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Product Specific Guidance: Derivatives

1. **When did the International Swaps and Derivatives Association ("ISDA")’s Supplement 70 to the 2006 ISDA Definitions and the 2020 IBOR Fallbacks Protocol become effective?**

ISDA published Supplement 70 to the 2006 ISDA Definitions (the “Supplement”) and the ISDA 2020 IBOR Fallbacks Protocol (the “2020 Protocol”) to implement new fallback language for new and legacy derivative contracts referencing rates including LIBOR, SGD-SOR and THB-THBFIX (the “2020 Rates”). They became effective on 25 January 2021 (the “Effective Date”). As and from the Effective Date, all new derivatives contracts that incorporate the 2006 ISDA Definitions will include the new fallback language for, *inter alia*, the 2020 Rates. All new derivative contracts that incorporate the 2021 ISDA Interest Rate Derivatives Definitions will also include the new fallback language for, *inter alia*, the 2020 Rates. Certain derivative contracts existing as at the Effective Date will also include the new fallback language if both counterparties have adhered to the 2020 Protocol or otherwise bilaterally agreed to include the new fallbacks in their contracts.

2. **What is the new fallback language?**

The fallback for each of the 2020 Rates will be, or will be based on, the relevant Risk-Free Rate (“RFR”). The conversion of a 2020 Rate to its RFR does not occur on the Effective Date. Instead, the conversion will occur only from the calculation period whose rate fixing date falls on the cessation effective date of that 2020 Rate. For example, for USD-LIBOR, the cessation effective date is 30 June 2023. As the rate fixing date for USD-LIBOR is 2 London Banking Days before the start of a calculation period, USD-LIBOR will be replaced by USD-SOFR only for calculation periods that start 2 London Banking Days after 30 June 2023.

3. **How is the conversion expected to take place for both linear and non-linear derivatives?**

**Linear derivatives**

Linear derivatives can either be converted by adherence to the 2020 Protocol or bilateral negotiation at a master agreement level (incorporating fallbacks) or at a transaction level (active conversion).

**Non-linear derivatives**

Non-linear derivatives are within the scope of the 2020 Protocol and would also be amended by adherence to the 2020 Protocol. However, you should consider carefully how the 2020 Protocol fallbacks would function for certain non-linear derivatives. For guidance on how fallbacks operate for non-linear derivatives, you may refer to ISDA’s RFR Conventions and IBOR Fallbacks - Product Table (including guidance on how fallbacks operate for non-linear derivatives) (4 October 2021).

Apart from adhering to the 2020 Protocol, you may enter into bilateral amendments to remediate your non-linear derivatives. In such cases, these will be handled on a master agreement or on an individual transaction basis. Please reach out to your Relationship Manager (“RM”) for a further discussion about the available options.

The Bank strongly encourages you to formulate your own views on the advantages and disadvantages of adhering to the 2020 Protocol for your non-linear derivatives, taking into account your needs and circumstances, and to seek independent advice if necessary.

4. **How will fixed-fixed and floating cross-currency swaps (CCS) transition?**

For fixed-fixed CCS, there would be no reference to LIBOR, and therefore there would be no direct impact. The only implication for derivatives would be the discount curve used for valuation. We encourage you to check the discount curve used to calculate the value of the positions for collateral payment purposes.

For a floating CCS, if the interest benchmark has changed to a RFR, then there will be an impact on the value of the derivative.

In addition, there is potential for a timing mismatch in the payment legs if you choose to rely on fallbacks for transition. For example, in a USD-KLIBOR CCS, a 12-month KLIBOR leg would fall back to MYR-MYOR after 1 January 2023, while the USD-LIBOR leg would fall back to USD-SOFR after 30 June 2023. If you have any impacted floating CCS exposures, you should consider active conversion to mitigate this risk.

5. **If I adhere to the 2020 Protocol, will the ISDA IBOR fallbacks be incorporated in both cleared and uncleared derivatives?**

**Uncleared derivatives**

The 2020 Protocol will apply to uncleared derivatives documented under Covered Agreements (e.g. ISDA Master Agreements but also other agreement types) once both parties have adhered to the 2020 Protocol. Please note that the relevant parties to a covered derivatives transaction will need to have adhered to the 2020 Protocol for it to apply.

**Cleared derivatives**

The 2020 Protocol will not cover cleared derivatives directly. However, major clearing houses such as LCH have amended or proposed to amend their rule books to incorporate the Supplement or convert cleared LIBOR trades to the relevant RFR ahead of the LIBOR cessation dates so the effect would be the same.
6. If I have adhered to the 2020 Protocol, is there a need for re-papering?

The Bank and the relevant trading entities in its Group have adhered to the 2020 Protocol. If you have also adhered to the 2020 Protocol, all of your existing 2020 Protocol covered master agreements, credit support documents and confirmations that satisfy the criteria of Protocol Covered Documents will be amended to include the ISDA IBOR Fallbacks. Hence, no further amendments or “re-papering” will be required to include fallbacks in these Protocol Covered Documents.

However, adherence to the 2020 Protocol does not preclude you from actively converting any of your legacy LIBOR-referencing agreements to RFR-referencing agreements before LIBOR’s cessation and doing so may be preferable for some products such as loan-linked swaps. You should also consider the appropriateness of applying the ISDA IBOR fallbacks to your legacy non-linear derivatives. Please reach out to your RM for a further discussion on remediation options.

7. If I did not adhere to the 2020 Protocol, will the Bank consider negotiating a bilateral amendment agreement?

Yes, we will consider negotiating a bilateral amendment agreement to incorporate the ISDA IBOR fallbacks. Any deviations from the Bank’s standard position on the terms of the bilateral amendment agreement will be subject to assessment and approval on a case-by-case basis.

8. Is there any difference between the observation periods and payment dates for legacy LIBOR derivatives contracts and the replacement RFR swaps?

LIBOR is a forward-looking term benchmark, hence market participants will know the amount due on the payment date from the start of the calculation period. This differs for RFR averages compounded in arrears, which are backward-looking daily rates and whose payment amounts will not be known until the end of the calculation period.

To account for this, the observation period for contracts that rely on fallbacks is shifted back to allow time for the calculation and payment for the period by the payment date. As such, the payment dates for a replacement RFR swap will be the same as the legacy LIBOR derivatives contract, but the observation period and calculation methodology will differ.

9. What is the methodology for calculating the ISDA Credit Adjustment Spread (CAS)?

The ISDA CAS is determined using a historical median approach which calculates the median spread between the relevant LIBOR and the adjusted RFR over a 5-year lookback period. The ISDA CAS for each of the relevant LIBOR fallbacks in the Supplement and 2020 Protocol was fixed on 5 March 2021.

10. How will derivatives contracts incorporate the ISDA CAS?

The ISDA CAS is incorporated within the relevant fallbacks included in the Supplement. New derivatives transactions entered into on or after 25 January 2021 will have referenced the 2006 ISDA Definitions (as amended by the Supplement) or the 2021 ISDA Interest Rate Derivatives Definitions and will therefore include the new fallbacks (with the ISDA CAS incorporated).

The 2020 Protocol includes the same fallbacks as the Supplement and thus, also incorporates the ISDA CAS. Thus, the result is the same for derivatives transactions entered into before 25 January 2021 that are covered by the 2020 Protocol, where the parties have adhered to the 2020 Protocol.

Where there is active conversion and the conversion effective date is prior to 30 June 2023, the CAS will typically be based on a forward basis swap spread rather than the ISDA CAS.

11. Is it compulsory to use the ISDA CAS for derivatives fallbacks?

The ISDA CAS is automatically applied to fallbacks included in new derivatives contracts entered into on or after 25 January 2021 that reference the 2006 ISDA Definitions or the 2021 ISDA Interest Rate Derivatives Definitions.

The ISDA CAS is also automatically applied to fallbacks included in pre-25 January 2021 covered legacy derivatives contracts that are subject to the 2020 Protocol (or that have included the same fallbacks via a bilateral amendment agreement).

The Bank strongly encourages you to formulate your own views on the advantages and disadvantages of adhering to the 2020 Protocol (and consequently, using the ISDA CAS for fallbacks in your pre-25 January 2021 derivatives contracts), taking into account your needs and circumstances, and to seek independent advice, if necessary.

12. What is the difference between the ISDA 2020 IBOR Fallbacks Protocol and the ISDA 2021 Fallbacks Protocol (“2021 Protocol”) and which should I adhere to?

ISDA publishes and administers protocols to provide market participants with an effective mechanism for making “bulk” amendments to their existing documents. Two key points to note about the Fallbacks Protocols:

- the existing documents that they cover are not limited to ISDA documents; and
- by adhering to the Fallbacks Protocols, you must adopt all (and not some only) of the amendments. However, after adhering, you may bilaterally agree with an adhering counterparty to make changes.

As there are a number of other ISDA defined rates that are or will be affected by benchmark reforms, the 2021 Protocol was published adopting a modular approach, so that as and when the replacement for these affected rates are determined, a new Benchmark Module will be published. To date, 2 Benchmark Modules have been published – December 2021 and June 2022.


The June 2022 Benchmark Module implements the new fallback language for the USD LIBOR Swap Rate set out in Supplement 88 to the 2006 ISDA Definitions.

The Bank and the relevant trading entities in its Group have adhered to the December 2021 Benchmark Module. The Bank has also adhered to the June 2022 Benchmark Module.

If you have existing transactions that reference any of the affected rates covered by the 2020 Protocol or any of the Benchmark Modules to the 2021 Protocol, you should formulate your own views on the advantages and disadvantages of adhering to the 2020 Protocol or the relevant Benchmark Module, taking into account your needs and circumstances, and seek independent advice if necessary.

Lastly, do note that adherence to the 2020 Protocol or a Benchmark Module is on a legal entity basis and an adherence fee of USD500 per legal entity is payable to ISDA (although ISDA offers a discount for adherence by 25 or more affiliated legal entities).
Product Specific Guidance: Loans

13. Will all LIBOR-linked loan products use compounded RFRs?

The Working Group on Sterling Risk-Free Reference Rates (RFRWG) has identified the following loans where the use of compounded RFRs may create operational difficulties:

- loans to smaller corporate, wealth and retail clients,
- trade and working capital products,
- export finance,
- Islamic finance, and
- loans to borrowers in emerging market jurisdictions with exchange controls.

For the above types of loans, parties typically need to determine the amount of accrued interest at the outset/in advance of the interest period. For such cases, it may be more suitable to use a Term RFR or an in advance convention.

The FICC Markets Standards Board (FMSB) released a ‘Standard on use of Term SONIA’ which builds on the use cases identified by the RFRWG and identifies the main circumstances where there may be a robust rationale for using Term SONIA within lending products.

In addition, in its recommended best practices for use of Term SOFR in new contracts, the Alternative Reference Rates Committee (ARRC) has indicated support for the use of Term SOFR for business loan activity, and in areas where use of overnight and averages of SOFR has proven to be difficult. This applies in particular to multi-lender facilities, middle market loans, and trade finance loans. The ARRC also recognises that Term SOFR may also be appropriate for certain securitisations that hold underlying business loans or other assets that reference Term SOFR and where those assets cannot easily reference other forms of SOFR.

Do speak to your RM to ascertain the Bank’s product offerings, so that you can determine which are most suitable for your needs.

14. I want to unwind my exposure instead of remediating it. Can I do that?

Subject to the terms of the impacted agreement, you might have the flexibility to unwind your current exposure or prepay the existing loan.

15. Can borrowers continue to borrow using USD LIBOR until 2023?

Issuance of new USD LIBOR products ceased at the end of 2021. Clients with existing USD LIBOR lending facilities may be able to draw down on these depending on the specific circumstances and terms of the facility.

Clients with USD LIBOR exposures maturing beyond 30 June 2023 will need to either actively convert their exposures to an alternate reference rate or include robust fallback language in their contracts. USD LIBOR contracts that mature prior to the 30 June 2023 cessation date can be allowed to expire at their original maturity date.

Since 1 January 2022, new USD loans should be based on SOFR or an alternate benchmark rate.

16. Will we need to sign any new documentation to convert LIBOR-linked loans to RFR pricing?

It is likely that you will be required to sign an amendment agreement (or equivalent) to implement the change in pricing. The exact form of documentation required will depend on the specific facilities you have with the Bank i.e. bilateral or syndicated.

17. Have the regulators or industry working groups published any fallback language for legacy loan contracts?

There are two potential methods, depending on the products. They are (i) actively amend contracts bilaterally, or (ii) to include the fallback language into contracts.

The Loan Market Association (LMA) has published recommended RFR facility documentation incorporating rate switch provisions. The rate switch language provides that from a pre-agreed date (or following certain rate switch trigger event dates) existing term rate loans will convert to RFR loans on pre-agreed terms. The key terms applicable to RFR loans post-conversation and the compounding formula are set out in schedules to the facility agreement.

The ARRC in the US has updated its recommended hardwired fallback language for a range of products, the latest of which can be found here. Parties to USD loans governed by English law have generally followed the drafting recommendations of the LMA.

Whether you choose to actively convert or to incorporate fallbacks into your contracts will depend on your specific needs, which will in turn affect the amendments made and the change in contractual language. Regardless, your contracts will have to be amended and you may wish to commence discussions with your RMs as soon as possible.

18. What is the Bank’s proposed conversion methodology for USD LIBOR-linked loans?

The preferred remediation approach is to actively transition (i.e. to convert USD LIBOR contracts to SOFR or Term SFOR) ahead of LIBOR cessation.

The Bank’s preferred interest calculation methodologies are (i) Term SOFR or (ii) SOFR compounded in arrears.
If you have a USD LIBOR-linked loan, at the time of conversion, a CAS will be added to SOFR or Term SOFR, which will be stated in the loan documentation.

Conversions will be timed to take place on the interest reset date. For conversion taking place for only affected fixings i.e. after LIBOR cessation, the CAS published by the relevant industry body will be applicable. The ISDA CAS is now on Bloomberg and the CAS for USD cash products will be published on Refinitiv, as stated by the ARRC.

Where applicable, the CAS may be determined as (i) the same CAS as published by Bloomberg, or (ii) a calculation based on the forward-looking basis swap transactions market, which is used to calculate the implied future difference between USD LIBOR and SOFR. It is calculated as the linear interpolation between differing tenors of USD LIBOR and SOFR swaps.

If your loan is linked to a derivative, you may wish to remediate both products together to avoid any mismatch in the respective interest rates, particularly if these transactions are subject to hedge accounting considerations. You should seek independent advice on this and on any other considerations as necessary.

If you are ready to commence remediation discussions, please reach out to your RM who can then organise a call with yourself and the relevant deal teams.

19. If I have a LIBOR term loan and an interest rate swap, how can I ensure the swap continues to hedge the term loan after LIBOR cessation?

The potential loss of hedge effectiveness is one of the risks of LIBOR transition.

If you have signed up to the ISDA Protocol, all your legacy derivative contracts would have retroactively included enhanced fallbacks that will convert your LIBOR contracts to RFR. However, it is imperative to note that if you choose to rely on fallbacks for each leg without aligning their approach, basis risk may arise resulting in differences in interest coupon amounts.

Hence, where possible, you may consider active conversion when remediating legacy LIBOR exposures to ensure that the repriced RFR transactions and their hedges continue to operate effectively.

Where you hold derivative hedges with us, the Bank intends to coordinate their transition together with your loans, to reduce the chance of hedging mismatch. Such alignment may result in a cost incurred.

The Bank can use either the forward-looking spread or historical median approach to calculate the CAS, with the intention to keep both LIBOR and RFR loans as economically equivalent as possible.

20. I have a revolving credit facility which allows me to drawdown in any currency. Will this be impacted by the transition?

Non-USD LIBOR rates within a facility should have been remediated to RFRs or an alternate benchmark prior to the cessation date of 31 December 2021.

You may continue to drawdown USD currencies with existing USD LIBOR facilities depending on the specific circumstances and terms of the facility. However, for facilities maturing beyond 30 June 2023, they will need to be remediated prior to the USD LIBOR cessation date of 30 June 2023.

21. I have a USD LIBOR-linked syndicated facility, where the Bank is not an agent. Which of the following remediation options should I select?

a. Amend the agreement to reference SOFR/Term SOFR from the effective date of the revised facility agreement; or

b. Add rate switch language to allow the facility to switch from referencing USD LIBOR to reference SOFR/Term SOFR instead.

If you (and the lender group) are ready to transact in SOFR/Term SOFR, you may wish to consider option (a). The SOFR/Term SOFR pricing should start from the beginning of the next interest period, and the Bank’s preference is for non-cumulative compounding in arrears with a five-business day lookback.

If the other parties are not ready to transition to SOFR/Term SOFR, option (b) will satisfy our fallback requirements.
Product Specific Guidance: Bonds

22. How is the market approaching the transition of LIBOR-linked bonds to RFRs?

As noted by the RFRWG in their tough legacy paper, bond markets are encouraged to continue their active conversion from LIBOR to RFR as some legacy bonds do not contemplate the cessation of LIBOR in their fallback provisions, whilst in a small number of cases, there are no fallback provisions at all.

One method that the markets have been considering is the conversion of LIBOR-linked bonds to RFRs by way of consent solicitation. Consent solicitation is a market-based approach which enables an issuer to initiate a proposal of certain amendments to the terms and conditions of a bond, which may include the amendment of the reference rate.

If the necessary quorum and/or consent thresholds set out in the terms and conditions are reached, usually between 75-100%¹ of bondholders, then the proposed amendments will be made to the terms and conditions of the bond and will bind all holders of the bonds, irrespective of whether they voted in favour of the amendments or not.

23. What are the preferred conventions in bond markets to date?

Both SONIA and SOFR bond markets have seen a preference for a compounded in arrears methodology with a short lookback (or lag) convention, typically five-business days.

However, both the RFRWG and ARRC have noted that although this is the current favoured approach, market users should use the convention which best suits their individual circumstances.

¹ RFRWG, in its paper on ‘Active transition of GBP LIBOR referencing bonds’, highlighted that under English law, amendments to interest rate provisions in bond terms and conditions typically require a quorum of two-thirds or 75% of holders of the outstanding principal amount of bonds. Under New York law, consent thresholds of 100% are common.
Product Specific Guidance: Islamic Banking

24. What is the impact of the transition on Islamic Banking products?

A key Shariah principle, which is the prohibition of uncertainty, requires absolute certainty on the objects of performance of an Islamic financing contract. That is, for the asset or service to be performed, the consideration (amounts payable) and the dates of performance and payment must be determined for the contract to be Shariah compliant.

Transitioning from the Shariah compliant LIBOR benchmarks that are in nature forward-looking rates, to RFRs that are backward-looking compounded in arrears methodologies, may not always be compatible for some Islamic Banking products.

For Islamic products to transition from LIBOR to RFRs, structural changes are required in order to adapt the structures to be Shariah compliant. The structures which can be adapted are Ijarah, Diminishing Musharakah and Commodity Murabaha.

For other Islamic Banking structures such as Good Murabaha, Musawamah and Istisna, it would not be possible to adapt them to make use of compounded in arrears RFR methodologies and they will require reference to alternate benchmarks such as Term RFR rates where available.

The cessation dates for LIBOR applies to all users of the LIBOR benchmarks and so Islamic Banking exposures referencing LIBOR will need to transition to new RFRs.

25. How can Islamic structures be changed to accommodate the LIBOR transition?

Commodity Murabaha

There are two types of Commodity Murabaha transactions that can be utilised in the industry to accommodate a backward-looking RFR. Parties may enter into a combination of the following Commodity Murabaha transactions under one contract or product.

- Dual Rate structure:
  - The Murabaha contract will be executed at a higher rate in order to pre-determine a maximum profit for the structure. Any excess would be returned to the client as a rebate.

- Dual Murabaha structure:
  - a. Clients execute a Commodity Murabaha for the principal amount to be paid at maturity date.
  - b. The client will execute spot Murabaha transactions on the respective payment dates to recover the profit amount calculated in line with the RFR rate.

Also referred to as Ceiling rate structure.

Ijarah and Diminishing Musharakah

In Ijarah and Diminishing Musharakah products, the Bank will lease an asset (typically, real estate or industrial machinery) to the client during the period of the financing so the client can have unobstructed and exclusive use of the asset. To remunerate the Bank, the client pays rent, calculated on the basis of financial parameters.

When IBOR benchmarks are used to calculate rent, the rent amount is agreed at the beginning of the rent period. With the transition to RFRs, these products will shift to daily rent periods where the rent will be fixed on a daily basis, based on the RFR or a 2-period structure.

26. What are the RFR compliant Islamic structures for Commodity Murabaha?

The Bank’s Sharia board have approved two structures for Commodity Murabaha which are RFR compliant.

<table>
<thead>
<tr>
<th>Islamic Banking Structure</th>
<th>Financing</th>
<th>Trade</th>
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<tbody>
<tr>
<td>Commodity Murabaha – Dual Tranche</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Commodity Murabaha – Dual Rate</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

27. What are the remediation options for Islamic Banking products (derivatives, bilateral contracts, Islamic corporate finance and syndication contracts)?

Derivatives

The ISDA Protocol and Supplement is not appropriate for use in Islamic Banking products. Hence, unlike for conventional banking, where adherence to the Protocol is encouraged, for Islamic Banking, derivative contracts bilateral negotiations through active remediation will be the preferred approach. Where active conversion is not possible, robust fallbacks should be included.

Bilateral contracts

For existing contracts, a repapering approach will be undertaken, whereby repapering existing contracts for clients availing financing under the affected structures (Commodity Murabaha, Ijarah and Diminishing Musharakah) to the new documentation set will be executed.

Islamic corporate finance and syndication contracts

The remediation approach for Islamic corporate finance and syndication is the same as the conventional approach with an external counsel being engaged for contract remediation.
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