



RFR Secretariat
Bank of England
Threadneedle Street
London EC2R 8AH
(Submitted by email to: RFR.Secretariat@bankofengland.co.uk)

29 September 2017

Dear Sirs,

White Paper: SONIA as the RFR and approaches to adoption - June 2017¹

The International Capital Market Association (ICMA) is responding to the above.

Representing a broad range of capital market interests including banks, asset managers, exchanges, central banks, law firms and other professional advisers, ICMA's market conventions and standards have been the pillars of the international debt market for almost 50 years. See: www.icmagroup.org.

ICMA is responding in relation to its primary market constituency that lead-manages syndicated debt securities issues throughout Europe. This constituency deliberates principally through ICMA's Primary Market Practices Committee², which gathers the heads and senior members of the syndicate desks of 51 ICMA member banks, and ICMA's Legal and Documentation Committee³, which gathers the heads and senior members of the legal transaction management teams of 21 ICMA member banks, in each case active in lead-managing syndicated debt securities issues in Europe.

We set out our response in Annex 1 to this letter and would be pleased to discuss it with you at your convenience.

Yours faithfully,

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¹ <http://www.bankofengland.co.uk/markets/Documents/sterlingoperations/rfr/rfrwgwhitepaper0617.pdf>

² <http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Primary-Market-Practices-Sub-committee/>.

³ <http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Legal-and-Documentation-Sub-committee/>.

ANNEX 1

1. ICMA is responding to the White Paper specifically in relation to the potential adoption of SONIA as an alternative to sterling LIBOR for the bond markets. We have not replied to the individual questions in the White Paper but summarise our key thoughts below in relation to Questions 5 b), 7 and 8 in particular. The significance of these elements of the White Paper has increased as a result of Andrew Bailey's speech on the Future of LIBOR.⁴
2. There are two aspects to consider in relation to the adoption of SONIA as an alternative to sterling LIBOR for the bond markets, (i) ensuring contractual continuity for outstanding legacy debt securities which currently reference LIBOR (including those being issued now and before the adoption of a new benchmark but maturing after the potential discontinuation of sterling LIBOR) and (ii) the adoption of an appropriate benchmark for future floating rate notes.

Legacy Contracts

3. In relation to (i) above ICMA has consistently been highlighting the importance of contractual continuity to ICE Benchmark Administration (Benchmark Administrator for LIBOR) and ESMA, among others, in previous consultation responses and engagement.⁵ Whilst promoting the adoption of a robust benchmark rate is a positive goal, it is important to ensure that there are no significant negative side effects for outstanding contracts that reference LIBOR.
4. Bond terms and conditions are broadly but not uniformly consistent. There are various formulations referencing sterling LIBOR (most typically "screen rate determination" and "ISDA determination", with "screen rate determination" being the more common).⁶ Even if it were possible to determine a precise figure for outstanding debt securities referencing sterling LIBOR as at a specific point in time (ie the date if and when LIBOR is discontinued and replaced by an alternative benchmark) it would not be possible to determine with certainty what the final outcome would be for each of those securities on a global basis. In the event of a discontinuation of LIBOR, in the absence of any coordinated legislative or individual amendments to legacy contracts, the majority of these securities would likely revert to a fixed rate (being the last available floating rate fixing) for the remaining term of the securities.
5. It would be uncommon for the terms and conditions to provide for sterling LIBOR to be replaced by an alternative benchmark (and this is particularly difficult to address where the replacement rate for LIBOR is as yet unknown). There is no protocol mechanism for the amendment of bond terms and conditions (like ISDA for derivative contracts) and unlike the syndicated loan markets the ultimate beneficial owners of bonds are not easily identifiable. Amendments to bond terms and conditions would ordinarily require bondholder consent via a consent-solicitation process or other liability management exercise. Amendments to interest rate provisions typically require a higher threshold of bondholder consent to be effective. Liability management exercises can be costly and time-consuming for issuers and the outcome cannot be guaranteed. If a discontinuation of LIBOR resulted in a move over to an alternative benchmark requiring legacy contracts to be amended this could cause significant market disruption.
6. Accordingly, we re-iterate that it is very important to eliminate or reduce the risk for uncertainty in the adoption of an alternative benchmark, which could lead to market disruption

⁴ <https://www.fca.org.uk/news/speeches/the-future-of-libor>

⁵ See the ICMA responses to various consultations on this ICMA webpage: <http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/Primary-Markets/primary-market-topics/benchmarks/>

⁶ ICMA have previously sent example wording for each of these formulations to the Bank of England, see Annex 2

and potentially litigation. In this regard, for legacy contracts, it is desirable to deliver an alternative in such a way as to maintain a rate that is commercially as close as possible to the current rate. It is therefore important that any replacement rate used for sterling LIBOR addresses the forward-looking term element of LIBOR, reflects the different maturities and interest periods used in debt securities as well as the addition of a “credit element” to any risk-free rate which may be selected as an alternative rate.

7. In addition, to assist in achieving contractual continuity, practical measures such as publishing alternative rates in the same places as they are currently published or posting notices on current and new publication sites in relation to any change in publication venue would be desirable. In this respect a future robust rate would effectively become LIBOR.
8. Finally, given the inter-relationship between the derivatives and bond markets, it is important that work on RFRs and adoption in the financial markets is not carried out in isolated product areas.

Adoption of appropriate benchmark for future transactions

9. In relation to (ii) ICMA looks forward to engaging with the UK authorities and participating in any future working group discussions as to the appropriateness of any replacement rate for the bond markets.

ANNEX 2**EXAMPLE 1**

Below is example wording for the terms and conditions of a debt issuance programme where the programme allows for floating rate notes to be issued with interest determined on the basis of either (i) a screen rate determination (with relevant fallbacks) or (ii) ISDA Determination (based upon the ISDA definitions). The relevant option will be selected by the issuer in the final terms for the specific bond issuance.

(a) Interest on Floating Rate Notes and Index Linked Interest Notes:

- (i) *Interest Payment Dates:* Each Floating Rate Note and Index Linked Interest Note bears interest on its outstanding nominal amount from the Interest Commencement Date at the rate per annum (expressed as a percentage) equal to the Rate of Interest, such interest being payable in arrear on each Interest Payment Date. The amount of interest payable shall be determined in accordance with Condition ●. Such Interest Payment Date(s) is/are either shown hereon as Specified Interest Payment Dates or, if no Specified Interest Payment Date(s) is/are shown hereon, Interest Payment Date shall mean each date which falls the number of months or other period shown hereon as the Interest Period after the preceding Interest Payment Date or, in the case of the first Interest Payment Date, after the Interest Commencement Date.
- (ii) *Business Day Convention:* If any date referred to in these Conditions that is specified to be subject to adjustment in accordance with a Business Day Convention would otherwise fall on a day that is not a Business Day, then, if the Business Day Convention specified is (A) the Floating Rate Business Day Convention, such date shall be postponed to the next day that is a Business Day unless it would thereby fall into the next calendar month, in which event (x) such date shall be brought forward to the immediately preceding Business Day and (y) each subsequent such date shall be the last Business Day of the month in which such date would have fallen had it not been subject to adjustment, (B) the Following Business Day Convention, such date shall be postponed to the next day that is a Business Day, (C) the Modified Following Business Day Convention, such date shall be postponed to the next day that is a Business Day unless it would thereby fall into the next calendar month, in which event such date shall be brought forward to the immediately preceding Business Day or (D) the Preceding Business Day Convention, such date shall be brought forward to the immediately preceding Business Day.
- (iii) *Rate of Interest for Floating Rate Notes:* The Rate of Interest in respect of Floating Rate Notes for each Interest Accrual Period shall be determined in the manner specified hereon and the provisions below relating to either ISDA Determination or Screen Rate Determination shall apply, depending upon which is specified hereon.
 - (A) ISDA Determination for Floating Rate Notes

Where ISDA Determination is specified hereon as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Accrual Period shall be determined by the Calculation Agent as a rate equal to the relevant ISDA Rate. For the purposes of this sub-paragraph (A), “**ISDA Rate**” for an Interest Accrual Period means a rate equal to the Floating Rate that would be determined by the Calculation Agent under a Swap Transaction under the terms of an agreement incorporating the ISDA Definitions and under which:

- (x) the Floating Rate Option is as specified hereon
- (y) the Designated Maturity is a period specified hereon and
- (z) the relevant Reset Date is the first day of that Interest Accrual Period unless otherwise specified hereon.

For the purposes of this sub-paragraph (A), “**Floating Rate**”, “**Calculation Agent**”, “**Floating Rate Option**”, “**Designated Maturity**”, “**Reset Date**” and “**Swap Transaction**” have the meanings given to those terms in the ISDA Definitions.

- (B) Screen Rate Determination for Floating Rate Notes
- (x) Where Screen Rate Determination is specified hereon as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Accrual Period will, subject as provided below, be either:
 - (1) the offered quotation; or
 - (2) the arithmetic mean of the offered quotations,

(expressed as a percentage rate per annum) for the Reference Rate which appears or appear, as the case may be, on the Relevant Screen Page as at either 11.00 a.m. (London time in the case of LIBOR or Brussels time in the case of EURIBOR) on the Interest Determination Date in question as determined by the Calculation Agent. If five or more of such offered quotations are available on the Relevant Screen Page, the highest (or, if there is more than one such highest quotation, one only of such quotations) and the lowest (or, if there is more than one such lowest quotation, one only of such quotations) shall be disregarded by the Calculation Agent for the purpose of determining the arithmetic mean of such offered quotations.

If the Reference Rate from time to time in respect of Floating Rate Notes is specified hereon as being other than LIBOR or EURIBOR, the Rate of Interest in respect of such Notes will be determined as provided hereon.

- (y) if the Relevant Screen Page is not available or if, sub-paragraph (x)(1) applies and no such offered quotation appears on the Relevant Screen Page or if sub-paragraph (x)(2) above applies and fewer than three such offered quotations appear on the Relevant Screen Page in each case as at the time

specified above, subject as provided below, the Calculation Agent shall request, if the Reference Rate is LIBOR, the principal London office of each of the Reference Banks or, if the Reference Rate is EURIBOR, the principal Euro-zone office of each of the Reference Banks, to provide the Calculation Agent with its offered quotation (expressed as a percentage rate per annum) for the Reference Rate if the Reference Rate is LIBOR, at approximately 11.00 a.m. (London time), or if the Reference Rate is EURIBOR, at approximately 11.00 a.m. (Brussels time) on the Interest Determination Date in question. If two or more of the Reference Banks provide the Calculation Agent with such offered quotations, the Rate of Interest for such Interest Accrual Period shall be the arithmetic mean of such offered quotations as determined by the Calculation Agent; and

- (z) if paragraph (y) above applies and the Calculation Agent determines that fewer than two Reference Banks are providing offered quotations, subject as provided below, the Rate of Interest shall be the arithmetic mean of the rates per annum (expressed as a percentage) as communicated to (and at the request of) the Calculation Agent by the Reference Banks or any two or more of them, at which such banks were offered, if the Reference Rate is LIBOR, at approximately 11.00 a.m. (London time) or, if the Reference Rate is EURIBOR, at approximately 11.00 a.m. (Brussels time) on the relevant Interest Determination Date, deposits in the Specified Currency for a period equal to that which would have been used for the Reference Rate by leading banks in, if the Reference Rate is LIBOR, the London inter-bank market or, if the Reference Rate is EURIBOR, the Euro-zone inter-bank market, as the case may be, or, if fewer than two of the Reference Banks provide the Calculation Agent with such offered rates, the offered rate for deposits in the Specified Currency for a period equal to that which would have been used for the Reference Rate, or the arithmetic mean of the offered rates for deposits in the Specified Currency for a period equal to that which would have been used for the Reference Rate, at which, if the Reference Rate is LIBOR, at approximately 11.00 a.m. (London time) or, if the Reference Rate is EURIBOR, at approximately 11.00 a.m. (Brussels time), on the relevant Interest Determination Date, any one or more banks (which bank or banks is or are in the opinion of the Trustee and the Issuer suitable for such purpose) informs the Calculation Agent it is quoting to leading banks in, if the Reference Rate is LIBOR, the London inter-bank market or, if the Reference Rate is EURIBOR, the Euro-zone inter-bank market, as the case may be, provided that, if the Rate of Interest cannot be determined in accordance with the foregoing provisions of this paragraph, the Rate of Interest shall be determined as at the last preceding Interest Determination Date (though substituting, where a different Margin or Maximum or Minimum Rate of Interest is to be applied to the relevant Interest Accrual Period from that which applied to the last preceding Interest Accrual Period, the Margin or Maximum or Minimum Rate

of Interest relating to the relevant Interest Accrual Period, in place of the Margin or Maximum or Minimum Rate of Interest relating to that last preceding Interest Accrual Period).

(C) Linear Interpolation

Where Linear Interpolation is specified hereon as applicable in respect of an Interest Accrual Period, the Rate of Interest for such Interest Accrual Period shall be calculated by the Calculation Agent by straight line linear interpolation by reference to two rates based on the relevant Reference Rate (where Screen Rate Determination is specified hereon as applicable) or the relevant Floating Rate Option (where ISDA Determination is specified hereon as applicable), one of which shall be determined as if the Applicable Maturity were the period of time for which rates are available next shorter than the length of the relevant Interest Accrual Period and the other of which shall be determined as if the Applicable Maturity were the period of time for which rates are available next longer than the length of the relevant Interest Accrual Period provided however that if there is no rate available for the period of time next shorter or, as the case may be, next longer, then the Calculation Agent shall determine such rate at such time and by reference to such sources as it determines appropriate.

“Applicable Maturity” means: (a) in relation to Screen Rate Determination, the period of time designated in the Reference Rate, and (b) in relation to ISDA Determination, the Designated Maturity.

“ISDA Definitions” means the 2006 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc., unless otherwise specified hereon.

EXAMPLE 2

Alternative example wording for Screen Rate Determination fallback provisions from a debt issuance programme. The relevant provisions are in the Agency Agreement in this particular precedent. LIBOR itself will be defined in the relevant final terms for the specific issue and would ordinarily reference the ISDA definitions. The terms and conditions from the Offering Circular are also set out below for completeness.

Agency Agreement:

1.1 Interest determination

(a) Where Screen Rate Determination is specified in the applicable Final Terms as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Period will, subject as provided below, be either:

(i) the offered quotation; or

(ii) the arithmetic mean (rounded if necessary to the fifth decimal place, with 0.000005 being rounded upwards) of the offered quotations,

(expressed as a percentage rate per annum), for the Reference Rate which appears or appear, as the case may be, on the Relevant Screen Page as at the Specified Time on the Interest Determination Date in question plus or minus (as indicated in the applicable Final Terms) the Margin (if any), all as determined by the Principal Paying Agent. If five or more offered quotations are available on the Relevant Screen Page, the highest (or, if there is more than one highest quotation, one only of those quotations) and the lowest (or, if there is more than one lowest quotation, one only of those quotations) shall be disregarded by the Principal Paying Agent for the purpose of determining the arithmetic mean (rounded as provided above) of the offered quotations.

(b) If the Relevant Screen Page is not available or if, in the case of subclause [(a)(i)], no offered quotation appears or, in the case of subclause [(a)(ii)], fewer than three offered quotations appear, in each case as at the Specified Time, the Principal Paying Agent shall request each of the Reference Banks to provide the Principal Paying Agent with its offered quotation (expressed as a percentage rate per annum) for the Reference Rate at approximately the Specified Time on the Interest Determination Date in question. If two or more of the Reference Banks provide the Principal Paying Agent with offered quotations, the Rate of Interest for the Interest Period shall be the arithmetic mean (rounded if necessary to the fifth decimal place with 0.000005 being rounded upwards) of the offered quotations plus or minus (as appropriate) the Margin (if any), all as determined by the Principal Paying Agent.

(c) If on any Interest Determination Date one only or none of the Reference Banks provides the Principal Paying Agent with an offered quotation as provided in the preceding paragraph, the Rate of Interest for the relevant Interest Period shall be the rate per annum which the Principal Paying Agent determines as being the arithmetic mean (rounded if necessary to the fifth decimal place, with 0.000005 being rounded upwards) of the rates, as communicated to (and at the request of) the Principal Paying Agent by the Reference Banks or any two or more of them, at which such banks were offered, at approximately the Specified Time on the relevant Interest Determination Date, deposits in the Specified Currency for a period equal to that which would have been used for the Reference Rate by leading banks in the London inter-bank market (if the Reference Rate is LIBOR) or the Euro-zone inter-bank market (if the Reference Rate is EURIBOR) plus or minus (as appropriate) the Margin (if any) or, if fewer than two of the Reference Banks provide the Principal Paying Agent with offered rates, the offered rate for deposits in the Specified Currency for a period equal to that which would have been used for the Reference Rate, or the arithmetic mean (rounded as provided above) of the offered rates for deposits in the Specified Currency for a period equal to that which would have been used for the Reference Rate, at which, at approximately the Specified Time on the relevant Interest Determination Date, any one or more banks (which bank or banks is or are in the opinion of the Issuer suitable for the purpose) informs the Principal Paying Agent it is quoting to leading banks in the London inter-bank market (if the Reference Rate is LIBOR) or the Euro-zone inter-bank market (if the Reference Rate is EURIBOR) plus or minus (as appropriate) the Margin (if any), provided that, if the Rate of Interest cannot be determined in accordance with the foregoing provisions of this paragraph, the Rate of Interest shall be determined as at the last preceding Interest Determination Date (though substituting, where a different Margin is to be applied to the relevant Interest Period from that which applied to the last preceding Interest Period, the Margin relating to the relevant Interest Period in place of the Margin relating to that last preceding Interest Period).

Offering Circular terms and conditions:**(a) Rate of Interest**

The Rate of Interest payable from time to time in respect of Floating Rate Notes will be determined in the manner specified in the applicable Final Terms.

(i) Screen Rate Determination for Floating Rate Notes

Where Screen Rate Determination is specified in the applicable Final Terms as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Period will, subject as provided below, be either:

(A) the offered quotation; or

(B) the arithmetic mean (rounded if necessary to the fifth decimal place, with 0.000005 being rounded upwards) of the offered quotations,

(expressed as a percentage rate per annum) for the Reference Rate[i] (being either LIBOR or EURIBOR, as specified in the applicable Final Terms) which appears or appear, as the case may be, on the Relevant Screen Page (or such replacement page on that service which displays the information) as at 11.00 a.m. (London time, in the case of LIBOR, or Brussels time, in the case of EURIBOR) on the Interest Determination Date in question plus or minus (as indicated in the applicable Final Terms) the Margin (if any), all as determined by the Principal Paying Agent. If five or more of such offered quotations are available on the Relevant Screen Page, the highest (or, if there is more than one such highest quotation, one only of such quotations) and the lowest (or, if there is more than one such lowest quotation, one only of such quotations) shall be disregarded by the Principal Paying Agent for the purpose of determining the arithmetic mean (rounded as provided above) of such offered quotations.

The Agency Agreement contains provisions for determining the Rate of Interest in the event that the Relevant Screen Page is not available or if, in the case of (A) above, no such offered quotation appears or, in the case of (B) above, fewer than three such offered quotations appear, in each case as at the time specified in the preceding paragraph.