ISDA 2020 IBOR Fallbacks Protocol

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2020 IBOR Fallbacks Protocol: Infrastructure

ISDA 2020 IBOR Fallbacks Protocol

Last Updated: January 18, 2021

Number of Parties: 7230

Protocol:

Covered Arrangements, Amendment and Adherence.

ISDA 2020 IBOR FALLBACKS PROTOCOL

published on October 23, 2020
by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. (**ISDA**) has published this ISDA 2020 IBOR Fallbacks Protocol (this **Protocol**) to enable parties to Protocol Covered Documents to amend the terms of each such Protocol Covered Document to (i) in respect of a Protocol Covered Document which incorporates, or references a rate as defined in, a Covered ISDA Definitions Booklet, include in the terms of such Protocol

Supplement:

Amendments to Transition to RFR

Amendments to the 2006 ISDA Definitions to include new IBOR fallbacks

Supplement number 70 to the 2006 ISDA Definitions

Final on October 23, 2020 and published and effective on January 25, 2021

Adherence Letter:

How you adhere to the Protocol

EXHIBIT 1
to the ISDA 2020 IBOR FALLBACKS PROTOCOL

Form of Adherence Letter

[Letterhead of Adhering Party]

[Date]

FAQ:

Many answers you need

ISDA 2020 IBOR Fallbacks Protocol (IBOR Fallbacks Protocol) FAQs

ISDA has prepared this list of frequently asked questions to assist in your consideration of the IBOR Fallbacks Protocol.[1] Unless otherwise defined herein, capitalized terms used in these FAQs have the meanings given to them in the IBOR Fallbacks Protocol, the Supplement to the 2006 ISDA Definitions, finalized on October 23, 2020 and to be published by ISDA and effective on

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How does the Protocol & Supplement work? High Level

Execute Adherence Letter

- Amendments made on **25 January 2021** to all Legacy and future Covered Transactions with other Adhering Counterparties

- No Amendments to Adherence Letter can be made in Amendment Letter

- Latera adherence possible

Supplement: Legacy Transactions

Supplement is *Supplement No.70* to the 2006 ISDA Definitions. So, adhering to the Protocol updates Covered Transactions prior to the Implementation Date incorporates Supplement 70 existing Covered Transactions.

Supplement: Future Transactions

Future Transactions which The Supplement applies only to new transactions which are entered into on/after the Effective Date i.e. incorporating the 2006 ISDA Definitions into a Confirmation after this time

Big Bang/Implementation Date:

25 January 2021

Amendments of transactions via the Protocol apply as of the Implementation Date or date of adherence.

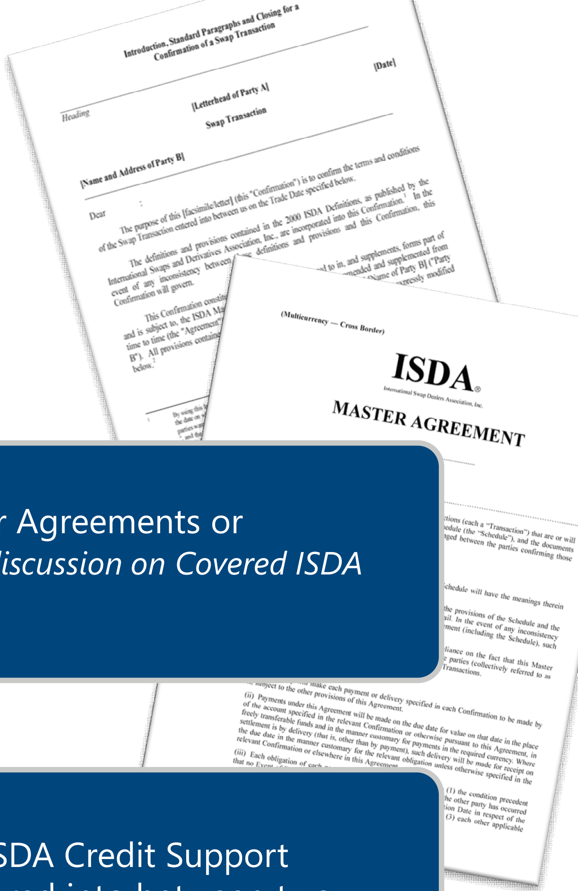
No cut-off for adherence, but ISDA can implement a 30 day limit

What is amended?:

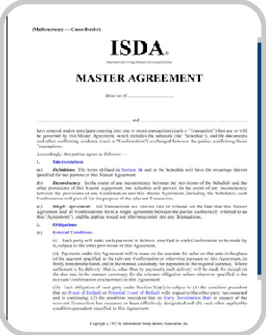
- On Pre-cessation Events, legacy IBORs are amended to new Risk Free Rates

- Why this is complicated is discussed further on

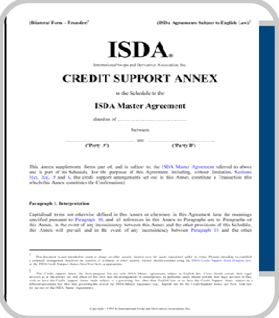
What are the Protocol's Covered Arrangements?



The Protocol covers 3 Categories of Documentation:



"**Protocol Covered Master Agreements**" are ISDA Master Agreements or "**Additional Master Agreements"** (*see next slide and note discussion on Covered ISDA Definitions Booklets*).



"**Protocol Covered Credit Support Documents**" are an ISDA Credit Support Document or an Additional Credit Support Document entered into between two Adhering Parties.

A "**Protocol Covered Confirmation**" are a Confirmation entered into between two Adhering Parties and includes a confirmation which supplements, forms part of and is subject to, or is otherwise governed by, a Master Agreement and incorporates a Covered ISDA Definitions Booklet.

ISDA Fallbacks Protocol: Inclusion of Non-ISDA Documents

Additional Credit Support Documents

(a) 2007 FBF Collateral Annex;

(b) 1997 ABF Collateral Annex;

(c) AFB/FBF Addendum to the ISDA 2016 Credit Support Annex for Variation Margin (VM);

(d) 2008 Credit Support Appendix to the Swiss Master Agreement for OTC Derivative Instruments published by the Swiss Bankers Association;

(e) 2015 Credit Support Appendix to the Swiss Master Agreement for OTC Derivative Instruments published by the Swiss Bankers Association;

(f) Credit Support Appendix for Variation Margin to the Swiss Master Agreement for OTC Derivative Instruments published by the Swiss Bankers Association.

Additional Master Agreements

(a) 2001 FBF Master Agreement relating to Transactions on Forward Financial Instruments;

(b) 2007 FBF Master Agreement relating to Transactions on Forward Financial Instruments;

(c) 2013 FBF Master Agreement relating to Transactions on Forward Financial Instruments;

(d) 1994 AFB Master Agreement for Foreign Exchange and Derivatives Transactions;

(e) 2007 AFTI/FBF Master Agreement for Loans of Securities;

(f) 1997 AFTI/FBF Master Agreement for Loans of Securities;

(g) 2007 FBF Master Agreement for Repurchase Transactions;

(h) 1994 AFTB Master Agreement for Repurchase Transactions with Delivery of Securities;

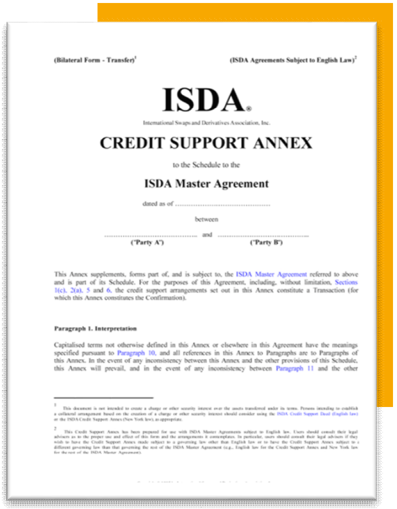
Helpfully, ISDA has produced a "**List of Non-ISDA Documents for inclusion in Protocol"**, which confirms that various Non-ISDA Documents, can also be covered by the Protocol, such as the GMRA; GMSLA; the 2007 FBF Master Agreement for Repurchase Transactions; the 2013 Spanish Master Agreement (CMOF); and the 2013 Swiss Master Agreement.

Which rates are updated by the protocol and which are not?

IBOR	IBOR Administrator	Alternative RFR	Alternative RFR Administrator
Bank Bill Swap Rate (BBSW)	Australian Securities Exchange (ASX)	Reserve Bank of Australia Interbank Overnight Cash Rate (AONIA)	Reserve Bank of Australia (RBA)
Canadian Dollar Offered Rate (CDOR)	Refinitiv	Canadian Overnight Repo Rate Average (CORRA)	Bank of Canada
LIBOR (EUR)	IBA	Euro Short-term Rate (€STR)	European Central Bank (ECB)
Euro Interbank Offered Rate (EURIBOR)	European Money Markets Institute (EMMI)		
Hong Kong Inter-bank Offered Rate (HIBOR)	Treasury Markets Associations (TMA)	Hong Kong Dollar Overnight Index Average (HONIA)	TMA
LIBOR (JPY)	IBA	Tokyo Overnight Average Rate (TONA)	Bank of Japan
Tokyo Interbank Offered Rate (TIBOR)	Japanese Bankers Association TIBOR Administrator (JBATA)		
Euroyen TIBOR	JBATA		
Singapore Dollar Swap Offer Rate (SOR)	ABS Co	Singapore Overnight Rate Average (SORA)*	MAS
London Interbank Offered Rate (LIBOR)	ICE Benchmark Administration (IBA)	Swiss Average Rate Overnight (SARON)	SIX Swiss Exchange
Thai Baht Interest Rate Fixing (THBFIX)	Bank of Thailand	Thai Overnight Repurchase Rate (THOR)*	Bank of Thailand
LIBOR	IBA	Sterling Overnight Index Average (SONIA)	Bank of England
LIBOR (USD)	IBA	Secured Overnight Financing Rate (SOFR)	Federal Reserve Bank of New York (NY Fed)

BUT:

- **Effect Fed Funds Rate and ESTR, which are used extensively in CSAs are not covered by the Protocol, but in practice need to be updated.**
- **EIOPA**


(Bilateral Form - Transfer)
(ISDA Agreements Subject to English Law)
ISDA.
International Swaps and Derivatives Association, Inc.
CREDIT SUPPORT ANNEX
to the Schedule to the
ISDA Master Agreement
dated as of
between
and
("Party A") ("Party B")
Paragraph 1. Interpretation

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Index Cessation Event & Pre-cessation Trigger

Supplement defines "**Index Cessation Event**":

- **Rate Administrator**: Rate administrator makes a public statement by a rate administrator announcing that is has ceased or will cease to provide a rate permanently or indefinitely, provided that at the time of the statement or publication there is no successor administrator that will continue to provide LIBOR.

- **Regulator**: A public statement by a relevant body stating that he administrator has ceased or will cease to provide the rate permanently or indefinitely, where there is no successor administrator.

- **FCA (LIBOR only)**: A statement or publication of information by the FCA, that the LIBOR rate is, or will become, non-representative of the underlying market, that representativeness will not be restored, and that the statement is to engage triggers for fallbacks activated by pre-cessation announcements: **Pre-Cessation Trigger**

- **Index Cessation Effective Date**: This is the first date an IBOR is no longer provided (or in the case LIBOR, is judged non-representative)

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All-in Fallback Rates: The SOFR Example

Compound in Arrears: SOFR is compounded in arrears i.e. a compounded rate over a period e.g. 3m, 6m. This means final rates aren't known until the end of an interest period.

Backward Shift: Due to compound in arrears, two day shift applied to an interest period, so that interest rate calculation period starts two Business Days before the relevant period and ends two days after.

Spread Adjustment: This captures the credit element of LIBOR (LIBOR is unsecured, but SOFR is **secured, based on transactions** collateralized by US treasuries. Based on 5 year historical medial looking at the relevant IBOR and relevant compounded risk free rate.

Update IBOR/EURIBOR fallbacks shown on EUR-EURIBOR-Reuters as an example

- Definition of EUR-EURIBOR-Reuters (unchanged)
- EUR-EURIBOR-Reuters no index cessation fallbacks
  - Alternative source to be used if no screen rate is published (administrator itself or alternative authorised distributor) otherwise
  - Determination by Calculation Agent of a commercially reasonable alternative to EURIBOR recommended by administrator or supervisor or if not available based on own determination taking into account CCPs or futures exchanges
- EUR-EURIBOR-Reuters index cessation fallbacks
  - Reference to “Fallback EuroSTR”
  - Fallbacks in case of non index cessation disruptions of “EuroSTR”
  - Fallbacks in case of a cessation of “Fallback EuroSTR”

LIBOR Cessation Timeline – IBA Announcement

- In July 2017, UK Financial Conduct Authority (FCA) announced it would not require banks to submit to LIBOR after December 31, 2021
- FCA and other regulators have urged end-users to transition from LIBOR by that date
- On November 30, 2020, ICE Benchmark Administration (IBA), the administrator of USD LIBOR announced:
  - It will cease publication of 1week and 2 month USD LIBOR on Dec 31, 2021
  - It does not intend to cease publication of other tenors until June 30, 2023
- IBA previously announced on November 18, 2020 that it would cease publication of GBP, EUR, JPY and CHF IBOR on December 31, 2021
- IBA consultation open for comment until January 25, 2021 (but viewed as largely procedural requirement). Final statement expected February

LIBOR Cessation Timeline – Regulator Response

- The FCA and US regulators issued coordinated supporting statements:
  - Banks encouraged to cease new USD LIBOR contracts "as soon as practical" and no later than December 31, 2021
  - Contracts after that date create "safety and soundness risks" for banks
  - June 30 2023 cessation date allows more time for legacy contracts to mature
  - Banks should use extra time to continue transition plans
- Extension expected to principally benefit legacy FRNs and syndicated loans and not to impact Protocol adherence:

> *"This does not give market participants a reason to not adhere to the ISDA IBOR Fallbacks Protocol or otherwise defer transition in relation to USD LIBOR."*

- Edwin Schooling Latter, FCA, December 4, 2020

LIBOR Cessation Timeline – Impact for Protocol

- IBA November announcements not 'Index Cessation Event' for ISDA documents or 'Spread Adjustment Fixing Date' for Bloomberg rulebook
- Final announcement would trigger spread fixing for all USD LIBOR tenors
- Likely timeline:
  - To end of 2021: No change to swap contracts
  - To June 30, 2023:
    - 1 week and 2 month LIBOR calculated by Linear Interpolation of published rates
    - All other tenors continue to reference the relevant LIBOR rate
  - After June 30, 2023: All USD LIBOR swaps of all tenors fall back to the compounded SOFR rate plus the spread adjustment fixed in 2021
- "Pre-cessation triggers" unlikely for USD LIBOR but still possible for other currency LIBORs

Adherents to the Protocol - Overview

- 7,854 adherents to the Protocol as of January 19, 2020, including:
  - All major trading entities of all global dealers
  - National and regional banks
  - Asset managers, pension schemes, funds
  - Corporates
- Use of the Protocol is open to all entities and entirely voluntary
- Strongly encouraged by US and UK regulators
- Identity of adherents is published on ISDA website upon adherence
- Entities may adhere individually or as agents on behalf of clients

Adherents to the Protocol - Questions

- Will my financing arrangements transition at the same time and on the same basis as my hedging arrangements?
- Is the Protocol effective to amend my contracts? Are the agreements covered?
- Will I need to bilaterally exclude any contracts or transactions?
- What will be the economic impact on my portfolio of the spread adjustment?
- For agents, is blanket adherents for all clients appropriate?
- Will the fallbacks trigger a 'lifecycle event' to bring transactions into scope for clearing or margining?
- Do I need any third party consents to amend the terms of my contracts?

In-Scope and Out-of-Scope Agreements

- Protocol covers all 'Protocol Covered Master Agreements' and 'Protocol Covered Credit Support Documents' that reference a 'Relevant IBOR' and incorporates one of the following 'Covered ISDA Definitions Booklets' (or includes the relevant definition therefrom):
  - 2006 ISDA Definitions
  - 2000 ISDA Definitions
  - 1998 ISDA Euro Definitions
  - 1991 ISDA Definitions
- Protocol Covered Master Agreements include over 70 Additional Master Agreements (including local law master agreements, repo agreements, securities lending agreements)
- Non-ISDA documents not subject to ISDA's legal due diligence as to the effectiveness of the Protocol amendment process

Dealing with Out-of-Scope Agreements: ISDA Bilateral Amendment Forms

Template Form of Amendment for short-form bilateral adoption of the terms of the ISDA 2020 IBOR Fallbacks Protocol in existing agreements (Principal version)

Introduction

The International Swaps and Derivatives Association, Inc. (**"ISDA"**) has published this Form of Amendment to enable parties to amend one or more existing confirmations, existing

Template Form of Amendment for long-form bilateral adoption of the terms of the ISDA 2020 IBOR Fallbacks Protocol in existing agreements (Principal version)

Introduction

The International Swaps and Derivatives Association, Inc. (**"ISDA"**) has published this Form of Amendment to enable parties to amend one or more existing confirmations, existing master agreements or existing credit support documents to incorporate in one or more of those documents the relevant terms of the Attachment to the ISDA 2020 IBOR Fallbacks Protocol (the **"IBOR Fallbacks Protocol"**) in 'long-form' if

Although adherence to the Protocol is likely to be high, not all counterparties will adhere, and not all derivatives agreements will be suitable for adherence, *e.g.* Loan-linked hedging arrangements. Agreements excluded from the Protocol can either have amended fallbacks covered in the Annex to the Protocol, or in a separate bilateral agreement.

ISDA has therefore produced multiple template agreements which the Protocol will not be appropriate for.

Short Form Bilateral Fallbacks Protocol Adoption Agreement”

Template Form of Amendment for long-form bilateral adoption of the terms of the ISDA 2020 IBOR Fallbacks Protocol in existing agreements (Principal version)

<u>Introduction</u>

The International Swaps and Derivatives Association, Inc. (“**ISDA**”) has published this Form of Amendment to enable parties to amend one or more existing confirmations, existing master agreements or existing credit support documents to incorporate in one or more of those documents the relevant terms of the Attachment to the ISDA 2020 IBOR Fallbacks Protocol (the “**IBOR Fallbacks Protocol**”) in ‘long-form’ if

The Short-form Bilateral Fallbacks Protocol Adoption Agreement allows parties to amend one or more of their existing confirmations, existing master agreements or existing credit support documents (a “Document Package”) to incorporate the Fallbacks Protocol in its entirety, if one or both of the parties have not adhered to the IBOR Fallbacks Protocol. The template also allows parties to include additional terms, including in templates published separately by ISDA, to supplement the Fallbacks Protocol’s terms. The parties can also dis-apply pre-cessation fallbacks, and exclude some documents from the agreement.

This template would be suitable for clients which will not adhere to the Protocol, perhaps due to a limited number of transactions, but would like to take advantage of the Protocol’s terms.

Long Form Bilateral Fallbacks Protocol Adoption Agreement

Template Form of Bilateral Agreement for amending references to USD Interest Rates in Credit Support Documents

<u>Introduction</u>

The International Swaps and Derivatives Association, Inc. ("**ISDA**") has published this Form of Amendment to enable parties to amend one or more existing credit support documents to replace references to any USD interest rate with a reference to SOFR.

Parties responsible for determining the appropriateness of this "Form of Amendment":

The documentation of each individual transaction and wording of

The Long-form Bilateral Fallbacks Protocol Adoption Agreement also allows parties to amend a Document Package to incorporate the Fallbacks Protocol in its entirety. The document is very similar to the Short Form Bilateral Fallbacks Protocol Adoption Agreement, but sets out the Protocol in full as an annex.

This template would be suitable for clients who are not familiar with the Protocol, for example private wealth clients, and would like to sign up to a single document.

Template Amendment Language Bilateral ISDA Forms: Disapplication Pre-cessation Trigger

- **Template wording to disapply the 'pre-cessation' trigger in the Fallbacks Protocol in existing agreements**

This template wording enables parties to amend a Document Package to disapply the 'pre-cessation' trigger 'hardwired' into the 'Index Cessation Event' trigger and in related provisions in Fallbacks Protocol.

Template wording to disapply the 'pre-cessation' trigger set out in the ISDA 2020 IBOR Fallbacks Protocol in existing agreements

<u>Introduction</u>

The International Swaps and Derivatives Association, Inc. ("**ISDA**") has published this template wording to enable parties to amend one or more existing confirmations, existing master agreements or existing credit support documents to disapply the 'pre-cessation' trigger that is 'hardwired' into the 'Index Cessation Event' trigger and in related provisions in the ISDA 2020 IBOR Fallbacks Protocol (the "**IBOR Fallbacks Protocol**").

Parties responsible for determining the appropriateness of this template wording:

Template wording to exclude existing documents from the scope of the ISDA 2020 IBOR Fallbacks Protocol

- This template wording enables parties to amend a Documents Package to exclude one or more documents from the scope of the Fallbacks Protocol, in a bilateral amendment agreement. ISDA has also produced an IBOR Fallbacks Product table, which sets out suggested amendments for further types of swaps.
- The template wording provides five clause options for inclusion:

Template wording to exclude existing documents from the scope of the ISDA 2020 IBOR Fallbacks Protocol

Introduction

The International Swaps and Derivatives Association, Inc. ("**ISDA**") has published this template wording to enable parties to amend one or more existing confirmations, existing master agreements or existing credit support documents to exclude one or more of those documents from the scope of the ISDA 2020 IBOR Fallbacks Protocol (the "**IBOR Fallbacks Protocol**").

Template wording to exclude existing documents from the scope of the ISDA 2020 IBOR Fallbacks Protocol

- **Option 1:** A Document Package Agreement is excluded from the Fallbacks Protocol/Bilateral Form Annex and separate triggers and fallbacks apply in one or more of those documents. For example, Bank may have entered into a Documentation Package with an Australian Bank, and both parties have adhered to the Protocol. However, both parties want to reverse the Protocol amendments made in various 1995 ISDA Credit Support Annexes which are "Protocol Covered Documents" under the Fallbacks Protocol. To do so the parties use the wording in Option 1 to list out these documents and amend them, and then include separate triggers and fallbacks.

- **Option 2**: To exclude one or more Documentation Package Documents in the Fallbacks Protocol/Bilateral Form Annex from the scope of the Fallbacks Protocol **and** provide that the triggers and fallbacks in one or more such documents should match the triggers and fallbacks in a related hedged product (such as a loan or a bond). For example, Bank may have entered into a Documentation Package with a French Asset Manager, and both parties have adhered to the Protocol. The parties want to reverse the amendments made pursuant to that protocol in various loan-linked interest rate swap confirmations which are "Protocol Covered Documents" for the purposes of the Fallbacks Protocol. They can use the wording in Option 2 to list out these documents and amend them **and** then also specify that certain of these documents will incorporate the triggers and fallbacks in the related loan agreements.

Template wording to exclude existing documents from the scope of the ISDA 2020 IBOR Fallbacks Protocol

- **Option 3**: To exclude one or more Documentation Package Documents -from the scope of the IBOR Fallbacks Protocol on the basis that they already contain fallbacks negotiated by the parties (identified as any document between the parties which contains a specified set of fallbacks). For example, if the IBOR Fallbacks Protocol applies as between the parties, and the parties want to reverse the amendments made pursuant to that protocol in various loan-linked interest rate swap confirmations (which are "Protocol Covered Documents" for the purposes of the IBOR Fallbacks Protocol) because those confirmations already contain negotiated fallbacks which the parties have deemed fit for purpose, they can use the wording in Option 3 to identify these documents and amend them.

- **Option 4**: To combine the first and third options above i.e. excluding Document Package Documents from the Protocol, some of which are specified in an annex (and in which separate triggers and fallbacks will be specified to apply) and some of which are identified as any document between the parties which contains a specified set of fallbacks).
  - This could occur where Bank and German Bank Counterparty have both adhered to the Protocol but they want to reverse the amendments to local law agreements, such as the French FBF or a Bilateral Swiss Master Agreement, which would otherwise be Protocol Covered Documents. To do this Bank and the German Bank Counterparty would use the wording in Option 4 to list out these documents and amend them, and then include separate triggers and fallbacks. Furthermore, if the parties have also entered into loan-linked interest rate swap confirmations which are "Protocol Covered Documents" and in respect of which the parties do not want the IBOR Fallbacks Protocol to apply because those confirmations contain negotiated fallbacks which the parties have deemed fit for purpose, they can use the wording in Option 4 to identify these documents and amend them.

Template wording to exclude existing documents from the scope of the ISDA 2020 IBOR Fallbacks Protocol

- **Option 5**: To combine Option 1, Option 2 and Option 3 above. ISDA describes this as "exclude one or more existing confirmations, master agreements or credit support documents from the scope of the IBOR Fallbacks Protocol (a) some of which are identified as any document between the parties which contains a specified set of fallbacks and (b) some of which are specified in an annex and, at the same time, for one or more of those documents specified in an annex, to provide that the triggers and fallbacks therein should match the triggers and fallbacks in a related hedged product, such as a loan or a bond, or otherwise to separately provide triggers and fallbacks for inclusion in such documents)"
  - For example, if the IBOR Fallbacks Protocol applies as between the parties, and the parties want to reverse the amendments made pursuant to that Fallbacks Protocol in vanilla interest rate swap confirmations which are "Protocol Covered Documents", they can use the wording in Option 5 to list out these documents and amend them **and** then also specify that certain of these documents will incorporate the triggers and fallbacks in one or more related loan agreements or otherwise will incorporate separate triggers and fallbacks.
  - If the parties have also entered into loan-linked interest rate swap confirmations which would be "Protocol Covered Documents" and in respect of which the parties do not want the IBOR Fallbacks Protocol to apply because those confirmations contain negotiated fallbacks which the parties have deemed fit for purpose, they can use the wording in Option 5 to identify these documents and amend them.

Template wording to include additional existing documents within the scope of the ISDA 2020 IBOR Fallbacks Protocol in Non-ISDA Amendment Agreements

If transaction counterparties have not adhered to the Fallbacks Protocol, they can bilaterally adopt the terms of the IBOR Fallbacks Protocol in existing agreements by entering into the ISDA Short Form and Long Form Agreements described above. If they do, they have no need for this wording. If the parties choose not to use the ISDA-published forms of amendment above and instead use an alternative form of amendment to bilaterally adopt the terms of the Protocol, inserting this template wording in their preferred amendment agreement together with a list of applicable documents will bring those documents in scope of the IBOR Fallbacks Protocol.

Template wording to include additional existing documents within the scope of the ISDA 2020 IBOR Fallbacks Protocol

Introduction

The International Swaps and Derivatives Association, Inc. ("**ISDA**") has published this template wording to enable parties to amend one or more existing master agreements or existing credit support documents to include those documents within the scope of the ISDA 2020 IBOR Fallbacks Protocol (the "**IBOR Fallbacks Protocol**") as "Additional Master Agreements" or "Additional Credit Support Documents" to the extent they would otherwise not have been amended pursuant to the IBOR Fallbacks Protocol.

Parties responsible for determining the appropriateness of

ISDA Collateral Agreement Interest Rate Definitions

ISDA

Collateral Agreement Interest Rate Definitions

- Currently in draft form, ISDA will publish the ISDA Collateral Agreement Interest Rate Definitions (the "**Collateral Agreement Interest Rate Definitions**") to enable parties to include standardised definitions relating to overnight interest rates in ISDA-published collateral agreements such as credit support annexes for variation margin.

- The Collateral Agreement Interest Rate Definitions also include fallbacks which apply if the relevant benchmark referenced as, or forming part of, the relevant rate contained in collateral agreements incorporating the Collateral Agreement Interest Rate Definitions is permanently discontinued, or the relevant benchmark temporarily fails to be published.

2021 ISDA Interest Rate Derivatives Definitions

ISDA is working on a “root and branch update of the 2006 Definitions with the 2020 ISDA Interest Rate Derivatives Definitions.

Key areas of update include Calculation Agent provisions; dates and periods; payments calculations and floating amounts; cash settlement provisions and of course IBORs.

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2020 ISDA

Interest Rate Derivatives

Definitions

EuroSTR and SOFR Amendment Agreements

- The EuroSTR Amendment Agreement contemplates amending references to any EUR interest rate to refer instead to EuroSTR (Collateral Rate).
- The SOFR Amendment Agreement contemplates amending references to any USD interest rate to refer instead to SOFR (Collateral Rate). The Combined Amendment Agreement operates in the same way.

IBOR Fallbacks Product Table

Product	Current IBOR Conventions	Current/Expected RFR Conventions	Effect of Fallback to Adjusted RFR plus spread ('IBOR Fallbacks')	Potential Amendments after contract converts to IBOR Fallbacks	Issues/Notes
Vanilla interest rate swaps	Rate set at beginning of period and payments made at end of the period	Rate set at the end of the period and a payment delay (typically) applies	Rate set at the end of the period with a backward shift so that payments are made on the same date that they would be made for an IBOR vanilla interest rate swap	Generally none but counterparties may want to consider amendments to conform to OIS specifications (i.e., expected/used RFR specifications)	
Cross currency swaps	Rates set at beginning of period (varies by IBOR and currency) and payments made at end of the period	Very few actual examples but ARRC cross-currency WG published guidance recommending rates set at the end of the period and a payment delay	Current IBOR specifications for leg that does not fall back and Rate set at the end of the period with a backward shift for leg that does fall back; payments are made on the same date that they would be made for current swap	Counterparties could agree that the leg for which fallbacks have not been triggered will nonetheless fall back to an adjusted RFR plus spread	
Swaps with periods that differ from IBOR tenor	Rate set at beginning of period and payments made at end of the period	Rate set at the end of the period and a payment delay (typically) applies	Unless Linear Interpolation applies, documentation will provide for use of the fallback rate for the relevant IBOR tenor that is available two days before the relevant payment date. If Linear Interpolation applies, then the RFR will be compounded over the period and the spread will be based on an interpolation of the relevant spreads.	Counterparties could agree to use the spread for the relevant IBOR tenor but compound the RFR over the actual period (with a backward shift). Alternatively counterparties could agree to a payment delay with payment at the end of the relevant IBOR period.	
Swaps with stubs			Unless Linear		

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IBOR Fallbacks Product Table

				calculation.	Date).
IBOR caps/floors	First payoff known in advance (after fixing) and therefore no optionality	Very few actual examples but, if use compounding in arrears, there will be optionality until the final payment	Payoff would not be known until two days before the end of the period (and therefore optionality would be introduced)	Counterparties could agree to change the observation period so that the original IBOR fixing is at the mid-point of the compounded in arrears RFR observations. Alternatively, counterparties could agree to convert to a single period swap (for which the IBOR fallbacks would apply as described under vanilla interest rate swaps)	Impact on risk and valuation of not knowing the payoff until two days before the end of the period could have a significant impact on risk and valuation, particularly for shorter tenors.
Swaptions	Various	Expected to match the market standard for OIS	May depend on settlement method (cash settled versus physical settled) but if cleared physical settled and CCP no longer clears the relevant IBOR swap (because the IBOR has been discontinued), then collateralized cash price cash settlement will apply; discontinuation of ICE Swap Rates will have implications for cash settled swaptions	Counterparties could agree to a swaption based on standard RFR conventions and negotiate the strike or spread over the RFR for such swaption based on the spread for the IBOR fallbacks.	Physical settlement requires a reference rate for new transactions that is based on the IBOR for which fallbacks would be triggered – cash settlement would apply if such a rate does not exist. Will different volatility inputes result in P/L impacts?
Cancelable swaps	Various	Expected that floating leg will match issuer requirements			Note that is hedged by swap is not subject to ISDA Definitions. Would likely need to wait to know floating rate based on the RFR at the end of the relevant period. Value transfer would be uncertain due to non-deterministic length of the swap.

Implications for Structured Products and CLOs

- Structured Products referencing Relevant IBORs not traded under Master Agreements out of scope of the Protocol
- Adjustment of market hedges to reference fallbacks may create negative basis risk with the relevant structured product
- Newly issued products should include mechanisms to adjust IBOR rates to mirror transition in hedge contracts
- If the terms of the product do not include mechanism for LIBOR adjustment then consent solicitation may be required
- Application of possible legislative solutions for “tough legacy” contracts will depend on relevant governing law issues

Implications for CLOs

- If the terms of the CLO do not include robust fallbacks for LIBOR adjustment, then consent solicitation may be required which may require 100% consent
- Estimates of around 10-20% of US CLOs in this category
- Extension of LIBOR to June 30, 2023 may help resolve legacy CLO issues:
  - More CLOs will mature or provide opportunity for refinancing
  - Possible legislation for amending ‘tough legacy contracts’
  - Judicial instruction proceedings

Implications for non-standard derivatives

- Hedging swaps (such as securitisation hedges) may contain non-ISDA standard definitions of LIBOR. These may be incorporated or transposed from the terms of the securitisation and may not match the relevant “Covered ISDA Definitions Booklet” definition
- Careful diligence should be undertaken on these contracts to ensure that their Protocol status is ascertainied (and if necessary, bilateral amendments are made)

Implications for Loans and their Hedges

- The Dangers of Adhering: unintentionally breaching loan provisions?
- Coordinating the Syndicate & Lender/Borrower issues
- Should the loan follow the Swap or the Swap follow the Loan?

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Tough Legacy Transactions: Hypothetical Scenario

In 2018, Cadiz Bank entered into an USD-LIBOR-referenced interest rate derivatives transaction with Jerez Corp under an ISDA Master Agreement: Covered Rate and Agreement!

2021: Jerez Corp (a) refuse to adhere to the Protocol; (b) refuses to mediate the IBOR to an ARR. Cadiz Bank is the "Calculation Agent" and must navigate the contractual fallbacks in the 2006 ISDA Definitions to identify a new floating interest rate.

Calculation Agent looks to the USD-LIBOR-BBA definition in 2006 Definitions fallback: "I*f such rate does not appear on the Reuters Screen LIBOR01 Page, the rate for that Reset Date will be determined as if the parties had specified "USD-LIBOR-Reference Banks" as the applicable Floating Rate Option."*

Q4 2021: LIBOR Ceases and rate no longer appears: USD-LIBOR-Reference Banks is deemed to apply. Rate is now "*the rate for a Reset Date…determined on the basis of the rates for which deposits in US Dollars are offered by the Reference Banks at approximately 11:00 am London time, on the day that is two London Banking Days preceding that Reset Date to prime banks in the London interbank market….*"

Calculation Agent "*requests the principal London office of each of the Reference Banks to provide a quotation of its rate.*"

"*Reference Banks*": "*four major banks in the London interbank market*". As part of the "USD-LIBOR-Reference-Banks" fall-back as long as "*at least two quotations are provided, the rate for a Reset Date will be the arithmetic means of the quotations*".

If fewer than two quotations are provided, the rate for the Reset Date will be the arithmetic mean of "*the rates quoted by major banks in New York City, selected by the Calculation Agent, at approximately 11:00 am, New York City time, on that Reset Date for loans in US Dollars to leading European banks for a period of the Designated Maturity commencing on that Reset Date and in a Representative Amount.*"

There are no further fallbacks beyond this.

Calculation Agent "*requests the principal London office of each of the Reference Banks to provide a quotation of its rate.*"

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