determine which rate – HONIA or HIBOR – is the most appropriate?

HL: There is no straightforward answer to this question. Considerations often vary for different market participants when negotiating contractual terms with their counterparties. A variety of factors, such as market liquidity and familiarity with the rate, may influence the decision-making process. Firms should take into account their own circumstances when determining which rate could best suit their needs.

IQ: How important is it to have robust fallbacks in place, even in a multi-rate environment?

HL: Having robust fallbacks in place is crucial. This could ensure contracts continue to function and any potential market disruption is avoided in the event a benchmark is no longer available. We would strongly encourage firms to put fallbacks in place in financial contracts. This would not only help minimise potential disputes between counterparties, but could also mitigate litigation risk in the future.

IQ: What steps can the official sector take to encourage firms to adopt fallbacks?

HL: Given the inherently globalised nature of the financial market, international cooperation is important. Through the FSB OSSG, financial regulators including the HKMA have been encouraging regulated institutions to adopt fallbacks in contracts. We are happy to see that financial institutions are relaying this message to their clients. Of course, we need the assistance of industry associations to develop robust contractual language for fallbacks. In this regard, we will continue to work with industry bodies such as ISDA and the Asia Pacific Loan Market Association to strengthen contractual robustness.

IQ: Some market participants, particularly in cash markets, would like to see the development of forward-looking term risk-free rates to support transition. How important is this? Have the HKMA and TMA taken any steps to encourage the development of forward-looking term rates based on HONIA, and what are the challenges to developing new term rates?

HL: We understand some market participants are keen to have forward-looking term rates, which provide advance knowledge and certainty over interest payments. The best way to translate overnight RFRs into term rates is through overnight index swap (OIS) trading. Higher turnover in the HONIA OIS market will help a HONIA swap curve to develop that can be used for term rates. But this will depend on market conditions. Like many other jurisdictions, the challenge is that it will take time for liquidity in the OIS market to develop. IQ

* Defining the New Normal

Firms globally are thinking hard about some of the longer-term impacts of the coronavirus crisis, while also having to prepare for a variety of other challenges, including the transition from LIBOR. **IQ** *talks to a panel of industry leaders about the challenges and opportunities for Asia's derivatives markets, and what the 'new normal' will look like*

IQ: How did derivatives markets in Asia fare at the start of the coronavirus outbreak? How did that change, and what lessons have been learned?

Kate Birchall (KB): In February and March, we saw a significant increase in volumes – in both regional and global currencies. Through this period of volatility, all of our Asian currencies saw an increase in the number of participating firms, indicating that growth of the Asian derivatives markets continues to deepen and broaden.

Margin stability was a significant area of focus with our clients. Given the market volatility, the amount of margin called by clearing houses came into the spotlight. Through this period, we did not change our margin approach and only modest increases in margin were required.

Patrick Leung (PL): Liquidity in parts of the market dried up significantly in late February, and dealers became very conservative in making markets. As a result, transaction costs were much higher than what we would normally have experienced. Following the various central bank and government initiatives, liquidity gradually came back in March and we started to see a return of a normal functioning market. We're now nearly back to normal in terms of liquidity.

In particular, this crisis highlighted the importance of US dollar liquidity. The fact the Federal Reserve provided US dollar liquidity and the setting up of various swap lines was one of the key reasons why the market was able to start returning to normal.

Andrew Ng (AN): As COVID-19 spread across Asia, most jurisdictions acted to stimulate their economies by cutting benchmark interest rates, cutting the reserve ratio and

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increasing government spending. Some countries, such as Singapore and China, encouraged banks to loosen credit terms on existing loans.

An important factor for banks in the region was to ensure access to US dollar funding. At the onset of the crisis, market volatility and uncertainty made regional institutions nervous and there was a spike in implied short-term US dollar swap curves. The Federal Reserve acted fast to establish swap lines with certain central banks including the Monetary Authority of Singapore (MAS) to ensure continued access to US dollar financing. This very much helped DBS and banks in Singapore on their US dollar books, which regional clients depend on.

In terms of trading strategy, banks that were positioned for further rate cuts benefited in the first quarter of 2020. As uncertainty increased, so did volatility, resulting in certain clients needing to either hedge their positions or rebalance their portfolios to adjust to the new normal. All of this led to an increase in volumes, particularly in FX, rates and equity derivatives products.

In terms of lessons, we found a lot of our digitisation efforts paid off as the crisis took its toll on our branches across the region. We saw record trading flows through our digital channels, particularly from our consumer banking and wealth franchise. This has incentivised us to further accelerate our commitment to digital initiatives this year.

Taihei Okabe (TO): Liquidity in both cash and derivatives deteriorated dramatically in March and value-at-risk surged to the highest levels in recent years, causing dislocations in long-end swap spreads and leveraged carry trade positions, such as US Treasury futures basis trades. However, liquidity facilities offered by central banks and substantial levels of capital and liquidity built up since the global financial crisis aided quick normalisation of impaired markets in April.

Shigeru Nonomura (SN): Liquidity dried up in rates derivatives. As more traders and operational staff began to work from home, risk-taking capabilities on the dealer side went down. At the same time, investors needed to hedge their risk, which led to very violent moves in rates. A few times, we observed the same tenor interest rate swap trading at different levels in different broker markets.

Risk appetite recovered as we found a new equilibrium of rates and basis markets, also helped by central bank easing policies globally. Through a process of adapting, we learned what can and cannot be done from home as effectively as in the office. For example, trading flow products from home was very difficult without dealer phones to talk to voice brokers and restricted access to information from other traders and the sales team. On the other hand, IT and supporting roles were found to be as effective at home.

> "This crisis highlighted the importance of US dollar liquidity. The fact the Federal Reserve provided US dollar liquidity and the setting up of various swap lines was one of the key reasons why the market was able to start returning to normal"
>
> **Patrick Leung, Blackrock**

IQ: One of the big areas of focus globally is benchmark reform. How would you describe the level of readiness in Asia for a possible cessation of LIBOR after the end of 2021?

PL: We have been working to make sure there's sufficient awareness of LIBOR transition, the time line, the challenges, and the need to change systems and processes. A lot of changes are being put in place internally, and there has also been a lot of communication with clients about the implications. From a bigger picture perspective, I do feel that a good number of people have a good understanding of what is happening, but there is a question mark with regards to how ready the whole market is.

SN: For an orderly cessation of LIBOR at the end of 2021, there needs to be a major pick-up in the pace of preparation. There are certain key issues to be clarified, such as hedge accounting rules and conventions for derivatives conducted bilaterally. Accounting rules especially seem to be a barrier for investors to start using risk-free rates (RFRs) for hedging.

TO: Major banks and securities companies in Japan →

→ are now developing systems or considering contractual solutions relating to LIBOR transition, but other relatively small-sized companies are just starting those preparations. Given the recent letter to CEOs from the Japanese Financial Services Agency in June, as well as efforts by other national regulators to increase liquidity in alternative RFRs, we expect preparations for LIBOR transition to accelerate. At the same time, we still have some concerns about the readiness of market participants generally if the cessation trigger event occurs earlier than we expect, as well as delays or other impacts from the current pandemic situation.

AN: Transition from interbank offered rates (IBORs) in Asia-Pacific is lagging the US and EU. Unlike LIBOR, where there is a clear deadline of end-2021, there is no clear transition date for some of the Asian benchmarks – although some benchmarks like Singapore's Swap Offer Rate and the Thai Baht Interest Rate Fixing use US dollar LIBOR as an input, so are also subject to the end-2021 deadline.

Some Asian jurisdictions are adopting a multi-rate approach for their local benchmarks, with RFRs remaining alongside existing benchmarks. This might make transition more challenging, as market participants may not see an incentive to transition to new RFRs if they are comfortable with existing forward-looking term rates.

KB: From a clearing perspective, given the importance of the US dollar in the Asian region, there has been strong focus on the immediate impact, particularly the transition to SOFR discounting for cleared US dollar interest rate swaps in October. Participants have been working closely with LCH for some time to ensure they are prepared for that. On the cessation of LIBOR, most institutions we are in discussions with have either started or are starting projects to look at the implications for their firms.

> "For an orderly cessation of LIBOR at the end of 2021, there needs to be a major pick-up in the pace of preparation"
>
> **Shigeru Nonomura, Nomura Securities**

IQ: A number of RFRs have emerged in the region as alternatives to local IBORs. How liquid are RFRs like AONIA, HONIA, SORA and TONA? What steps can be taken to increase liquidity in these rates?

AN: Unlike the US and Europe, multiple RFRs have been adopted across Asia, with differing approaches, which leads to complexity and less incentive for migrating from existing benchmarks to the RFRs. This fragmentation from a volume perspective, compounded by the fact that some of the RFRs are newly launched, has resulted in relatively low liquidity. Asian businesses are taking time to adapt, and deal flows are currently limited. Central banks can play an important role by taking a synchronised approach within the region to drive the adoption of RFRs through the wholesale market and subsequently the broader cash market.

In Singapore, we expect liquidity in SORA to pick up with the availability of central clearing. Although volume is still relatively low, the industry led Steering Committee for SOR transition to SORA (SC-STS) is working hand in hand with the MAS to develop a market in SORA derivatives. Brokers have started quoting prices, which provides better clarity to traders in terms of valuation. For cash products, the MAS began issuing SORA-based floating rate notes (FRN) on a monthly basis starting from August 2020, while DBS issued its first SORA linked FRN in May 2020 under its $30 billion global medium-term note programme. In August 2020, the MAS also began publishing compounded SORA rates for one-month, three-month and six-month tenors and a SORA index.

KB: The number of RFRs is unique to Asia and creates additional challenges for regional participants. While all new rates take time to be adopted and incorporated into industry practices and products, key early drivers of liquidity are clearing, government support and the referencing of RFRs in cash products. SORA is a great example of how the market, the regulator and central counterparties can work together to help develop liquidity and drive the success of a new reference rate. LCH was brought into the process early and worked with Singaporean regulators and the local financial community on the development of SORA, allowing it to be cleared earlier than it otherwise would. This has been an important aspect of building liquidity in the new RFR. In other jurisdictions, the adoption of RFRs is still developing. We look forward to working with participants and regulators in each market to develop a clearable product.

TO: Currently, there is not enough liquidity in swaps referencing RFRs. Considering derivatives are used to hedge risks arising from assets or liabilities, the transition

"Transition from IBORs in Asia-Pacific is lagging the US and EU. Unlike LIBOR, there is no clear transition date for some of the Asian benchmarks"

Andrew Ng, DBS

in the cash products market is essential to increase liquidity in derivatives. The proactive issuance of RFR-referenced bonds by government agencies in Asia, as is the case in Europe and the US, may help to facilitate the transition from IBORs to RFRs.

SN: TONA is not yet liquid. Investors are hesitant to trade it, not only because it is illiquid but because hedge accounting rules are not defined for RFRs. In Japan, we also have TIBOR, which is a major reference rate for local loans, and the derivatives market on TIBOR is a lot more liquid than for RFRs. Domestic banks do not feel rushed to trade TONA swaps actively for now. I expect more activity to pick up once cross-currency basis trades reference RFRs. For example, if the SOFR market grows and investors reference it in a basis swap, it will be natural for the yen side to reference TONA instead of three-month yen LIBOR, which is the current convention.

PL: It feels like it's very early days. The lion's share of the liquidity is still with the existing IBORs. I don't think there's any real liquidity in most of the Asian RFRs yet. There's a bit of a chicken and egg situation – if there's no liquidity, it's hard for participants to adopt them. My hope is that there will be lessons learned from the US and European markets, and we can try to leverage those experiences to move things along faster. I think the industry has been made aware of what is going on with LIBOR transition, but outside of that, I think more education is needed.

IQ: A number of regulatory changes are scheduled for implementation over the next few years, including margin requirements for phase-five and phase-six firms and the final Basel III framework. Which regulatory changes do you think will have the biggest impact on the region's derivatives market?

SN: Increased capital requirements for derivatives as a result of the finalisation of Basel III and the Fundamental Review of the Trading Book (FRTB) – expected to enter into force in 2023 – should have a huge impact for almost all major banks in Japan. In addition, the standardised approach for counterparty credit risk (SA-CCR) is expected to be a mandatory requirement for all major banks in Japan. For many commercial banks, the SA-CCR implementation will lead to an increase in derivatives-related risk-weighted assets too. The combined impact of increased capital requirements may encourage banks to change their activities in the derivatives market.

KB: The non-cleared margin rules are likely to have a material impact on the region's FX and rates markets. The absence of a uniform rates clearing mandate across the region has meant many firms continue to trade bilaterally. At LCH, we are seeing firms across the region considering the impact of the rules on their portfolios and how they will manage risk after they have to comply with the requirements. The cost of compliance is high and poses considerable legal and operational complexities. As a result, we have seen interest in all of LCH's clearing services: rates, FX, credit default swaps and repo. Additionally, we are looking at how we can extend tenors of products or introduce new product lines in order to encompass a greater proportion of transactions that are currently traded bilaterally.

AN: LIBOR transition will have the biggest impact given the big-bang nature of the transition, and all participants will be affected by the cessation. Regulators have made it clear there will be no delay to the end-2021 deadline, which is challenging considering we are still in the midst of the COVID-19 pandemic.

In comparison, implementation of other regulations, like phases five and six of the initial margin (IM) rules and the FRTB, have been delayed. Although many counterparties will be brought into scope of the phase-five IM rules in September 2021, regulators have clarified that documentation only needs to be put in place if firms exceed the IM exchange threshold, which is helpful. However, many small phase-five and phase-six firms will need to implement capabilities to compute IM exposures using the ISDA Standard Initial Margin Model. →

"The non-cleared margin rules are likely to have a material impact on the region's FX and rates markets. The absence of a uniform rates clearing mandate across the region has meant many firms continue to trade bilaterally"

Kate Birchall, LCH

One of the challenges will be the availability of non-cash collateral once the phase five and six firms come into scope. In this regard, market participants should consider widening the scope of eligible regional collateral to Asian government bonds, other high-grade Asian bonds and even liquid equities in order to cater to the surging demand.

TO: Margin requirements are, of course, burdensome, but with regulators creating a new phase six for smaller firms and implementing measures to mitigate the compliance burden, the regulations should ultimately not be a negative factor for Asian derivatives markets.

In contrast, benchmark transition will have a great impact on Asian derivatives markets and market participants. For example, swaps referencing RFRs are currently in arrears. Because of the time-zone difference, Asian market participants have a shorter time between fixing and payment, which will be operationally burdensome.

IQ: Is regulatory fragmentation an issue, and how should this issue be addressed?

TO: Yes, it is. First, regulatory fragmentation will create an unfair playing field. If a globally agreed regulatory standard is implemented in some jurisdictions earlier than others, or is interpreted and implemented in an inconsistent manner, this will put some market participants at a disadvantage.

Second, regulatory fragmentation is a challenge for market participants doing business globally, because they have to comply with regulations in each jurisdiction in which they operate. While it is understandable that perfect harmonisation of regulations is difficult, financial institutions operating globally hope the regulators in each country will cooperate with each other to ensure global consistency in the implementation of their respective rules. This will result in fair competition and a reduction in the cost of compliance.

PL: The simple answer is yes. The practical answer is I don't see how this can be changed easily. Each jurisdiction is different, but if there are ways of encouraging more harmonisation, then that would be welcome for investors that are more globally oriented.

KB: The Asian derivatives market is different to those of Europe and the US in that there is not a single regulatory approach across the region. From the LCH perspective, the absence of homogeneity does not cause significant issues in terms of access to derivatives markets, and we are pleased to work with regulators in each local market. The work of local regulators through international bodies like the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions encourages continued regulatory coordination and engagement to minimise regulatory fragmentation in the region.

SN: A widely known result of fragmentation in the Japanese market is the spread between cleared interest rate swaps at the Japan Securities Clearing Corporation (JSCC) and LCH. US persons are restricted from clearing yen interest rate swaps at the JSCC, where the majority of market activity takes place. Therefore, when Japanese investors need to gain duration and the providers are US persons, the spread widens and vice versa. On the 10-year tenor, the spread once reached 9 basis points (bp) at the peak and -4.5bp at the bottom. Liquidity has worsened by all measures since this fragmentation began to emerge. Agreeing on terms to accept offshore clearing houses is on the agenda of the Commodity Futures Trading Commission, but we have not heard of any progress in recent months.

AN: Market fragmentation is a reality in Asia-Pacific, which has slowed the efficient movement of capital across the region, as well as the growth of its derivatives and financial markets. For a regional bank like ours, fragmentation in regulatory guidelines, legal frameworks, operational practices and technology usage have a deep impact on our ability to function effectively.

We believe efficiency comes from being able to roll out processes and solutions that have been tried and tested at the head office across the whole region. However, when certain locations impose bespoke regulatory conditions in their jurisdiction, it means we need to rethink our model by implementing a unique instance of technology, processes or controls in that market. This can make the business more costly to run. Regulatory fragmentation can be addressed by having a more efficient framework for equivalence and recognition decisions. This could include taking a more risk-based approach that is built on outcomes instead of a rule-by-rule comparison. Greater cross-border equivalence will help promote a more diverse and open market.

Our view is that regulations like the margin rules or central clearing that are designed to mitigate systemic risk should be jointly coordinated and implemented with global regulators. However, regulations designed to address local trading and market practices, such as reporting and conduct, should fall under the discretion of local regulators.

> "Regulatory fragmentation is a challenge for market participants doing business globally, because they have to comply with regulations in each jurisdiction in which they operate"
>
> **Taihei Okabe, Mizuho Securities**

IQ: In what way do you expect technologies like distributed ledger, artificial intelligence and smart contracts to impact derivatives markets in the region?

AN: Over the past five years, technology has undergone unparalleled innovation. We need to look at each of these technologies pragmatically and determine whether they fit our own business model and growth strategy, whether the costs justify the outcome and whether the technologies are best suited to the front, middle or back office.

For technologies like artificial intelligence and big data, our focus is to better understand our clients, not only with respect to what they trade, but more importantly, their behavioural traits. This will allow us to build models from the data collected over time. We are also developing the use of machine learning, particularly natural language processing, which will allow programs to auto execute for repetitive processes such as trade reconciliation breaks or settlement fails.

With blockchain, a lot of the post-trade workflows – in confirmation, affirmation, reconciliation and settlement – can be reduced to minutes instead of the usual two-day cycle due to the single instance of a database that can be made available to selected clients. The other use case for blockchain would be its tokenisation functionality. We are carefully examining how to apply tokenisation to our business lines through the use of proof of concepts. There has been much talk about having tokenised assets in fixed income markets in Asia, particularly in locations where bonds can be fractionalised and offered to the retail segment. This remains to be seen, but we are prepared to tokenise for both primary and secondary markets should the industry move toward this approach.

Finally, the crypto markets are starting to enter a period of relative stability with respect to the better-known coins. We are carefully examining this area to see how we can add value to our clients using our existing capabilities in market making and custody.

SN: In the legal and documentation space, new technology will hopefully make it easier to capture the current terms of master agreements. Some ISDA Master Agreements were executed a long time ago and have been amended many times since execution. To understand the current contractual terms, you may have to sift through all these amendments, which may be rather cumbersome and tricky. New technology may relieve us of this messy work and help us avoid making mistakes.

TO: Recent advances in electronic trading technologies have helped the emergence of algorithmic strategies. However, high-frequency trading often gets the blame for being a new source of market volatility. Deep learning →

is a subset of artificial intelligence and is a growing area of derivatives research, with the aim of revolutionary speed improvements in calibrating option pricing models to market data.

PL: There are so many benefits that can be gained from technological change – enhancing efficiency, enabling more data-based processing, and helping the liquidity discovery process. The problem is the cost and benefit. How do you know for sure that an investment in some new technology will produce the right amount of benefits? The trend towards more technology will continue, but it may take time.

IQ: Are you optimistic or pessimistic about the business environment for the remainder of 2020 and into 2021? What are your priorities?

TO: We remain cautiously optimistic, and there are signs of recovery driven by the aggressive programmes by central banks to stimulate the economy. Benchmark transition will be one of our top priorities for 2020 and 2021, both internally to ensure a smooth transition and providing transparency to our customers. We also think that new behavioural patterns in how the business operates – leveraging new technologies and fintech – will bring us lots of efficiencies and opportunities in our business.

SN: I am optimistic that the market will remain active and volatile. Banks should benefit from various financial activities that will accelerate with the changing social and business environment. One risk scenario for the rates market, however, is that things worsen and central banks take further control of the curve.

KB: For the remainder of 2020 and into 2021, I am optimistic in terms of our Asian growth. We are continuing to see strong growth in the number of clients that are onboarding with LCH across all our product lines. Clearing brokers – those firms that provide access to the clearing house – are continuing to expand their footprint and increase the amount of balance sheet available to Asian clients.

PL: We are still going through a lot of changes. The rest of this year will probably see us as an industry trying to define what normal will look like in the near to intermediate future. For example, what will office occupancy be going forward? I do feel like there is a demand for a return to normal, but at the same time, there is a heightened consideration of health concerns, so firms will be trying to figure out the right balance. In 2021 and beyond, the industry will probably look a little different. We need to think about what lessons can be learned from this period that could potentially result in longer-term changes.

AN: We are cautiously watching the situation as most countries attempt to return to normality. For now, the equity markets are holding up well, partly as a result of lower rates. As economies return to normal, we need to be careful not to rely on consumption-related indicators, but also assess whether the coronavirus crisis has shifted fundamentals within our society, such as structural unemployment trends and the gap between haves and have nots, which may have severe implications for economies and eventually spill over to markets.

We have so far benefited from a high volatility environment, which has increased our trading income. This may start to subdue as markets settle into the new normal. We may therefore have to adjust our revenue model and perhaps look at fee-based income to supplement our trading income. We also need to ensure we are prepared for the new deflationary environment. This is a challenge given it will run in parallel with IBOR transition. We need to tackle the new RFRs, as well as the possibility of negative interest rates at the same time, and ensure we have done the necessary stress tests and prepared our systems and processes to cater for such outcomes.

IQ: What jurisdictions do you expect to be growth areas? How can ISDA play a role in those jurisdictions to support safe and efficient markets?

KB: As we look ahead, north Asia will be a key growth market. To date, ISDA has been very active in working with these jurisdictions to highlight the importance of a robust legal framework so their local firms can access the liquidity of the world's derivatives markets.

AN: We all understand that there will be low or negative growth in Asia this year, and the recovery next year will be difficult and staggered. The question is which countries will come out of this cataclysm with balance sheets intact and social-political stability ensured. These considerations should provide important clues as to where business opportunities lie beyond 2020. We see Singapore, aided by major policy support and its highly competitive labour market, infrastructure and business capabilities, adapting quickly to the ongoing seismic changes. After taking a big hit from the pandemic, Singapore's households and companies will bounce back with vigour, we are sure.

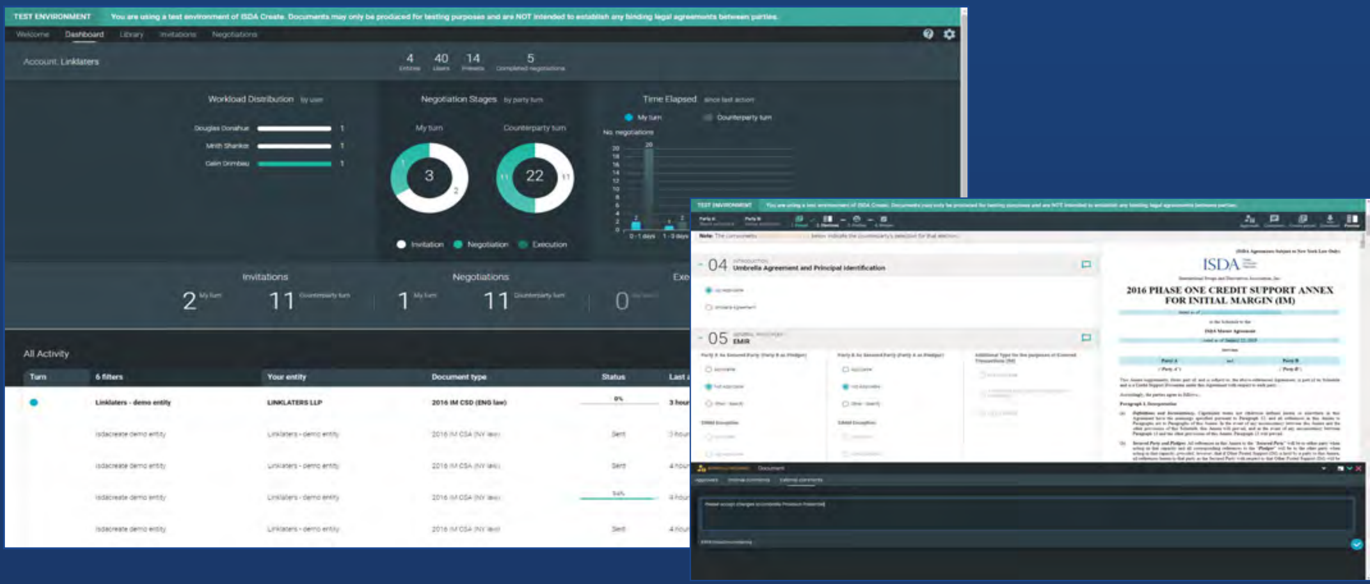
We also expect China's domestic demand-oriented markets to deliver strong growth, even if external demand remains lacklustre. In Indonesia, the authorities have taken decisive measures to stabilise the currency and fixed income markets, which should pave the way for orderly financial conditions as the economic recovery takes root. With this macro backdrop in mind, we see opportunities for further financial market deepening in China and Singapore, and a continuation of an open capital account in Indonesia.

ISDA® Safe, Efficient Markets

What is ISDA Create?

ISDA Create is an online platform that automates the process of producing, agreeing and executing derivatives documentation. The system captures, processes and stores data from these documents, providing users with a complete digital record.

ISDA Create responds to the urgent need for greater digitisation in the derivatives market, offering market participants the opportunity to reduce the reliance on paper documentation.



The first module under ISDA Create focused on supporting the regulatory initial margin requirements for non-cleared derivatives. ISDA Create is now being extended to support other documents in 2020, including the schedule to the ISDA Master Agreement.

Benefits of ISDA Create

- Makes the negotiation process far more efficient and less time consuming
- Provides powerful commercial, risk management and resource management functions, data and analytics
- Removes the need for any post-execution transfer of data from negotiated documentation into internal systems and removes the chance of error arising from such a transfer
- Allows firms to automate the creation and delivery of documentation, and negotiate and execute documentation with multiple counterparties simultaneously
- Enables firms to opt for standard elections, with the flexibility to customise on a party-by-party basis. There are no restrictions on what parties may agree bilaterally
- Automatically reconciles both standard elections and bespoke provisions exchanged, and flags differences in an efficient and easy-to-read way
- Enables parties to embed their standard workflow by allowing approvals of deviations from preferred elections to be requested and recorded through the platform, providing an audit trail
- Stores data digitally, which can be pulled into a firm's internal systems for storage and/or further use

Want more information on ISDA Create or to arrange a platform demonstration?
Contact **ISDACreate@isda.org**

Understanding Benchmark Fallbacks

ISDA is preparing to publish a supplement to the 2006 ISDA Definitions to incorporate robust fallbacks for new derivatives contracts that reference certain interbank offered rates, as well as a protocol to enable parties to choose to include the fallbacks in legacy non-cleared trades. What will this mean for market participants, and how can they implement the new fallbacks?

What is a benchmark fallback?

Benchmark fallbacks are replacement rates that would apply to derivatives trades referencing a particular benchmark. These would take effect if the relevant benchmark becomes unavailable while market participants continue to have exposure to that rate. Specific fallback rates are set out in the 2006 ISDA Definitions. ISDA is working on new robust fallbacks that would apply in the event of a permanent cessation of a key interbank offered rate (IBOR).

Why are changes to fallbacks necessary?

Current fallbacks under the 2006 ISDA Definitions typically require the counterparty that is the calculation agent to obtain quotes from major dealers in the relevant interdealer market. If an IBOR has been permanently discontinued, it is likely that major dealers would be unwilling and/or unable to give such quotes. It is also likely that quotes could vary materially across the market.

With respect to LIBOR, the UK Financial Conduct Authority (FCA) has stated that it will not compel or persuade banks to make LIBOR submissions after the end of 2021, raising the likelihood that LIBOR will cease to exist after that date.

What rates have been chosen as fallbacks for the IBORs?

It was determined that the fallbacks will be adjusted versions of the risk-free rates (RFRs) identified by public-/private-sector working groups in each jurisdiction as alternatives to the IBORs. These are AONIA (Australian dollar), CORRA (Canadian dollar), €STR (euro), HONIA (Hong Kong dollar), SARON (Swiss franc), SOFR (US dollar), SONIA (sterling) and TONA (yen) (see table)[1].

What is a fallback adjustment?

There are inherent structural differences between the IBORs and RFRs. IBORs are available in multiple tenors while RFRs are overnight rates. The IBORs also incorporate a bank credit risk premium and other factors. Adjustments are therefore needed to the RFRs to ensure contracts originally negotiated to reference an IBOR continue to meet the objectives of the counterparties to the maximum extent possible once a fallback takes effect.

Following a series of industry consultations on the adjustment methodologies, the RFRs will be compounded over the relevant IBOR period and a spread adjustment will be added to the compounded rate. The spread adjustment will be based on the median over a five-year period of the historical differences between the IBOR in the relevant tenor and the relevant RFR compounded over each corresponding period.

Under what circumstances will the new fallbacks come into effect?

The adjusted RFR in the relevant currency would apply as a fallback following a permanent cessation of the IBOR in that currency. For derivatives that reference LIBOR only, the adjusted RFR in the relevant currency would also apply as a fallback following a determination by the FCA that LIBOR in that currency is no longer representative of its underlying market, even if it continues to be published.

How can I adopt the new fallbacks?

ISDA will shortly publish a supplement amending the 2006 ISDA Definitions to incorporate the new fallbacks. These changes will automatically apply to cleared and non-cleared derivatives referencing the 2006 ISDA Definitions that are executed on or after the date the supplement comes into effect. In addition, a protocol will be published that will enable market

LIBOR Currency	IBOR	Administrator	Alternative RFR	Alternative RFR Administrator	Public-/Private-sector Working Group
Australian Dollar	Bank Bill Swap Rate (BBSW)	Australian Securities Exchange	Reserve Bank of Australia Interbank Overnight Cash Rate (AONIA)	Reserve Bank of Australia	
Canadian Dollar	Canadian Dollar Offered Rate (CDOR)	Refinitiv	Canadian Overnight Repo Rate Average (CORRA)	Bank of Canada	Canadian Alternative Reference Rate Working Group
Swiss Franc	LIBOR	ICE Benchmark Administration (IBA)	Swiss Average Rate Overnight (SARON)	SIX Swiss Exchange	National Working Group on Swiss Franc Reference Rates
Euro	LIBOR Euro Interbank Offered Rate (EURIBOR)	IBA European Money Markets Institute	Euro Short-term Rate (€STR)	European Central Bank	Working Group on Euro Risk-free Rates
Sterling	LIBOR	IBA	Sterling Overnight Index Average (SONIA)	Bank of England	Working Group on Sterling Risk-free Reference Rates
Hong Kong Dollar	Hong Kong Interbank Offered Rate (HIBOR)	Treasury Markets Association (TMA)	Hong Kong Dollar Overnight Index Average (HONIA)	TMA	Working Group on Alternative Reference Rates under the TMA
Yen	LIBOR Tokyo Interbank Offered Rate (TIBOR) Euroyen TIBOR	IBA Japanese Bankers Association TIBOR Administrator (JBATA) JBATA	Tokyo Overnight Average Rate (TONA)	Bank of Japan	Cross-industry Committee on Japanese Yen Interest Rate Benchmarks
US Dollar	LIBOR	IBA	Secured Overnight Financing Rate (SOFR)	Federal Reserve Bank of New York	Alternative Reference Rates Committee

participants to choose to incorporate the revisions into their legacy non-cleared derivatives trades with counterparties that also opt to adhere to the protocol. Parties could alternatively agree to incorporate the new fallbacks by bilaterally amending their legacy non-cleared contracts. Clearing houses have indicated they will use the powers in their rule books to implement the fallbacks in all of their legacy cleared derivatives transactions as of the effective date of the updates.

What is an ISDA protocol?

A protocol is a multilateral contractual amendment mechanism that is used to make standard amendments to ISDA documentation among adhering counterparties. Protocols provide an efficient way of implementing industry standard contractual changes to legacy trades with a large number of counterparties, avoiding the need to bilaterally negotiate the same amendments with each party individually.

Where can I find the fallback rates?

Bloomberg will publish the adjustments and all-in fallback rates via a variety of distribution platforms. As a result, counterparties will be able to access the fallback rates on a screen in the same way they access the IBORs today (although the fallback rates will be available at the end of each period instead of the beginning). Bloomberg began publishing indicative spread adjustments and all-in fallback rates in July.

Can I use fallbacks to transition from the IBORs?

Fallbacks are not intended to be a primary means of moving from IBORs to RFRs. Once the fallbacks are in place, it is recommended that market participants focus on voluntary transition before the cessation of any key IBOR. Moving away from key IBORs voluntarily by amending or closing out contracts that reference those rates allows counterparties to tailor their strategies to their specific portfolios, and could allow firms to negotiate terms that avoid the adjustment mechanisms for fallbacks. IQ

More information, including background context, educational materials, details of the fallback methodology consultations, and information on the calculation and publication of adjustments related to fallbacks, is available on the ISDA website at www.isda.org/fallbacks.

An information brochure on benchmark reform is available here: bit.ly/3klQuoE

For additional information, please email: benchmarkreform@isda.org

[1] ISDA is also updating the 2006 ISDA Definitions to provide fallbacks for certain interest rate benchmarks like SOR (Singapore dollar) and THBFIX (Thai baht) that use US dollar LIBOR as an input, so contracts referencing those benchmarks have robust fallbacks in the event of a permanent cessation of US dollar LIBOR

Disputes in a Post-Brexit World

As the end of the Brexit transition period approaches, Allen & Overy's ***Karen Birch*** *and* ***Sarah Garvey*** *consider the implications of different scenarios for governing law and jurisdiction clauses in derivatives documentation*

In the past, when people read newspapers in hard copy, you could always identify the sports fans as they would turn immediately to the back pages to read the sports news. You can identify your average litigator in much the same way. When picking up a contract for the first time, a litigator will turn immediately to the governing law and dispute resolution provisions at the back of the document.

That's because, when things go wrong – and sometimes even when they go right – these clauses really matter. They play a critical role in determining not only the precise nature and scope of the parties' legal rights and obligations, but also their prospects of successfully pursuing their preferred litigation strategy. As a result, they're the first thing a litigator looks at when asked to advise on the merits of a dispute.

Taking governing law first, the choice of law dictates how any express contractual obligations will be interpreted, whether particular terms are enforceable, the extent to which terms can be implied and whether there are circumstances under which the law will step in to overwrite the contractual bargain.

English law is a popular choice of governing law for commercial contracts globally because the starting point is that party autonomy prevails. The parties can allocate commercial and legal risk between themselves and English law will, except in very narrow circumstances, give effect to what they have agreed. The threshold for implying terms is relatively high and there are very few scenarios in which the law will override the parties' agreement.

Choice of forum is critical because it is the chosen court or tribunal that will determine the outcome of any dispute over what the parties' rights and obligations are. The English courts remain the forum of choice for many commercial parties. They have significant experience in dealing with disputes arising under highly complex commercial agreements and have a reputation for upholding the rule of law, for making legally accurate, reliable and commercial decisions, and for procedural fairness. The English courts are also popular because English judgements are relatively easy to enforce in many other jurisdictions around the world, including – at present – all 27 of the European Union member states (EU 27).

A choice of both English law and the English courts brings with it a huge body of case law that parties can rely on to help them understand exactly what their obligations are and how any dispute over those obligations might be assessed by an English judge (including well over 100 decisions in the past 10 years on the 1992 or 2002 ISDA Master Agreements). The combined effect is a high degree of legal certainty, which is a hugely valuable commodity.

Given the importance of making the right choice of law and courts, it is unsurprising that one of the key questions for commercial parties in assessing the legal implications of Brexit – and, more recently, the legal implications of the Brexit transition period coming to an end – has been whether

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> "While many of the benefits of litigating in England will remain after the end of the transition period, there may be a change in the approach taken by member-state courts to English jurisdiction clauses and judgements"

they should continue to choose English law and the English courts in their commercial contracts. Many of the existing rules in this area are either EU rules or rules that apply in the UK by virtue of the UK's status as an EU member state. As a result, the end of the transition period may well change the status quo in private international law in the UK and the EU.

Whatever the outcome of the negotiations on the future relationship, the benefits of choosing English law as the governing law of a contract will continue to exist. In particular, EU member-state courts will continue to recognise and give effect to a choice of English law if that is what the parties have agreed. As a result, the change in the status quo at the end of the transition period should not have a big impact on the approach taken by parties to governing law. Except in very narrow circumstances, there is no reason why parties that have historically chosen English law to govern their contracts should not continue to do so.

The position on choice of courts is more nuanced and remains more uncertain at the time of writing. While many of the benefits of litigating in England will remain after the end of the transition period, there may be a change in the approach taken by member-state courts to English jurisdiction clauses and judgements.

Scenario 1

The UK accedes to the Lugano and Hague conventions, and the Recast Brussels Regulation falls away

Choice of court

The two most widely used ISDA Master Agreements – the 1992 ISDA Master Agreement (multicurrency – cross-border) and the 2002 ISDA Master Agreement – each contain a choice of court clause at section 13(b). In both cases, where English law is chosen as the governing law, section 13(b) confers jurisdiction on the English courts and then goes on to state that the parties are not precluded from bringing proceedings in other jurisdictions. Due to differences in the drafting, however, the clauses operate slightly differently in terms of where, outside England, proceedings can be brought. The 2002 Master Agreement is more permissive than the 1992 Master Agreement.

Not infrequently, parties agree to amend section 13(b) when entering into transactions under an ISDA Master Agreement to specify (either in the schedule or in individual confirmations) a dispute resolution mechanism that is more appropriate to the particular transaction they are entering into – for example, an exclusive English jurisdiction clause or an arbitration clause. The parties may choose to include one of the model jurisdiction or arbitration clauses set out in the 2018 ISDA Arbitration Guide or the 2018 Choice of Court and Governing Law Guide, or they may negotiate a bespoke clause between themselves.

Civil judicial cooperation

As things currently stand, EU member-state courts are obliged by the terms of the EU Withdrawal Agreement 2020 to respect English jurisdiction clauses and enforce related judgements in accordance with the harmonised EU regime set out in the Recast Brussels Regulation. That obligation arises in all cases where the relevant proceedings start before the end of the transition period on December 31, 2020, even if the judgement itself is not handed down until afterwards.

Whatever happens in the negotiations between the two sides, it now seems certain that a continuation of the Recast Brussels Regulation following the end of the transition period is not on the table. This means, one way or another, there will be a change of regime in the UK as the Recast Brussels Regulation falls away on →

"Whatever happens in the negotiations between the two sides, it now seems certain that a continuation of the Recast Brussels Regulation following the end of the transition period is not on the table. This means, one way or another, there will be a change of regime in the UK as the Recast Brussels Regulation falls away on January 1, 2021"

→ January 1, 2021. How big that change is in practice depends on the negotiations, and there are two potential scenarios.

Scenario 1

The UK accedes to the Lugano Convention 2007 and the Hague Convention on Choice of Court Agreements 2005, and the Recast Brussels Regulation falls away. The Lugano Convention is an international convention that is broadly equivalent to the Recast Brussels Regulation but applies between EU member states and Switzerland, Iceland and Norway.

Under the Lugano Convention, contracting-state courts must respect jurisdiction clauses in favour of other contracting-state courts and enforce related judgements. For the UK to remain a Lugano Convention contracting state after the end of the transition period, it will need to accede to the convention in its own right. Importantly, this requires the consent of all other contracting states. The UK government sought the consent of the contracting states to accede to the Lugano Convention in this new capacity in April 2020.

The Hague Convention is an international agreement that requires contracting states to respect exclusive jurisdiction clauses in favour of other contracting states and to enforce related judgements, provided the jurisdiction clause in question was agreed after the convention entered into force in the state of the chosen court. The contracting states are currently the UK, all EU member states, Singapore, Mexico and Montenegro.

As with the Lugano Convention, to remain a Hague Convention contracting state after the end of the transition period, the UK will need to accede to the convention in its own right. However, this does not require the consent of the other Hague Convention contracting states, so the UK's accession is a unilateral step.

The UK government had previously begun the process to accede to the Hague Convention when a no-deal exit from the EU became a possibility. When the UK and EU 27 subsequently agreed an exit deal including a transition period, this pushed back the date on which the UK would need to accede, meaning it will now have to re-lodge its application three months before the end of the transition period.

The UK government has introduced draft legislation – currently known as the Private International Law (Implementation of Agreements) Bill – that will give domestic effect to the Hague Convention when the UK re-joins in its own right. The bill will also amend secondary legislation that has already been passed in the UK under the EU (Withdrawal) Act 2018 in relation to the UK's re-accession (the Civil Jurisdiction and Judgments (Hague Convention on Choice of Court Agreements 2005) (EU Exit) Regulations 2018).

These regulations currently include complex rules on how the Hague Convention will operate in the UK following the end of the transition period. Following proposals made during a debate in the House of Lords at the end of June 2020, it seems likely the bill will amend these regulations to simplify the rules. If the amendments are passed, it appears the Hague Convention will be deemed in the UK to apply to any exclusive jurisdiction clause entered into after the Hague Convention first entered into force in the UK on October 1, 2015.

Scenario 2

No agreement is reached between the UK and the EU 27 on civil judicial cooperation – specifically, the EU 27 does not agree to the UK re-joining the Lugano Convention in its own right. The UK nevertheless accedes to the Hague Convention. In this scenario, both the Recast Brussels Regulation and the Lugano Convention fall away. Save where the Hague Convention applies, English common law rules will apply when assessing jurisdiction clauses and the enforcement of related judgments (and national law will apply in EU member states).

This scenario would represent a marked shift in private international law. For the first time since the late 1960s, the default jurisdictional rules for many civil and commercial matters would be the flexible and largely uncodified English common law rules and the equivalent regimes in member states.

The UK has already legislated for this scenario via secondary legislation under the EU (Withdrawal) Act 2018, which will come into effect on January 1, 2021, assuming no agreement is reached with the EU 27 before then. This legislation will sound the death knell for the Recast Brussels Regulation and the Lugano Convention in the UK in all cases other than those where proceedings have been initiated prior to the end of the transition period.

Implications of scenario 1

If scenario 1 occurs, with the UK participating in the Lugano Convention and the Hague Convention but not the Recast Brussels Regulation, what will that mean for English jurisdiction clauses and judgements?

The Lugano Convention will become the primary regime rather than the Recast Brussels Regulation. The Lugano Convention largely mirrors the original Brussels Regulation. It therefore has not had the benefit of the updates included in the Recast Brussels Regulation, which were generally welcomed by commercial parties and those representing them.

Nevertheless, it is an effective regime on jurisdiction and judgements. If the UK acceded to the Lugano Convention, familiar European rules would continue to be applied by the English courts, as well as the courts of the EU 27, Switzerland, Iceland and Norway, including in respect of English jurisdiction clauses (at least where one party is domiciled in a contracting state). That would be the case whether those clauses are exclusive, non-exclusive or asymmetric. Importantly, English judgements would continue to be enforceable in the EU 27, Switzerland, Iceland and Norway under the Lugano Convention's mutual recognition regime.

If the UK re-accedes to the Lugano Convention on or shortly after January 1, 2021, it is anticipated the impact on those choosing an English jurisdiction clause in their 1992 or 2002 ISDA Master Agreements would be limited – subject to 'torpedo risk'.

ISDA members may be concerned by one potential impact of a reversion to the Lugano regime: the re-emergence of a tactical litigation manoeuvre commonly deployed by putative defendants when the old Brussels Regulation was in force, known as the 'Italian torpedo'.

This tactic involved putative defendants rushing to initiate proceedings in what they perceived to be a slow-moving member-state court (often in breach of a jurisdiction clause) before the prospective claimant could commence proceedings in the court chosen in the jurisdiction clause. The effect of this would be to temporarily block or 'torpedo' any determination of the claim against them in the chosen court, as the rules on related proceedings under the old Brussels Regulation required the second court involved to stay those proceedings and wait for the first court to determine jurisdiction. This could significantly delay the resolution of the dispute.

This problem was fixed in the Recast Brussels Regulation, after the issue was raised before the European Commission by commercial parties and bodies including ISDA, via an amendment that allows courts involved second to proceed if they were selected in an exclusive jurisdiction clause. This largely neuters the effect of any attempted torpedo where the Recast Brussels Regulation applies.

This helpful revision does not appear in the Lugano Convention, however. An interesting question is whether the Italian torpedo will re-emerge in 2021 under scenario 1. While this may make litigators' lives more interesting, it will certainly cause more headaches for commercial parties. Given the benefits that acceding to the Lugano Convention would bring, however, the risk of a resurgence of the torpedo would be a price worth paying for many parties.

Scenario 2

The UK accedes to the Hague Convention, and both the Recast Brussels Regulation and Lugano Convention fall away

Implications of scenario 2

If scenario 2 occurs, with the UK participating only in the Hague Convention, what will that mean for English jurisdiction clauses and judgements?

Parties to English law 1992 or 2002 ISDA Master Agreements that have been amended to include exclusive jurisdiction clauses should be able to rely on the Hague Convention following the end of the transition period, subject to two potential caveats.

First, there is a potential timing issue. The Hague Convention applies only to exclusive jurisdiction clauses agreed after the entry into force of the Hague Convention in the state of the chosen court. The Hague Convention first entered into force in the UK on October 1, 2015, so clauses entered into prior to that date will not be covered by the convention. The UK's implementing legislation looks likely to make it clear that, from a UK perspective, these clauses will be treated as Hague clauses from that date (notwithstanding the UK will leave and then immediately re-join the Hague Convention at the end of the transition period). However, it is not clear whether member-state courts will take the view that English jurisdiction clauses agreed before the UK re-joined in 2021 are within or outside the scope of the Hague Convention.

Second, there is a technical argument that the Recast Brussels Regulation rules take priority in certain cases where all the parties are domiciled within the EU. →

> "Although the negotiations on the future relationship are strictly separate from the negotiations on the UK's re-accession to the Lugano Convention, if the UK and the EU 27 agree to a close and wide-ranging future relationship, then the UK's re-accession to the Lugano Convention seems more likely than if no agreement on the future relationship is reached"

→ For parties to jurisdiction agreements falling outside the Hague Convention regime, including parties to unamended ISDA jurisdiction clauses, determining whether English jurisdiction clauses will be recognised and related judgements enforced is likely to be a question of national law in the relevant member state. Allen & Overy's published research into the position under the national laws of EU 27 states is broadly reassuring. Most respondents thought English jurisdiction clauses and judgements would continue to be respected and enforced under national law, but that it would be more expensive and take longer. However, some jurisdictions, such as Finland and Denmark, indicated enforcement may potentially be problematic.

If the UK and EU 27 end up in scenario 2, it may become increasingly commonplace for ISDA members to adapt their ISDA jurisdiction clauses to specify an exclusive English jurisdiction clause in order to take advantage of the Hague Convention.

Re-emergence of the anti-suit injunction?

In scenario 2, there may be more applications for 'anti-suit' injunctions from the English court. These are orders that aim to prevent a party from commencing or continuing proceedings in another court in breach of an exclusive jurisdiction clause. The Court of Justice of the European Union has ruled that such injunctions cannot be issued by member-state courts in respect of proceedings brought in other member states, as this would be inconsistent with principles of mutual respect between member states. However, post-transition, the English courts may take the view that they no longer need to refrain from granting such orders. This may be a helpful mechanism for ensuring parties comply with their obligations under exclusive English jurisdiction clauses.

Which scenario is most likely?

The political declaration on the future relationship between the UK and the EU 27 (which was agreed alongside the EU Withdrawal Agreement in October 2019) was completely silent on the prospect of an agreement for continued civil judicial cooperation. The same is true of the EU 27's negotiating mandate, published in February 2020.

In contrast, and consistent with the UK's position since the outset of the Brexit process, the UK's negotiating mandate did express an intention to reach an agreement on civil judicial cooperation – specifically, the UK's proposed continued civil judicial cooperation with the EU through the Hague Conference on Private International Law and the UK's accession to the Lugano Convention.

There is clearly an intention on the UK side to achieve scenario 1, and the UK submitted a request to accede to the Lugano Convention in April 2020. Switzerland, Iceland and Norway have stated they will agree to the UK's accession, but the EU is yet to make a decision on this question. It has been reported that the EU takes the view that participation in the Lugano Convention is something that sits alongside participation in the EU's single market.

Others have noted that EU parties, including consumers and other protected groups, as well as commercial parties, may benefit from the UK participating in a mutual regime on civil justice. Ultimately, politics is likely to prove the deciding factor. Although negotiations on the future relationship are strictly separate from the negotiations on the UK's re-accession to the Lugano Convention, if the UK and EU 27 agree to a close and wide-ranging future relationship, then the UK's re-accession to the Lugano Convention seems more likely than if no agreement on the future relationship is reached.

Either way, the next few months should shed light on whether the UK government's stated aim of re-joining the Lugano Convention is a real possibility in the near future. Commercial parties will need to keep a close eye on developments in this area and be ready once the position is clear to turn to the back pages of their contracts once again and respond accordingly. IQ

Karen Birch and Sarah Garvey are counsel in Allen & Overy's litigation practice in London

Cooperation is Key

*London has long been a centre for the resolution of disputes involving derivatives. **Sir William Blair**, former judge in charge of the London Commercial Court, professor of financial law and ethics at the Centre for Commercial Law Studies, Queen Mary University of London, and arbitrator at 3VB Chambers, talks to* **IQ** *about the challenges involved in adjudicating on complex disputes, the impact of Brexit and the importance of collaboration*

IQ: There are a number of commercial courts in various jurisdictions that adjudicate on disputes involving derivatives and other complex financial instruments. Why might counterparties choose the UK?

William Blair (WB): The question rightly recognises that parties to complex financial contracts choose the law that applies to their agreements and the place and method for dealing with disputes – it is one of the most important things they have to agree on. ISDA has led the way through industry agreed terms in this respect, and has gradually expanded the options.

Why might counterparties choose the UK? This year is the 125th anniversary of the establishment of the London Commercial Court. The reason it was set up was because of demand from business for judges who understand business needs. The position is exactly the same now. Among the reasons for choosing the UK are specialist judges, responsive procedures and English law, which is perceived as being commercially friendly. Language, time zone, ease of access, and the presence of major law firms and other supporting services are vital too.

But we have to remember that international commercial disputes are mobile. Parties have a choice. As the question implies, there are other excellent commercial courts – something to be welcomed – and arbitration is very important too. London has to work to stay ahead. It won't just happen. I think that the legal community and the people with responsibility for our courts and arbitral institutions fully realise this.

> "There are other excellent commercial courts – something to be welcomed – and arbitration is very important too. London has to work to stay ahead. It won't just happen"

IQ: As a former judge in charge of the London Commercial Court, you helped to establish the Financial List. Can you explain what that is and why it is important to London as a centre for dispute resolution?

WB: The Financial List is a judicial initiative. The impetus came in 2015 from the then chief justice, and began with a consultation process involving the key players including ISDA. It is intended for high-value cases, or cases with market importance or that require particular expertise. It is not intended as a high-volume list like (for example) the Shanghai Financial Court. It works by combining the expertise of judges from our business and property courts, including those with expertise in key areas for financial contracts, such as trusts and insolvency. There are 12 nominated judges, along with the judge in charge of the Commercial Court and the chancellor of the High Court.

Why is it important to London as a centre for dispute resolution? Because it shows a →

→ willingness to adapt to changes in market conditions – the financial markets now are unrecognisable from those of 30 years ago, and will be unrecognisable again in 30 years' time. One innovation is the Financial Markets Test Case Scheme, set up to facilitate the resolution of market issues where English law guidance is needed. This is being used by UK financial regulators to obtain court declarations on the effect of the coronavirus pandemic on selected business interruption insurance policies. Two judges, both highly experienced in insurance matters, heard the case at the end of July. The aim is to help to resolve contractual uncertainty at an early stage without waiting for disputes to come to court.

IQ: What are the challenges involved in adjudicating on disputes involving complex financial instruments like derivatives?

WB: It's a good question, and parties and their lawyers sometimes need to stand back and think about it. Lawyers are used to working in teams, some of whom will be working on nothing else. The judge essentially decides the case alone, and has other cases needing attention. So sheer complexity can be a real challenge. Presentation is key, and good lawyers strike a balance between what the court needs to know and the temptation for information overload. In cases involving financial instruments, it is also highly desirable that judges and arbitrators come with an understanding of the market context.

Otherwise, I would pick out two particular challenges. The first is documentation. Complex cases can produce many thousands of documents, and the tendency is to place too many of them before the court or arbitral tribunal – judges have been complaining about that for a long time. Only a relatively small number are likely to be relevant and, in the common law system, it is up to the parties to draw the ones that matter to the attention of the court.

The second is expert evidence. In financial cases, this can range from market practice to financial loss. PRIME Finance in The Hague can help identify experts. But such evidence tends to consist of a series of reports. Rather than present it cold, it can be useful for parties to focus on where the essential differences between the experts lie, what needs to be considered, and what is not in dispute. This can help parties settle disputes by narrowing differences. As occasionally happens in a number of countries, an amicus brief from ISDA can be very valuable where it is feasible to provide it. I know the common law system is adversarial, but we really need to think of resolving disputes as a collaborative process. This would also help address the two main complaints users have of commercial dispute resolution generally – the time it takes, and the expense.

IQ: You also helped to establish the Standing International Forum of Commercial Courts. What role does this play? How important is international cooperation among commercial courts?

WB: This is a judicial initiative out of London going back to 2016. Its role is to bring together commercial courts from various parts of the world – emerging as well as developed markets. There are about 40 jurisdictions represented, including courts in the major financial centres, and the Supreme People's Court and those of the Hong Kong Special Administrative Region in China. Some are newly established like the Astana International Financial Centre Court in Kazakhstan; others are long established such as the Tribunal de Commerce de Paris, now with the new International Chamber of the Paris Court of Appeal.

The world's commercial courts have never been brought together in this way before. What do we hope to achieve? There are three main aims: to provide a better service to business by sharing best practice; to make a better contribution to the rule of law than courts can achieve separately; and to support developing countries looking to enhance their own commercial dispute resolution. The importance of this cooperation has been shown practically during the pandemic.

IQ: How are commercial courts having to respond to the pandemic? What challenges have the courts faced, and do you think any of the measures introduced in response to the virus will become permanent?

WB: The total or partial closure of court buildings during the pandemic has been a global phenomenon. This has had a major impact on the ability of courts to deal with cases, commercial cases included. Bankruptcy and insolvency courts have a particularly important role in a crisis. Backlog is a worry, but there has likely been a fall-off in new cases filed. This does not necessarily apply everywhere – the London Commercial Court has seen a slight increase in filings and, according to the London Court of International Arbitration, the first quarter of 2020 saw a spike in new cases.

The challenge has been to deal with cases when most staff, judges and arbitrators – and of course parties, lawyers and potential witnesses – have been working from home. Many jurisdictions have reported an active and energetic adoption of hearings by remote technology, which has been surprisingly effective. However, this should not be overstated – even tech-savvy South Korea reports many hearings and trials being adjourned. Technical hazards such as poor connectivity and sub-optimal equipment abound, but there is a conviction that, in time, these are surmountable.

> "I know the common law system is adversarial, but we really need to think of resolving disputes as a collaborative process"

Will this have a permanent impact in commercial cases? The answer is almost certainly yes. Why fly people half way round the world – even when airline schedules are restored – if they can appear just as well remotely? But this can be exaggerated. Complex commercial disputes often involve people in different time zones, and in some – probably many – cases, face-to-face contact remains important. We are likely to see a mix emerging – some cases tried in a physical room as in pre-pandemic practice, others tried remotely, and others through hybrid hearings, with judges or arbitrators in the room and the parties joining remotely. What we must not do is allow this to become a purely technological debate. The question should be about enhancing the quality of justice – and that includes using technology to reduce waiting times and costs.

IQ: Do you think the UK will become a more or less attractive venue for the resolution of commercial disputes after Brexit? What measures might be necessary to ensure the UK continues to be an attractive option for counterparties when choosing a forum for dispute resolution?

WB: This question has been much debated, but the consensus seems to be that, overall, Brexit will not make much difference to the attractiveness of the UK as a venue for commercial disputes. ISDA has responded by drafting French and Irish law governed Master Agreements as additional governing law options, along with French and Irish court jurisdiction clauses, which is sensible. More generally, although automatic recognition of judgements currently depends on EU instruments, it is relatively rare in practice for enforcement measures to be required in major financial cases. It is to be hoped that when the frictions that Brexit has generated begin to recede, a mutual, Europe-wide system of recognition of civil and commercial judgements will be maintained. That is also in the interest of centres in the EU that want to attract business from London.

Importantly, arbitration should be entirely unaffected by Brexit, because enforcement of foreign arbitral awards takes places under the multi-national New York Convention. Over and above this, I would say that the priority that applies to the UK as much as anywhere else is to focus on the possibility of resolving disputes by negotiation and, if necessary, conciliation. Neither the pandemic, nor the economic recovery when it comes, should be hampered by disputes that could be agreed. The objective should be to create a legal environment in which business people feel safe and confident entering into negotiated solutions. IQ

Eyeing Cross-border Disputes

*A new international chamber of the Paris Commercial Court was launched in 2018, with the aim of creating an important hub for the resolution of cross-border commercial disputes. **Paul-Louis Netter**, president of the Paris Commercial Court, discusses the reasons for the initiative and the opportunities posed by Brexit*

IQ: Can you describe the role of the international chamber of the Paris Commercial Court?

Paul-Louis Netter (PLN): The international chamber is one of 13 chambers of the Paris Commercial Court, all dedicated to commercial disputes. It is the primary commercial court in France, both in terms of number of judges (180) and the level of expertise and specialisation of each of its chambers. Disputes are distributed by the court to a particular chamber, depending on the nature of the litigation and the issues under debate. The areas of specialisation span a broad range of economic activities, including banking and finance, corporate, contracts, transportation, antitrust, distribution, construction and media.

The international chamber is primarily responsible for ruling on cross-border litigations in the first instance. The cross-border nature of a litigation could take many forms, arising from the nationality of the litigating parties, the foreign law governing the agreement or the market in which the transactions were entered into. But counterparties can now also contractually give jurisdiction to the international chamber directly.

> "Brexit will be a game changer for cross-border litigation in Europe. Judgments of English courts will cease to benefit from the European judicial system organised under the Brussels I-bis Regulation"

IQ: Are you seeing increased interest from international parties choosing Paris as a forum for dispute resolution? Why might parties opt for the international chamber of the Paris Commercial Court?

PLN: Globalisation is obviously a key factor. In this context, Paris has, we believe, great assets to promote it. For one thing, France has a long tradition of having the greatest respect for the rule of law. The justice system comprises two tiers – first instance and appellate – with independent and highly competent courts. The Paris bar is one of the most developed in the world, with US, English and French international firms present and operating here since the end of World War I. Our case law has also consistently recognised the efficiency of netting, and the statutory safe harbour has been confirmed on many occasions by French courts, including in insolvency. French courts have the greatest respect for contracts, with strong emphasis on the intent of parties.

In addition, Paris is a major financial market, with both the European Securities and Markets Authority and the European Banking Authority based here. A number of large financial institutions with expertise in

investment banking, derivatives and/or asset management also have a presence in Paris.

These are all, by themselves, important legal and financial assets. But there is more, we believe. Brexit will be a game changer for cross-border litigation in Europe. Judgments of English courts will cease to benefit from the European judicial system organised under the Brussels I-bis Regulation. This means they will cease to be immediately and automatically enforceable in the EU 27. This will result in greater expense and difficulty in obtaining such recognition and enforcement – likely to be a key consideration, especially in financial and collateral matters.

This further strengthens the position of Paris as a centre for commercial disputes in Europe. Those strengths have already been recognised by both buy- and sell-side market participants, and the court is receiving more and more questions about its jurisdiction and the best way to elect for it.

IQ: What measures have been taken to make Paris a viable and attractive option for foreign counterparties when choosing a forum for dispute resolution?

PLN: An early decision was made by French authorities and regulators following recommendations made by the Legal High Committee for Financial Markets of Paris in 2017 to make every possible use of the flexibility authorised by French law to adapt and accommodate our procedural rules to international disputes. This has resulted in quite remarkable – and I believe unrivalled – changes.

As an illustration, I would highlight the fact that documents and agreements, together with tape recordings, can be brought before the Paris Commercial Court – as well as the Paris Court of Appeal – as valid evidence in English, with no need for a French translation. Interactions with the court, pleadings, submissions, conclusions, opinions and all hearings can be in English. A greater focus has also been given to hearings: parties will be able to ask experts to be heard by the court and cross-examined by the other party, all in English. Looking ahead, we strongly believe procedural rules globally will further converge and harmonise.

IQ: How would the international chamber of the Paris Commercial Court source expert judges to deal with complex financial judgements like derivatives?

PLN: I would first emphasise that all judges at the Paris Commercial Court are former business executives, each in the relevant market or domain that their respective chamber deals with. Among them are several bankers and financial experts.

This proximity with business, markets and companies stands as a guarantee to litigants of the best possible understanding of the issues at stake in a dispute, as well as the general context in which it takes place.

When it comes to derivatives or complex financial structured transactions, the court will make sure any case brought before it will be heard by a judge who is an expert in the field, whether he or she is a member of the international chamber or another chamber.

"We are patient and determined. Our conviction is that, with the continuous and formidable support we have had from the French authorities and regulators, Paris will, in a few years, be a more popular place for cross-border financial disputes that it has ever been before"

IQ: Most disputes involving derivatives have been subject to English or New York law and the jurisdiction of English or New York courts. Would the Paris Commercial Court take previous English and New York law rulings into account to inform its judgements?

PLN: The banking industry and financial sector have grown rapidly over the past 30 years. We are, of course, aware that the financial centres where this growth has been concentrated are New York and London. French banks have a strong presence in these markets, and have played their part in this development. We recognise that courts in these financial centres have been pivotal in this expansion by ensuring stability and legal certainty and encouraging financial, legal and contractual innovations. The Paris Commercial Court is eager to play a similar role for the European markets.

We fully appreciate that legal certainty is a key issue for market participants. I want to make this point clear: in any situation where there is an issue regarding the interpretation of a particular section of the ISDA Master Agreement (or any provision of another international market netting agreement), the Paris Commercial Court will first look for and examine previous court decisions on that section or provision. We will seek to ensure consistency and predictability to the greatest extent permitted by French law and by the specificities of the case.

In other words, the Paris Commercial Court does not see itself as a new 'Christopher Columbus' in the derivatives markets. Rather, we intend to offer a solid and stable alternative forum for global participants, with a sense of continuity and legal certainty.

IQ: Have you seen any indications that counterparties are opting for governing law other than English or New York law in derivatives or other financial transactions?

PLN: You do not change 30 years of market practice overnight. But major corporates and some French banks have picked up early on the French law ISDA Master Agreement. The legal and credit committees of many organisations have now approved the new agreement, and we have no reason to believe this will slow down any time soon, particularly because of Brexit.

Things can change, sometimes quite unexpectedly. We are patient and determined. Our conviction is that, with the continuous and formidable support we have had from the French authorities and regulators, Paris will, in a few years, be a more popular place for cross-border financial disputes that it has ever been before.

IQ: What steps has the court taken in response to the coronavirus outbreak?

PLN: As elsewhere, government regulations closed businesses and courts in the very early stages of the lockdown. The Paris Commercial Court quickly reacted and adjusted. This was a necessity at a time when companies, funds and institutions were under unprecedented pressure.

Priority was immediately given to restructuring, pre-insolvency and insolvency proceedings. The main role of the court is to assist companies and markets by promptly dealing with financial difficulties and by resolving complex situations quickly to save and protect businesses and jobs. Hearings were quickly held by video conference using encrypted software used by French judicial courts. The process ran relatively smoothly, and we have not encountered any particular difficulty.

Our level of activity on the prevention and pre-insolvency fronts has remained strong. All insolvency practitioners and administrators requested by distressed companies were appointed by the court , and they were able to start resolving difficulties with creditors under our supervision.

On April 20, we resumed hearings for less urgent disputes, again through video conference. As soon as permitted by the government, the court's premises will reopen. We have a return-to-work plan in place, and will ensure all required health precautions are taken and observed.

There is obviously nothing that couldn't be improved, but in such extraordinarily challenging times, the Paris Commercial Court has maintained its operations. There is now a long and difficult period before us. As with any other crisis in the past, we will learn a lot and we will use this to further improve and better serve our industries and markets. IQ

ISDA® Safe, Efficient Markets

What is the ISDA® CDM?

The ISDA Common Domain Model (ISDA CDM™) is a blueprint for how derivatives are traded and managed across the trade lifecycle. Having a single, common digital representation of derivatives trade events and actions will enhance consistency and facilitate interoperability across firms and platforms, providing a bedrock upon which new technologies can be applied.

WHY THE ISDA CDM?

Catalyst

- Over time, each firm has established its own systems and its own unique set of representations for events and processes that occur during the life of a derivatives trade.

- There is no commercial advantage to organizations maintaining their own representations. It results in firms having to continually reconcile their trades to make sure they have the same information – a big drain on resources. It also curtails the potential for greater automation, and results in increased operational risk.

- New technologies offer the potential for greater automation and efficiency, reducing complexity and costs. But effective automation can only be built on standardization.

Opportunity

- Derivatives market participants are looking at ways to reduce costs and improve the efficiency of back-office processes.

- An opportunity exists to create standards that support innovation and promote the adoption of new technologies.

- ISDA has a 30-year track record in developing industry standards.

BENEFITS OF THE ISDA CDM

- **Enhancing interoperability, reducing reconciliation and promoting straight-through-processing:** The ISDA CDM enables a consistent hierarchical representation across trades, portfolios and events, providing enhanced risk management and trade processing capabilities.

- **Creating an environment for innovation in financial markets:** The ISDA CDM creates a foundation for long-term process transformation using emerging technologies like cloud, distributed ledger and artificial intelligence. The ISDA CDM is available in machine-readable and machine-executable formats and languages that can be consumed by those technologies.

- **Delivering better regulatory oversight:** The ISDA CDM promotes transparency and alignment between regulators and market participants, ensuring regulatory goals can be met more efficiently.

Want more information? Contact Us: ISDA Market Infrastructure & Technology -
MarketInfrastructureandTechnology@isda.org

Dealing with the DTO

Equivalence for UK and EU trading venues before the end of the Brexit transition period is necessary to prevent damage to markets that are vital to investment and risk management in Europe. Alternative measures will only partly mitigate this damage and leave market participants and regulators with practical challenges

As the end of the Brexit transition period approaches, it is critical that the European Union (EU) and the UK recognise the equivalence of each other's trading venues in order to mitigate the impact of the UK's withdrawal from the EU.

If appropriate equivalence decisions are not in place by the end of the transition on December 31, 2020, counterparties subject to the derivatives trading obligation (DTO) in the EU and the UK will encounter significant issues, including an exacerbation in the fragmentation of liquidity in derivatives contracts that are highly important for investment and risk management in the financial system.

Specifically, EU counterparties that have to comply with the EU DTO and UK parties subject to the UK DTO that wish to trade over-the-counter (OTC) derivatives with each other after the end of the transition period will face conflicting requirements if the derivatives fall into scope of both DTOs (ie, the most liquid euro, US dollar and sterling interest rate swaps and index credit default swaps).

This conflict will arise when those EU and UK counterparties want to trade in-scope derivatives with each other on a cross-border basis. It will also occur when an EU counterparty wants to trade in-scope derivatives through a branch in the UK with a UK entity, or a UK party wishes to trade in-scope derivatives through a branch in the EU with an EU counterparty.

Without appropriate equivalence decisions, those counterparties would, in practice, only be able to trade in-scope derivatives with each other on US swap execution facilities (SEFs), as these venues are eligible under both the EU and UK DTOs. However, even if counterparties are able to trade with each other on US SEFs when the DTOs conflict, this would involve a significant increase in operational complexity and unpredictable implications for the effective functioning of markets.

The conflict between the EU and UK DTOs is likely to significantly exacerbate the fragmentation of liquidity in OTC derivatives markets between the EU and the UK that will result from Brexit.

The best way of mitigating the impact of this conflict is for the EU and the UK to recognise the equivalence of their respective legal and supervisory frameworks for trading venues. Given UK and EU trading venues will operate under substantively the same regulatory frameworks at the end of the transition period, there are no technical reasons why these equivalence decisions should not be made.

Alternative measures

If appropriate equivalence decisions are not forthcoming, the EU and the UK could take other steps to mitigate the impact of the conflict between their respective DTOs

"As the end of the Brexit transition period approaches, it is critical that the European Union and the UK recognise the equivalence of each other's trading venues"

– but these are unlikely to fully resolve the conflict and many practical challenges will remain for both firms and regulators.

One mooted option is for the EU and the UK to restrict the territorial application of their DTOs so they do not apply to trading conducted by their domestic entities through branches outside their territories (when trading with local counterparties in the branch jurisdiction or with third-country counterparties).

However, changing the territorial application of the DTOs in this way may require changes to the Markets in Financial Instruments Regulation (MIFIR) in the EU and an act of parliament in the UK. Measures to provide interim relief may therefore be required if the changes are not in effect at the end of the transition period.

The EU and the UK would also need to have a common approach to determining when a trade should (and should not) be regarded as executed through a branch, and firms would need to be able to implement that approach in order to ensure there are no gaps and no duplication in the application of the DTO. The jurisdiction in which the branch is located would likely want to apply its DTO to in-scope derivatives executed through the branch (the UK already does this), and to decide whether its clearing obligation should also apply to those trades. Another solution would be needed to address the conflicts that arise when EU and UK counterparties wish to trade with each other on a cross-border basis.

Alternatively, the EU and the UK could consider restricting the product scope covered by their respective DTOs to reduce the overlap. For example, the EU might determine there is insufficient liquidity in sterling or even US dollar interest rate swaps in the EU to warrant the inclusion of derivatives denominated in these currencies within the EU DTO after the transition period. The UK might perform a similar assessment of euro interest rate swap liquidity (or liquidity of other in-scope derivatives) in the UK after the transition period.

However, this approach may not eliminate, or even significantly reduce, the overlap between the scope of derivatives covered by the DTOs – in particular, if the UK concludes there is sufficient liquidity in the UK to warrant the continued inclusion of euro interest rate swaps in the UK DTO after the transition period. A solution would be needed to address the conflicts that would arise when EU and UK counterparties wish to trade derivatives with each other that are subject to both DTOs.

The EU and the UK could also leverage a mechanism under article 33 of MIFIR to avoid duplicative and conflicting rules by recognising the equivalence of each other's DTOs. This would have a more limited impact than a decision recognising the equivalence of EU or UK trading venues because it would only facilitate trading between EU and UK counterparties. However, this mechanism may be better suited to a situation where the EU or UK is unilaterally deferring to the other's DTO. It would not fully resolve conflicts where the DTOs apply in relation to trading through local branches with third-country counterparties.

UK action needed

Irrespective of whether equivalence decisions are in place or other action is taken to mitigate the impact of the conflict between the EU and UK DTOs, the UK should address additional issues that are created as a result of the way in which the UK DTO will apply to trading by EU counterparties.

The UK has been urged to remove the extraterritorial requirement for firms in the UK's temporary permission regime (TPR) to comply with the UK DTO when trading with UK counterparties outside the UK. UK authorities should also make clear that the UK DTO does not apply to EU firms in the TPR when those institutions are trading from offices outside the UK with EU or third-country counterparties.

Unless the EU and the UK adopt a revised common approach to the territorial application of their DTOs to trading conducted through branches, the UK should remove the requirement for branches of EU and other third-country firms to comply with the UK DTO. IQ

This article is a shortened version of an ISDA paper published on September 15, 2020: *Brexit: Impact on the Derivatives Trading Obligation and the Characterisation of OTC Derivatives in the EU and the UK*. To read the full paper, visit bit.ly/3ke2xEe

CCP EQUIVALENCE: AVOIDING THE BREXIT CLIFF EDGE

The importance of securing equivalence prior to the end of the Brexit transition period is not confined to trading venues. Central counterparties (CCPs) will also require mutual recognition when the UK is no longer treated as a member of the European Union (EU).

In October 2018, ISDA and several other industry associations published a paper on the impact of Brexit on over-the-counter (OTC) derivatives, setting out reasons why a no-deal Brexit would have a disruptive cliff-edge effect on EU regulations that apply to the derivatives market.

A second paper published in July 2020 warned that the imminent end of the Brexit transition period could have a similarly disruptive effect. EU and member-state authorities previously took some limited actions to mitigate the impact of a no-deal Brexit, but many of those actions expired when the UK entered the transition period.

In particular, the previous temporary recognition of UK CCPs in the event of a no-deal Brexit lapsed after the conclusion of the withdrawal agreement. The paper makes clear that appropriate steps are needed to recognise UK CCPs under the European Market Infrastructure Regulation, with effect from the end of the transition period.

As **IQ** went to press, a temporary and conditional equivalence determination for CCPs was understood to be close to publication, giving EU firms access to UK-based CCPs until mid-2022.

Without this determination, EU firms would have been unable to remain as clearing members and EU counterparties would have been unable to clear derivatives at those CCPs. EU and UK counterparties would also have faced huge operational challenges caused by the migration of thousands of contracts to alternative CCPs.

To read the July 2020 paper, visit: bit.ly/33wFL3J

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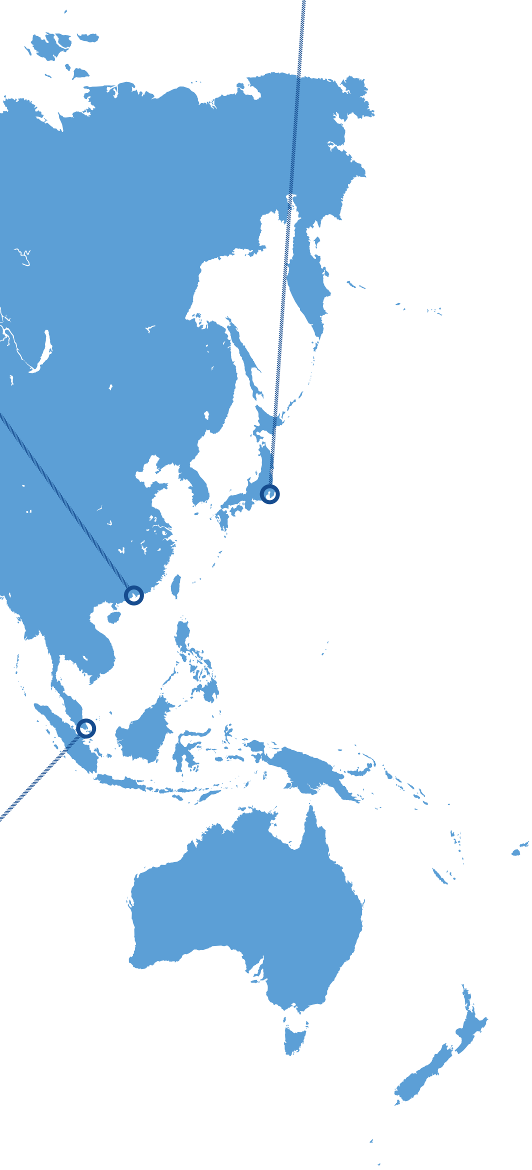

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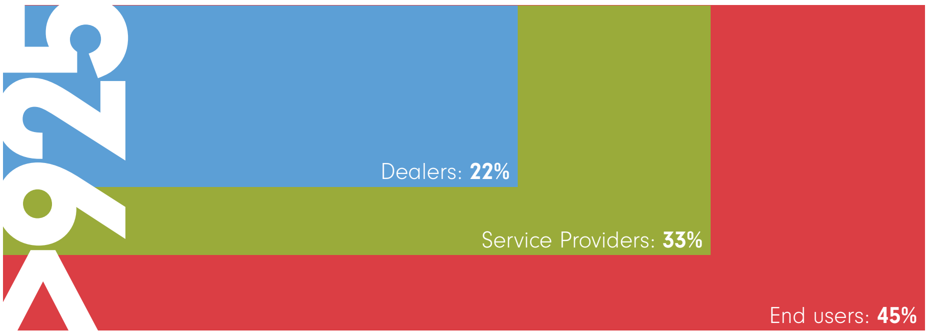
MEMBERSHIP BREAKDOWN

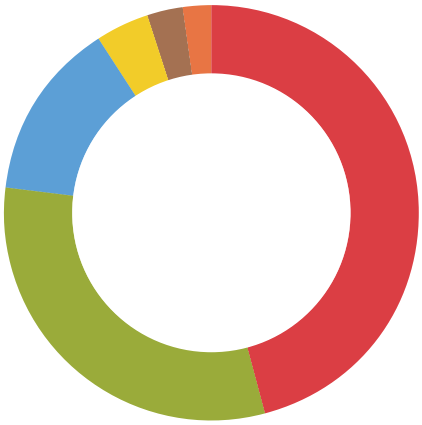


TYPES OF MEMBERS

Banks	30%
Law Firms	22%
Asset Managers	10%
Government Entities	13%
Energy/Commodities Firms	7%
Diversified Financials	5%
Other	13%

GEOGRAPHIC COLLATERALISATION

Europe	46%
North America	31%
Asia-Pacific	14%
Japan	4%
Africa/Middle East	3%
Latin America	2%



Additional information regarding ISDA's member types and benefits, as well as a complete ISDA membership list, is available on the Association's website:
https://www.isda.org/membership/

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ISDA Safe, Efficient Markets

MISSION STATEMENT

ISDA fosters safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products

STRATEGY STATEMENT

ISDA achieves its mission by representing all market participants globally, promoting high standards of commercial conduct that enhance market integrity, and leading industry action on derivatives issues.

THE PREEMINENT VOICE OF THE GLOBAL DERIVATIVES MARKETPLACE

Representing the industry through public policy engagement, education and communication

AN ADVOCATE FOR EFFECTIVE RISK AND CAPITAL MANAGEMENT

Enhancing counterparty and market risk practices and ensuring a prudent and consistent regulatory capital and margin framework

THE SOURCE FOR GLOBAL INDUSTRY STANDARDS IN DOCUMENTATION

Developing standardized documentation globally to promote legal certainty and maximize risk reduction

A STRONG PROPONENT FOR A SAFE, EFFICIENT MARKET INFRASTRUCTURE FOR DERIVATIVES TRADING, CLEARING AND REPORTING

Advancing practices related to trading, clearing, reporting and processing of transactions in order to enhance the safety, liquidity and transparency of global derivatives markets

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"Time is of the essence, and market participants should get operationally ready for transitioning from LIBOR to alternative reference rates. We would strongly encourage firms to take concrete action"

Howard Lee, deputy chief executive, Hong Kong Monetary Authority