

A background image showing various tools like hammers, chisels, and a saw on a wooden workbench. The word 'REVERSE' is in large red letters, 'inquiries' is in white, and 'Workshop Series' is in a black cursive font.

REVERSE inquiries

Workshop Series

IN-DEPTH SESSIONS

The Transition Away From the IBORs

Where are we now and where are we going?

November 10, 2021

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Agenda

- Overview of current trends and developments with the IBOR transition
- Status of tough legacy contract legislation in the US, UK, and EU
- Fallback recommendations related to LIBOR and SOFR
- Path to Synthetic LIBOR
- Tough old gut: EONIA to ESTR and Fed Funds to SOFR in ISDA Credit Support Annexes

Overview

Timeline for U.S. dollar loans

Now to December 31, 2021

U.S. banks must incorporate hard-wired fallbacks

After December 31, 2021

No more LIBOR-priced loans

- Regulatory guidance on November 30, 2020 and October 20, 2021 with respect to “new contracts”
- Permits LIBOR lending after December 31, 2021 pursuant “legally enforceable” contracts entered into before that date

June 30, 2023

Last day of U.S. dollar LIBOR quotations

Overview (cont'd)

Possible replacement reference rates:

○ Risk-free rates

- Daily simple SOFR
 - Timing of notices of borrowing
- Daily compounded SOFR
 - Effect on secondary market trading
- SOFR averages
 - Used in some markets (but not broadly used)
- Term SOFR
 - Likely the most common replacement for LIBOR
 - The first level of the ARRC waterfall (relevant for June 2023)

○ Credit-sensitive rates

- Response to risk-free rates
- Examples: Ameribor® and BSBY
- Regulatory response
 - Inverted pyramid
 - Paucity of data

Legislation

Legislation in the U.S.

- **New York State**

- Covers a loan agreement that has no fallback provision or has a fallback that could result in a rate based on LIBOR
- A loan agreement that gives a lender the right to select a replacement rate is not covered
 - Litigation safe harbor
- Only addresses agreements governed by New York law.
- Recommended benchmark replacement and benchmark replacement conforming changes are those recommended by the ARRC
 - No recommendation yet from the ARRC

Legislation in the U.S. *(cont'd)*

- **Federal**

- Adjustable Interest Rate (LIBOR) Act of 2021
 - Introduced to the House by the House Committee on Financial Services (and referred to Ways and Means)
 - Unclear when a vote will be scheduled in the House
- Provides a national approach
- Addresses issues under the Trust Indenture Act of 1940
- Covers agreements that give the lender the right to select a replacement rate
 - If no new rate selected by June 30, 2023, the benchmark automatically becomes a SOFR-based rate
- Includes the concept of benchmark replacement conforming changes

Fallbacks

Fallback Recommendations

LIBOR

- **Fallbacks from LIBOR**
 - Hard-wired approach (or something similar) required for U.S. banks
 - The ARRC has recommended term SOFR and the March 5 term SOFR adjustments
 - Possibly unhappiness about the use of the March 5 spread adjustments
 - Possible negotiation of small adjustments (?)

Fallback Recommendations

SOFR

- **Fallbacks from SOFR**
 - No ARRC recommendation
 - Daily SOFR
 - Amendment approach
 - Term SOFR
 - Not a public sector rate
 - Two alternatives developing:
 1. Amendment approach
 - Risks a fallback to base rate if there's no agreement on a fallback
 2. Waterfall of daily SOFR and then amendment approach
 - Guarantees a fallback other than base rate, but locks parties into a daily rate when a term rate (e.g., BSBY) may be available

ISDA 2020 IBOR Fallbacks Protocol: Infrastructure

Where are we now?

ISDA 2020 IBOR Fallbacks Protocol

Last Updated: November 8, 2021

Number of Parties: 14730

Protocol: Covered Arrangements, Amendment, and Adherence

Supplement: Amendments to Transition to RFR

Adherence Letter: How you adhere to the Protocol

FAQ: Many answers you need

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 Covered Document, in the terms of such Definitions Booklet, the Supplement to the 2006

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

EXHIBIT 1 to the ISDA 2020 IBOR FALLBACKS PROTOCOL Form of Adherence Letter

[Letterhead of Adhering Party]

[Date]

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 January 25, 2021. (i) IBOR Fallbacks Protocol (IBOR Fallbacks Protocol) FAQs

Dealing with Out-of-Scope Agreements

ISDA Bilateral Amendment Forms: Bilateral Mediation Update

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 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 ‘short-form’ if

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 high, but not all counterparties will adhere, and not all derivatives agreements are 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.

Supplements to the 2006 ISDA Definitions

Search

Bookstore > Definitional Booklets and Confirmations by Product Type > Supplements to the 2006 ISDA Definitions

Bookstore Online Library

Supplements to the 2006 ISDA Definitions

These supplements are amendments to the 2006 ISDA Definitions.

Note that Supplement 70 (the IBOR Fallbacks Supplement) is effective January 25, 2021. As the 2006 ISDA Definitions have not been amended since Supplement 66 on December 14, 2020, ISDA has published three blank supplements (Supplements 67, 68 and 69) to address the numbering issue.

Free downloads (95)

- Supplement 1 (Floating Rate Option "SEK Annual Swap Rate-SESWF", published October 5, 2007) (pdf)
- Supplement 2 (Amended first paragraph of Section 10.5 relating to MTM Amount, published October 10, 2007) (pdf)
- Supplement 2 (Side letter, published October 10, 2007) (doc)
- Supplement 3 (Floating Rate Options "TRY-TRYIBOR-Reuters" and "TRY-TRYIBOR-Reference Banks", published December 12, 2007) (pdf)
- Supplement 4 (Floating Rate Options "RUB-MOSPRIME-NFFA" and "RUB-MOSPRIME-Reference Banks", published January 29, 2008) (pdf)
- Supplement 5 (Section 13.1(b) amended for USD denominated Swaps only, published April 14, 2008) (pdf)
- Supplement 6 (Sections 1.4 and 1.8 amended, migration from TARGET to TARGET2 payment system, published June 5, 2008) (pdf)
- Supplement 7 (Floating Rate Option "ISK-REIBOR-Reuters" and "ISK-REIBOR-Reference Banks", published June 9, 2008) (pdf)
- Supplement 8 (Additional Provisions for Confirmation of Range Accrual Swap Transaction, published June 10, 2008) (pdf)
- Supplement 9 (Floating Rate Options "EUR Annual Swap Rate-10.00-BGCANTOR" and "USD Annual Swap Rate-11.00-BGCANTOR", revised Section 7.1(f)(xxx), published August 19, 2008) (pdf)
- Supplement 10 (INR-MIBOR-OIS-COMPOUND definition revised, published September 5, 2008) (pdf)
- Supplement 10 (INR-MIBOR-OIS-COMPOUND side letter, published September 5, 2008) (doc)
- Supplement 11 (Floating Rate Options "EUR Annual Swap Rate-10.00-ICAP" and "EUR Annual Swap Rate-11.00-ICAP", revised Section 7.1(f)(xxx), published October 14, 2008) (pdf)
- Supplement 12 (Floating Rate Options "EUR-EONIA-OIS-10.00-BGCANTOR", "HKD-Quarterly Annual Swap Rate-11.00-BGCANTOR", "HKD-Quarterly Annual Swap Rate-4.00-BGCANTOR", "SGD-Semi Annual Swap Rate-11.00-BGCANTOR", "OIS-11.00-BGCANTOR" and "USD-OIS-3.00-BGCANTOR", added "Reference Banks" language for HKD and SGD, published October 28, 2008) (pdf)
- Supplement 13 (Floating Rate Options "EUR-EONIA-OIS-10.00-ICAP", "EUR-EONIA-OIS-11.00-ICAP", "JPY-OIS-11.00-ICAP", "GBP-SONIA-OIS-11.00-ICAP", "CHF-OIS-11.00-ICAP", "USD-OIS-11.00-LON-ICAP", "USD-OIS-11.00-NY-ICAP" and "USD-OIS-3.00-NY-ICAP", published November 26, 2008) (pdf)
- Supplement 14 (Revised "CHF-ISDAFIX Swap Rate" and "USD-SIFMA Municipal Swap Index" definitions, new Day Count Fraction, new Romanian Leu Floating Rate Option, published June 5, 2009) (pdf)
- Supplement 15 (New Swap Rate Floating Rate Options, published August 5, 2009) (pdf)

- Supplement 16 (New Spread Exclusive Compounding method, redefined Applicable to Straight Compounding method, Straight and Flat Compounding definitions expressed in formulas, new Guidance, published August 8, 2009) (pdf)
- Supplement 17 (Floating Rate Option "AED-EBOR-Reuters", published October 15, 2009) (pdf)
- Supplement 18 (Technical changes for Section 7.1, published December 18, 2009) (pdf)
- Supplement 19 (Floating Rate Options "JPY-1TRM-MHCR", "JPY-1TPR-TBC", "JPY-STPR-Quoting Banks" and "JPY-Quoting Banks-LIBOR", published January 6, 2010) (pdf)
- Supplement 20 (Additional Floating Rate Options, published April 16, 2010) (pdf)
- Supplement 21 (Terms "CNY-CNREPOFIX-CFXS-Reuters" and "CNY 7-Reno Compounding Date" added to Section 7.1(ab), published April 26, 2010) (pdf)
- Supplement 22 (Technical changes for Section 1.5 Financial Centers, Article 5 Fixed Amounts, Section 6.2 Certain Definitions relating to Floating Amounts, Section 6.4 Negative Interest Rates and Section 7.1 Rate Options, published July 26, 2010) (pdf)
- Supplement 23 (Technical changes for Section 16.1 Optional Early Termination, Section 18.2 Certain Definitions Relating to Cash Settlement, Section 18.3 Cash Settlement Methods and Article 19 ISDA Settlement Matrix, published July 26, 2010) (pdf)
- Supplement 24 (Additional Floating Rate Options, published August 2, 2010) (pdf)
- Supplement 25 (Floating Rate Options "TWD-TAIBOR1" and "TWD-TAIBOR2", amended Section 7.3(f)(ii), published December 1, 2010) (pdf)
- Supplement 26 (Additional Floating Rate Options, published June 27, 2011) (pdf)
- Supplement 27 (Floating Rate Options "DHK-CIBOR2-Bloomberg" and "GBP-WMBA-RONIA-COMPOUND", published July 11, 2011) (pdf)
- Supplement 28 (New Section 15.2 Cleared Physical Settlement, Section 18.3(a) Collateralized Cash Price, published September 30, 2011) (pdf)
- Supplement 28 (New Section 19.4 Collateral Cash Price Matrix, published September 30, 2011) (pdf)
- Supplement 29 (Floating Rate Option "GBP-Semi Annual Swap Rate-SwapMarker26", published January 3, 2012) (pdf)
- Supplement 30 (Changes to Sections 7.1(a)(v), 7.1(i), 7.1(m)(iv), and 7.1(ab)(vii), (viii), and (ix), published February 27, 2012) (pdf)
- Supplement 31 (Floating Rate Option "COP-IBR-OIS-COMPOUND", published May 21, 2012) (pdf)
- Supplement 32 (Adjustment of HK Business Day and certain HKD Floating Rate Options under adverse weather conditions, published July 27, 2012) (pdf)
- Supplement 33 (Floating Rate Option "UK Base Rate" and amended "COREPO Rate", published September 26, 2012) (pdf)
- Supplement 34 (Floating Rate Option "CWH-HIBOR-TMA" and "CWH-HIBOR-Reference Banks", published August 23, 2013) (doc)
- Supplement 35 (Deleted "IDR-SOR-Reuters", "SGD-SOR-Reuters", "SGD-SOR-Reference Banks", "SGD-SONAR-OIS-COMPOUND" and "THB-SOR-Reuters", Added "SGD-SOR-VWAP", "SGD-SOR-VWAP-Reference Banks" and "SGD-SONAR-OIS-VWAP-COMPOUND" under Section 7.1(f), (ft) and (ra), amendments to Section 6.2(a), published August 29, 2013, effective October 1, 2013) (pdf)
- Supplement 36 (Deleted "USD-SIBOR-SIBO" under Section 7.1(ab), published August 29, 2013, effective January 1, 2014) (pdf)
- Supplement 37 (Amended Section 7.1 (ae) Russian Ruble including new provision (vii) "RUB-RUONIA-OIS-COMPOUND", published October 15, 2013) (pdf)
- Supplement 38 (Amended definition of "THB-THBFX-Reuters", deleted definition of "THB-SOR-Reference Banks", amended Section 6.2(a), new definition of "THB-THBFX-Reference Banks" under Section 7.1(a), published December 27, 2013, effective January 1, 2014) (pdf)

Source:

<https://www.isda.org/book/supplements-to-the-2006-isda-definitions/>

Timeline of the 2021 ISDA Interest Rate Derivatives Definitions

KEY CHANGES IN THE 2021 ISDA INTEREST RATE DERIVATIVES DEFINITIONS

ISDA.

2021 ISDA

Interest Rate Derivatives

Definitions

Version 1.0

Most major clearing houses plan to transition cleared trades to the 2021 Definitions on the implementation date (eg, via changes to their rule books). Therefore, market participants are encouraged to transition to the 2021 Definitions where alignment between cleared and non-cleared trades is important.

PUBLICATION AND IMPLEMENTATION

Although the 2021 Definitions were published in June 2021, they will not be implemented as the market standard definitional book for interest rate derivatives until October 4, 2021.

The ISDA working groups considered it important for market participants and infrastructures to target a particular date for adopting the 2021 Definitions to help ensure an efficient implementation and to minimize disruption. As it is likely that not all market participants will be in a position to adopt the 2021 Definitions by that date, the 2006 Definitions may continue to be used for some time (as was the case with the 2000 Definitions after publication of the 2006 Definitions).

However, it is important to note that ISDA does not intend to maintain or update the 2006 Definitions after October 1, 2021. Changes and additions that are not already in the pipeline by that date will only be reflected in the 2021 Definitions. Given the pace of change in this market, it is anticipated the 2006 Definitions will become outdated reasonably quickly.

Importantly, most of the major clearing houses have announced that although they will accept new trades for clearing which incorporate the 2006 Definitions, these trades will be cleared subject to the 2021 Definitions. There have been some indications from others that they will only allow 2021 ISDA Definitions trades.

The Long and Short of It

Mayer Brown Derivatives Blog

What the FCA's announced Index Cessation Event means for the 13,500+ adherents and other users of the 2020 ISDA IBOR Fallbacks Protocol and Fallbacks Supplement

Source:

<https://www.longandshortblog.com/2021/03/endofbeginningoflibortransition/>

The Guidance confirms the following key points:

- **Index Cessation Event:** an Index Cessation Event occurred on 5 March 2021 for all thirty-five LIBOR Settings.
- **Last Day of Publication/Representativeness and Index Cessation Effective Date:**
 - CHF LIBOR, EUR LIBOR, GBP LIBOR, JPY LIBOR, USD LIBOR (1 Week and 2 Months only) Settings
 - Last day of publication/representativeness: 31 December 2021; and
 - Index Cessation Effective Date: first London Banking Day on or after 1 January 2022.
 - USD LIBOR (Overnight, 1 month, 3months, 6 months , 12 months) Settings
 - Last day of publication/representativeness: 30 June 2023; and
 - Index Cessation Effective Date: first London Banking Day on or after 1 July 2023.
 - USD LIBOR (1 week and 2 months) Settings : (see also bullet immediately below)
 - Last day of publication/representativeness: 31 December 2021; and
 - Index Cessation Effective Date: first London Banking Day on or after 1 July 2023.
- **1 Week, 2 Month USD LIBOR Settings:** with a shorter and longer USD LIBOR tenor (both non-representative) available either side of each of these LIBOR Settings between 31 December 2021 and 30 June 2023, the rate for these LIBOR Settings will be determined by interpolating such shorter and longer tenors.
- **Spread Adjustments:** the **"Fallback Rates"** in the Fallbacks Supplement are crystallised when an Index Cessation Event occurs. This is because the Fallback Rates are "all in fallback rates" for each LIBOR Setting, and comprise a combination of an Adjusted Risk Free Rate/RRF (on the basis of daily compounded setting in arrears) and its **"Spread Adjustment"**. The Spread Adjustment is fixed on the **"Spread Adjustment Fixing Date"**. The Guidance confirms that the date of the FCA LIBOR Announcement is a Spread Adjustment Fixing Date, because it is an Index Cessation Event for all LIBOR Settings, and therefore fixes the Spread Adjustment.



Also visit: www.eyeonibor.com

Tough Legacy Transactions: Unsatisfactory Derivatives Fallback

2018

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

2021

Jerez Corp (a) refuses to adhere to the Protocol; (b) refuses to mediate the IBOR to an ARR. Cadiz Bank is the "Calculation Agent" and must navigate 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: *"If 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" fallback 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 NYC, selected by the Calculation Agent, at approx. 11:00 am, NYC time, on that Reset Date for loans in USD to leading European banks for a period of the Designated Maturity commencing on that Reset Date and in a Representative Amount."
No further fallbacks beyond this.

UK Legislative Solutions for Tough Legacy Contracts

Financial Services Act 2021

Introductory Text

Prudential regulation of credit institutions and investment firms

1. Exclusion of certain investment firms from the Capital Requirements Regulation
2. Prudential regulation of certain investment firms by FCA rules
3. Transfer of certain prudential regulation matters into PRA rules
4. CRR Basel standards
5. Prudential regulation of credit institutions etc by PRA rules
6. Power to amend the Credit Rating Agencies Regulation
7. Amendments of the Capital Requirements Regulation

Benchmarks

8. Review of which benchmarks are critical benchmarks
9. Mandatory administration of a critical benchmark
10. Prohibition on new use where administrator to cease providing critical benchmark
11. Assessment of representativeness of critical benchmarks
12. Mandatory contribution to critical benchmarks
13. Designation of certain critical benchmarks
14. Use of Article 23A benchmarks
15. Orderly cessation of Article 23A benchmarks
16. Review of exercise of powers under Article 23D
17. Policy statements relating to critical benchmarks
18. Critical benchmarks provided for different currencies etc
19. Changes to and cessation of a benchmark
20. Extension of transitional period for benchmarks with non-UK administrators
21. Benchmarks: minor and consequential amendments

Access to financial services markets

22. Regulated activities and Gibraltar
23. Power to make provision about Gibraltar
24. Collective investment schemes authorised in approved countries
25. Individually recognised overseas collective investment schemes
26. Money market funds authorised in approved countries
27. Provision of investment services etc in the UK

Variation or cancellation of permission to carry on regulated activity

28. Part 4A permissions: variation or cancellation on initiative of FCA

Rules about level of care provided by authorised persons

29. FCA rules about level of care provided to consumers by authorised persons

Critical Benchmarks (References and Administrators' Liability) Bill [HL]

Government Bill

Originated in the House of Lords, Session 2021-22

Last updated: 4 November 2021 at 14:44



[Details](#) [News](#) [Stages](#) [Publications](#)

Long title

A Bill to make provision about the meaning of references to Article 23A benchmarks in contracts and other arrangements; and to make provision about the liability of administrators of Article 23A benchmarks

Sponsoring departments

HM Treasury >



[Lord Agnew of Oulton](#)
Conservative, Life peer

HM Treasury >



[John Glen](#)
Conservative, Salisbury

Current version of the Bill

Bill 185 2021-22 (as brought from the House of Lords)

Get File ▾

3 November 2021

Commons

Bill passage

Bill started in the House of Lords

- 1st reading
- 2nd reading
- Committee stage
- Report stage
- 3rd reading

Bill in the House of Commons

- 1st reading
- 2nd reading
- Committee stage
- Report stage
- 3rd reading

Final stages

- Consideration of amendments
- Royal Assent

The Path to Synthetic LIBOR



Proposed decisions on the use of LIBOR (Articles 23C and 21A BMR)

Consultation Paper
CP21/29*

September 2021

Chapter 1 | Proposed decisions on the use of LIBOR (Articles 23C and 21A BMR)

1 Summary

Why we are consulting

- 1.1 On 20 May 2021 we published a consultation on our proposed policies on the exercise of 2 new powers introduced through amendments to the Benchmarks Regulation (BMR) under the Financial Services Act 2021 (FS Act). That consultation closed on 17 June and we have published our Feedback Statement and final Statements of Policy. We are now seeking views on our proposed decision to use these powers in respect of certain LIBOR settings.
- 1.2 The new powers under Article 23C(2) and Article 21A of the BMR relate to the use of critical benchmarks where this use is within scope of the BMR ('use of a benchmark' is defined at Article 3(1)(7)). They were introduced as part of a wider package of amendments to the BMR. This package was intended to ensure that the FCA has the appropriate regulatory powers to help reduce risks to market integrity and consumer protection in the wind-down period before LIBOR ceases permanently.

European Union Solution

REGULATION (EU) 2021/168 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 10 February 2021

amending Regulation (EU) 2016/1011 as regards the exemption of certain third-country spot foreign exchange benchmarks and the designation of replacements for certain benchmarks in cessation, and amending Regulation (EU) No 648/2012

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) In order to hedge against adverse foreign exchange rate movements involving currencies that are not readily convertible into a base currency or involving currencies that are subject to exchange controls, companies in the Union enter into non-deliverable currency derivatives, such as forwards and swaps. The unavailability of spot foreign exchange benchmarks for calculating the payouts due under currency derivatives would have a negative effect on companies in the Union that export to emerging markets or hold assets or liabilities in those markets, with consequent exposure to fluctuations of emerging market currencies. Following the expiry of the period ending on 31 December 2021 set out in Regulation (EU) 2016/1011 of the European Parliament and of the Council ⁽⁴⁾ (the ‘transitional period’), the use of spot foreign exchange benchmarks provided by an administrator located in a third country, other than a central bank, will no longer be possible.
- (2) In order to enable companies in the Union to continue their business activities while mitigating foreign exchange risk, certain spot foreign exchange benchmarks that are used in financial instruments to calculate contractual payouts and that are designated by the Commission in accordance with certain criteria should be excluded from the scope of Regulation (EU) 2016/1011.
- (3) Considering the need to undertake a thorough review of the scope of Regulation (EU) 2016/1011 and of its provisions

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.



FAQs on ISDA Collateral Agreement Amendment Agreements (SOFR and EuroSTR)

FAQs on ISDA Collateral Agreement Amendment Agreements (SOFR and EuroSTR)

This list of frequently asked questions is intended to assist in your consideration of the following template forms of bilateral agreement, published by ISDA on August 14, 2020, for amending references to EUR interest rates and/or USD interest rates in collateral agreements:

- (i) [Template Form of Bilateral Agreement for amending references to EUR Interest Rates in Credit Support Documents;](#)
- (ii) [Template Form of Bilateral Agreement for amending references to USD Interest Rates in Credit Support Documents;](#) and
- (iii) [Template Form of Bilateral Agreement for amending references to EUR Interest Rates and USD Interest Rates in Credit Support Documents.](#)

Free downloads (1)

[FAQs on ISDA Collateral Agreement Amendment Agreements \(SOFR and EuroSTR\).pdf](#)

ISDA 2021 EONIA Collateral Agreement Fallbacks Protocol



Open from August 18, 2021

ISDA 2021 EONIA Collateral Agreement Fallbacks Protocol

Last Updated: November 8, 2021

Number of Parties: 248

Overview

FAQ

The International Swaps and Derivatives Association, Inc. (ISDA) has published the ISDA 2021 EONIA Collateral Agreements Fallbacks Protocol (the **EONIA Collateral Protocol**).

The EONIA Collateral Protocol offers market participants an efficient way to amend the terms of certain ISDA collateral agreements to incorporate a fallback to €STR plus 8.5 basis points upon the cessation of EONIA.

Please refer to the "Frequently Asked Questions" for more information.

The EONIA Collateral Protocol is open to ISDA members and non-members. Parties will pay a one-time fee of \$500 to ISDA to adhere to the EONIA Collateral Protocol. There is no cut-off date to this EONIA Collateral Protocol. ISDA does, however, reserve the right to designate a cut-off date by giving 30 days' notice on this site.

ISDA Collateral Agreement Interest Rate Definitions

Additional Resources

EYE ON IBOR TRANSITION

THE EYE ON IBOR TRANSITION BLOG ENABLES OUR GLOBAL, CROSS-PRACTICE IBOR EXPERTS TO KEEP market participants abreast, in real time, of continuing regulatory and legislative announcements, trade group tools, and the status of market transition.



SEE ALL OUR IBOR
TRANSITION RESOURCES
HERE

DECEMBER 31, 2021

THE
IBOR
COUNTDOWN



Request to join our REVERSEinquiries LinkedIn group, subscribe to our newsletter, or send us suggestions and questions by **scanning the QR code** with your phone's camera to email us at: REVERSEinquiries@mayerbrown.com.



MAYER BROWN

VOLUME 04, ISSUE 05 | October 16, 2021

REVERSEinquiries

Structured and market-linked product news for inquiring minds.

Poor Supervision of Sales of Complex Exchange Traded Products

Major dealers must focus on sales and implementation, writes supervisory practice designed to prevent unmarketable sales of complex exchange traded products to retail investors. "As recent regulatory actions illustrate how this guidance can be imperfectly applied."

In a recent Securities and Exchange Commission ("SEC") news and dealer order (the "Order"), investment advisors ("IAs") registered under the Investment Advisers Act of 1940 (the "Advisers Act") in a dual registered broker-dealer were found exercising their discretionary authority over their clients' advisory accounts to purchase exchange traded notes ("ETNs") linked to short term VIX futures and keeping these ETNs in the clients' accounts for "unusually long periods of time."

The ETNs were "designed to provide exposure to the implied volatility of the S&P 500 by replicating a strategy of continuously maintaining a rolling portfolio of one- and two-month futures contracts on the CBOE volatility index (the "VIX")." As fully discussed in the prospectus for the ETNs, the buying and selling of futures contracts created net costs, which had a negative effect on the ETNs' returns. Due to these net costs, and the historical tendency for the future contracts to be in "contango" (during which it is more expensive to replace the current futures contract with the new futures contracts, the value of the ETNs would, and did, decrease over extended periods, even if the VIX remained flat or positive during the same period). Consequently, these ETNs were an inappropriate investment for an investor with a "buy and hold" strategy.

The SEC was well known in the broker-dealer arms of the ETNs' industry. There were internal communications on the broker-dealer side discussing how the ETNs was an inappropriate investment "based for a period of greater than two days." Associated persons of the broker-dealer described the ETNs as "only meant as an extremely short trading vehicle, not a way to hedge equity products."

However, this guidance (and the associated supervisory procedures) on the broker-dealer side of the firm did not prevent the RIA from purchasing the ETNs for their advisory clients, and holding the ETNs for

Footnote 1: See the Order available at: <https://www.sec.gov/readingroom/2021/10/16/20211016vixetn>
Footnote 2: See the Order at 2.
Footnote 3: See the Order at 4.

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got review under this system, as did major leveraged ETNs. Consequently, customers held these ETNs for unreasonably long periods of time.
The registered representatives were not trained to understand the nuances of non-traditional ETNs, and a requirement for such training in the firm's written supervisory procedures.
Result: unmarketable recommendations of non-traditional ETNs were made to customers, without the stated representative understanding that these products were only meant to be held on a short-term basis. The customers held the ETNs for long periods of time, incurring losses.
Broker-dealer was found to be in violation of FRIB, Rule 206(4) Supervision, 2010 (Standards of Essential Business Practices of Trade and F111 (Suitability).

rdusion
The leverage and master leverage exchange traded products have been a focus of regulators for years, if these types of products to investors with a buy and hold investment strategy being negative attention be industry. Given this, firms recommending and selling these products need to think in place and identify and follow their supervisory procedures designed to prevent sales to investors who are not intended benefits from these products.

dex Providers Move Away from LIBOR
Not all of the larger index providers have published consultations or other publications about remaining to have their indices. A number of indices, particularly those with a volatility or risk control theme, have a "d" where, typically three months USD LIBOR. Some of the index methodologies for these types of indices have LIBOR fallback provisions for a replacement rate, while others would have to be amended to go to the USD LIBOR fallback provisions.
of S&P 500 index index LLC ("S&P"), NYSE, and NYSE ARCA, published consultations regarding back from market participants on an appropriate replacement rate. Whether an S&P was used in a, the relevant rate the replacement rate was suggested as an alternative. For example, the S&P was suggested replacement for USD LIBOR, while the Euro Short Term Rate ("ESTR") was suggested as a replacement for EUR LIBOR. The availability of a new benchmark rate has been rate was expressed in these consultations as a replacement for a longer term of the rate, which is very similar to that one publication. Daily S&P would be a suitable replacement for overnight USD LIBOR.

A few original publications, MSCI introduced on August 16, 2021. First of all, we announced about methodologies to replace USD and EUR LIBOR in the MSCI Index. S&P issued a further consultation on July 26, 2021, in which it sought further market feedback and also stated that the S&P requirements would be effective from October 2021 onwards. In the consultation, S&P stated that USD LIBOR would be replaced with S, overnight and term.

Footnote 1: See the Order at 2.
Footnote 2: See the Order at 2.
Footnote 3: See the Order at 2.

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