

July 22, 2020

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Alternative Reference Rates Committee
(ARRC)

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Working Group on Alternative Reference
Rates (WGARR) under the Treasury
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Tanate Phutrakul, Chair
Working Group on Euro Risk-free Rates

Tushar Morzaria, Chair
Working Group on Sterling Risk-free
Reference Rates

Samuel Tsien, Chair
Steering Committee for SOR Transition to
SORA

By email

Re: Adherence to the ISDA IBOR Fallback Protocol

Thank you for your continued support of ISDA's work to implement robust fallbacks for derivatives referencing key interbank offered rates (IBORs), including pre-cessation fallbacks for LIBOR.

ISDA hopes to soon be in a position to launch the IBOR Fallback Protocol and the IBOR Fallback Supplement to implement the new fallbacks for legacy and new derivative contracts, respectively. The documents themselves should be final by the end of July and Bloomberg's publication of the indicative fallback rates recently launched on July 17th. The actual launch of the IBOR Fallback Protocol and the IBOR Fallback Supplement remains subject to and will occur only after ISDA receives a positive business review letter from the US Department of Justice and similar feedback from competition authorities in other jurisdictions. The fallbacks

will take effect in new contracts via the IBOR Fallback Supplement and in legacy contracts that are amended by the IBOR Fallback Protocol (or bilaterally) on a set date about four months later.

ISDA will provide market participants with approximately two weeks' notice of the official launch date and later effective date. During this two week period, ISDA expects to facilitate a process whereby regulated entities and other key market participants can adhere to the IBOR Fallback Protocol 'in escrow' prior to the launch date. This adherence will be binding and complete but the adhering entity's name and information will not appear on the ISDA website until the official launch date (and the adherence letter will be 'deemed' delivered as of that launch date, not the earlier date on which it was submitted 'in escrow').

Entities that adhere in escrow will do so via a private link that ISDA sends them. This link will take them to a page with the text of the IBOR Fallback Protocol and all related information, including full adherence mechanics. The final text of the IBOR Fallback Supplement and the IBOR Fallback Protocol will be available on www.isda.org during this time but the information in the private link (e.g., adherence mechanics, list of adherents) will not be publicly available.¹

Wide take up of this 'adherence in escrow' process will result in a broad and comprehensive list of adherents at the time the IBOR Fallback Protocol launches and thereby indicate to the market an expectation of wide usage of the new fallbacks. ISDA's most successful protocols have been those that facilitate compliance with specific and binding laws or regulations. We attribute this in part to a common understanding that all entities who are subject to the law or regulation will have to agree to the contractual amendments implemented by the relevant protocol.

Counterparties of these entities therefore have no reason to 'wait and see' whether each of their regulated entity counterparties intends to make the amendments or whether they could alternatively move their trades to those entities that do not.

While regulators globally have voiced support for the IBOR Fallback Protocol, agreement to the new fallbacks for legacy contracts is not specifically required by law or regulation in any jurisdiction. As a result, market participants may decide to wait and see how widely used the new fallbacks will be before they adhere to the IBOR Fallback Protocol (or agree to the new fallbacks bilaterally). Coupled with continued messaging and support directly from regulators, we believe that the adherence in escrow process described above could mitigate against this concern and send a very clear indication to the market as of the day the IBOR Fallback Protocol launches, which we believe would in turn result in a higher level of adherence by the end of this

¹ Entities that wish to adhere in escrow should email Breda Walsh (bwalsh@isda.org) by July 31st, 2020 with the contact information for an individual or individuals who should receive the private link to the adherence in escrow page. ISDA will compile a list of these individuals and communicate with them regarding when the adherence in escrow link will open and how long they will have to adhere in escrow (which is expected to be about two weeks). Ultimately, the individuals on this list will receive the actual private link. Affiliated legal entities must all submit separate adherence letters but one individual can submit each letter (and therefore one contact person per financial group is sufficient).

year. We would welcome your support in encouraging wide utilization of the adherence in escrow process.

Please do not hesitate to reach out to either of us or Ann Battle (abattle@isda.org) if you have any questions about ISDA's launch of the IBOR Fallback Supplement and the IBOR Fallback Protocol or the adherence process.

Sincerely,



Scott O'Malia
Chief Executive Officer



Katherine Tew Darras
General Counsel

CC: FSB OSSG (*via FSB Secretariat for circulation to the OSSG*)

Penluk Lothuvachai, Bank of Thailand