ISDA Safe, Efficient Markets

September 21, 2020

Andrew Bailey
Governor
Bank of England

John Williams
President and Chief Executive Officer
Federal Reserve Bank of New York

Co-Chairs, Financial Stability Board Official Sector Steering Group

By email

Re: Timing of the ISDA IBOR Fallbacks Protocol

Thank you for your continued support of ISDA's work to implement robust fallbacks for derivatives referencing key interbank offered rates (IBORs). We look forward to taking the next steps for this important initiative.

From a documentation and infrastructure perspective, ISDA is now in a position to launch the IBOR Fallbacks Protocol and the IBOR Fallbacks Supplement to implement the new fallbacks for legacy and new derivative contracts, respectively. However, as we have discussed, the actual launch of the IBOR Fallbacks Protocol and the IBOR Fallbacks Supplement remains subject to, and now completely contingent on, completion of our submissions to relevant competition authorities. Specifically, the launch will occur only if and after (1) ISDA receives a positive business review letter from the US Department of Justice (DoJ) and (2) we disclose the DoJ's letter to competition authorities in other jurisdictions and we receive positive feedback from our outside counsel in those other jurisdictions.[1] We hope to receive such feedback soon and our expectation is that feedback from outside counsel in those other jurisdictions will be positive if the DoJ issues a positive business review letter. We cannot predict with certainty how long it will take to receive feedback, but we are hopeful that it will only require 1-2 weeks.

Additionally, as we have also discussed, ISDA will provide market participants with approximately two weeks' notice of the official launch date and later effective date. During this two-week period, ISDA expects to facilitate a process whereby regulated entities and other key market participants can adhere to the IBOR Fallback Protocol 'in escrow' prior to the launch

[1] We have engaged counsel in a variety of jurisdictions, including without limitation the European Union, Australia, and Canada.

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date. More information about the process and objectives of the adherence in escrow process was set out in the letter we sent to the chairs of the various risk-free rate working groups in July.[2]

Finally, the IBOR Fallbacks Supplement and the IBOR Fallbacks Protocol will take effect approximately three months after the launch date. Market participants have almost unanimously advised ISDA to avoid an effective date during the last two weeks of December or the first week of January. Some market participants have also requested that ISDA avoid an effective date at any time in December because of code freezes that could impact operational implementation of the changes. Separately, a number of market participants have noted that less than a three-month period between the launch date and the effective date would not allow sufficient time for counterparty outreach and adherence, and the period should therefore be at least three months. Accordingly, we will avoid an effective date in December and provide a three-month period between the launch date and the effective date, which means that the effective date will not occur before the second half of January 2021.

As a practical matter, when the IBOR Fallbacks Supplement takes effect, all cleared OTC and non-cleared derivatives transactions entered after the effective date that incorporate the 2006 ISDA Definitions and reference a covered IBOR will contain the new fallbacks without further action by the counterparties. We also understand that this is the date that major CCPs intend to apply the new fallbacks to all new and existing cleared OTC derivatives transactions. Firms will be able to continue to adhere to the IBOR Fallbacks Protocol after the effective date and such a later adherence will not have a practical impact if the firms and their counterparties adhere prior to an actual cessation of a covered IBOR (or non-representative publication in the case of LIBOR). However, the objective of the three-month period is to allow the bulk of the market to agree to include the new fallbacks in their existing non-cleared derivatives transactions before the effective date.

As we have discussed, although ISDA has been in regular contact with the US DoJ and competition authorities in other jurisdictions regularly over the past several years, we have no control over when or if we will receive a positive business review letter from the US DoJ or positive feedback from outside counsel in those other jurisdictions. However, as ISDA is now in a position to launch the IBOR Fallbacks Supplement and the IBOR Fallbacks Protocol today, we are not aware of anything else that would delay the launch.

We would welcome the opportunity to discuss the timing described above with you. We note the remarks from the UK FCA and IBA regarding potential statements prior to the end of 2020 announcing future (post-2021) dates for the cessation and/or non-representativeness of LIBOR. As we have noted, any such announcements would result in the spread adjustments for the new fallbacks 'freezing' pursuant to the terms of the Bloomberg Rule Book that is already in effect and the 'frozen' spread adjustments applying to fallbacks that take effect in contracts

[2] http://assets.isda.org/media/4647387a/76e75f97-pdf/

incorporating the IBOR Fallbacks Supplement and the amendments made by the IBOR Fallbacks Protocol in the same way that they would apply if the announcements were made after the effective date.

Sincerely,

Scott O'Malia	Katherine Tew Darras
Chief Executive Officer	General Counsel