FINANCIAL CONDUCT AUTHORITY

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ARTICLE 23D BENCHMARKS REGULATION – NOTICE OF REQUIREMENTS

To:	**ICE Benchmark Administration Limited**
Reference Number:	**FRN 608291**
Address:	**Milton Gate, 60 Chiswell Street, London EC1Y 4SA, United Kingdom**
Date:	**01 July 2023**

1. ACTION

1.1. For the reasons given in this Notice and pursuant to Article 23D(2) of the Benchmarks Regulation ("BMR"), the Financial Conduct Authority ("the Authority") has decided to impose requirements on ICE Benchmark Administration ("IBA") to change the way in which the following LIBOR versions ("US Dollar LIBOR Versions") are determined. IBA must calculate the figure for:

1.1.1. 1-month US Dollar LIBOR,

1.1.2. 3-month US Dollar LIBOR, and

1.1.3. 6-month US Dollar LIBOR,

in accordance with the requirements in Annex 1 (the "Requirements").

1.2. The Requirements take effect immediately after this Article 23D(2) Notice is given to IBA in line with paragraph 6.1, and after the designation of the US Dollar LIBOR Versions as Article 23A benchmarks takes effect on 1 July 2023.

2. SUMMARY OF REASONS

2.1. The Authority decided to compel IBA under Article 21(3) BMR to continue publication for 12 months starting immediately after the publication of the US Dollar LIBOR Versions on 30 June 2023 is concluded and before the US Dollar LIBOR Versions would otherwise cease. In making this decision, the Authority noted that IBA would not be able to continue the publication of any of the US Dollar LIBOR Versions on the basis of its panel bank contributions-based methodology. The Authority intended, in line with its consultation on winding down 'synthetic' sterling LIBOR and US Dollar LIBOR and consultation on 'synthetic' US Dollar LIBOR ("CP22/21"), to require IBA to continue to publish the US Dollar LIBOR Versions under a changed, synthetic, methodology, which will no longer be representative of the underlying market that LIBOR was intended to measure.

2.2. The Authority also designated each of the US Dollar LIBOR Versions under Article 23A BMR, taking effect at 00:01 London time on 1 July 2023.

2.3. The Authority has decided, taking into account responses it received to CP22/21 and the Authority's statement of policy with respect to Article 23D of the Benchmarks Regulation dated March 2021, published pursuant to Article 23F(1)(d) BMR ("Article 23D Statement of Policy"), and for the reasons described in this Notice, to impose the Requirements on IBA as the Authority considers it:

1) appropriate to do so, having regard to the desirability of securing that the cessation of each of the US Dollar LIBOR Versions takes place in an orderly fashion; and

2) desirable to do so in order to advance both its consumer protection and integrity objectives.

3. DEFINITIONS

3.1. In this Notice, the following definitions apply:

"Article 23A benchmark" means a benchmark in relation to which a designation under Article 23A of the Benchmarks Regulation has effect

"Article 23D Statement of Policy" means the FCA's statement of policy with respect to Article 23D of the Benchmarks Regulation dated March 2021, published pursuant to Article 23F(1)(d) BMR

"ARRC" means the Alternative Reference Rates Committee, the US industry-led working group that leads on US Dollar LIBOR transition

"the Authority" means the Financial Conduct Authority

"the Benchmarks Regulation" or "BMR" means the Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, which is part of UK law by virtue of the European Union (Withdrawal) Act 2018, as amended by the Financial Services Act 2021 and the Critical Benchmarks (References and Administrators' Liability) Act 2021

"CP22/21" means the 'Consultation on 'synthetic' US dollar LIBOR and feedback to CP22/11' published by the FCA on 23 November 2022

"IBA" means ICE Benchmark Administration Limited

"CME Term SOFR Reference Rate" means the forward-looking term SOFR reference rates provided by CME Group Benchmark Administration

"ISDA" means the International Swaps and Derivatives Association, Inc.

"ISDA 2020 IBOR Fallbacks Protocol" means the ISDA 2020 IBOR Fallbacks Protocol published on 23 October 2020 by ISDA

"ISDA IBOR Fallbacks Supplement" means the Amendments to the 2006 ISDA Definitions to include new IBOR fallbacks, in supplement number 70 to the 2006 ISDA Definitions, published by ISDA, final on 23 October 2020 and effective on 25 January 2021

"ISDA Spread Adjustment" means, with respect to each LIBOR version, the fixed spread adjustment that applies as part of the ISDA IBOR fallback for each LIBOR version (which may be a positive or negative value or zero), and that is published for the purpose of the ISDA 2020 IBOR Fallbacks Protocol and ISDA IBOR Fallbacks Supplement

"LIBOR" means the LIBOR benchmark provided by IBA

"RFR" means risk-free rate

"version" has the meaning in Article 23G (2) of the BMR and is used to refer to LIBOR as provided for a particular currency and tenor, sometimes known as a LIBOR setting

4. REASONS FOR THE ACTION

Background

4.1. IBA formally notified the Authority on 4 March 2021 of its intention to cease providing the following LIBOR versions immediately after 31 December 2021:

1) all 7 sterling versions;

2) all 7 Japanese yen versions;

3) the 1-week and 2-month US Dollar versions;

4) all 7 Swiss franc versions; and

5) all 7 Euro versions.

4.2. IBA also formally notified the Authority on 4 March 2021 of its intention to cease providing the remaining US Dollar versions immediately following publication on 30

June 2023. IBA noted that it intended to cease providing all LIBOR versions on the proposed cessation dates, unless the Authority were to exercise its power to require IBA to continue to publish any versions using a changed, synthetic methodology.

4.3. The Authority exercised its powers under Article 21A(1) BMR to prohibit new use of the continuing US Dollar LIBOR versions, subject to certain specified exemptions, from 1 January 2022.

4.4. The Authority decided to exercise its power under Article 21(3) BMR in relation to the US Dollar LIBOR Versions for a 12-month period immediately after the publication on 30 June 2023 is concluded and before they would otherwise cease. The Authority also decided to designate each of the US Dollar LIBOR Versions under Article 23A BMR, which allows the Authority to access the Article 23D power to sustain these versions to secure their orderly wind down. Article 23D(2) BMR grants the Authority the ability to impose requirements on the administrator of a critical benchmark, here referring to each of the US Dollar LIBOR Versions of the benchmark which has been designated under Article 23A BMR. These requirements may relate to the way in which the benchmark is determined, including the input data, the rules of the benchmark or, where the benchmark is based on submissions from contributors, the benchmark's code of conduct.

4.5. Article 23D(3) BMR provides that the Authority may only use the Article 23D power if it considers it:

1) appropriate to do so having regard to the desirability of securing that the cessation of the benchmark takes place in an orderly fashion, and

2) desirable to do so in order to advance either or both of its consumer protection objective and its integrity objective.

4.6. The Authority has consulted on a Statement of Policy with respect to the exercise of its Article 23D power and subsequently published the Article 23D Statement of Policy in March 2021.

4.7. On 30 June 2022, the Authority consulted the market on the potential impact that publication of a synthetic US Dollar LIBOR would have and whether there would be any unintended adverse consequences. The Authority said that it expected any synthetic US Dollar LIBOR to follow a similar model to that used for synthetic sterling and Japanese yen LIBOR, i.e. that it would be based on the sum of the relevant forward-looking term rate plus the ISDA spread adjustment for the corresponding LIBOR setting. The Authority did not receive any feedback in opposition to this proposed methodology.

4.8. On 23 November 2022, the Authority published CP22/21 seeking views on its proposed decision to exercise the Article 23D(2) power in respect of each of the US Dollar LIBOR Versions and setting out how it had regard to the Article 23D Statement of Policy. The consultation closed on 6 January 2023.

4.9. There were 42 responses to CP22/21, with 41 responses to the questions on the Authority's proposed approach to exercising its methodology change power. Thirty-nine respondents agreed with the proposal and 2 were neutral. The Authority has taken account of these responses when considering whether and how to exercise its methodology change power.

4.10. As a result, the Authority has decided to impose changes in relation to each of the US Dollar LIBOR Versions as set out in paragraph 1.1 and Annex 1 of this Notice.

4.11. The Authority gives IBA this Article 23D(2) Notice in accordance with Articles 23D(2) and (7) of the BMR. The Notice takes effect immediately after it is given to IBA in line with paragraph 6.1 of this Notice, and after the Article 23A Designation Notice takes effect.

Reasons for Decision on whether to exercise Article 23D(2)

4.12. The Authority considers that exercising the Article 23D(2) power is appropriate in order to secure an orderly cessation of each of the US Dollar LIBOR Versions that has been designated under Article 23A BMR and is desirable to advance both consumer protection and integrity objectives.

4.13. The Authority has taken into account the factors in paragraphs 2.2 to 2.12 in the Article 23D Statement of Policy, as set out below.

Appropriateness of using the power having regard to the desirability of securing an orderly cessation of a critical benchmark

4.14. In making the Article 21(3) decision, the Authority has considered the likely existence and scale of outstanding legacy contracts referencing each of the US Dollar LIBOR Versions that would not be able to move away from using these versions upon or before 30 June 2023.

4.15. The Authority concluded that none of the US Dollar LIBOR Versions would be able to cease in an orderly fashion at end-June 2023 due to the likely existence of a relatively small but still material amount of legacy contracts and therefore decided to compel IBA under Article 21(3) BMR to continue the publication of the US Dollar LIBOR Versions for a full 12-month period after panel banks depart at end-June 2023, as set out in paragraph 2.1 of this Notice.

4.16. The Authority further decided to designate each of the US Dollar LIBOR Versions under Article 23A BMR, which allows the Authority to access the Article 23D power. The Authority considers it appropriate to use the Article 23D(2) power to impose a change of methodology, in conjunction with the Authority's decision under Article 21(3) BMR, so that IBA is required to continue the publication of each of the US Dollar LIBOR Versions on a robust, albeit non-representative, basis (synthetic basis) for a limited period. This is desirable to secure an orderly wind-down of the US Dollar LIBOR Versions.

Desirability of using the power to advance the Authority's consumer protection and/or integrity objectives

4.17. In CP22/21, the Authority proposed that, similar to the case with the relevant sterling and yen LIBOR versions, it would be desirable to use its Article 23D(2) power in the same way for the US Dollar LIBOR Versions, to advance its consumer protection and integrity objectives.

Consumer protection

4.18. The Authority establishes in making its Article 21(3) decision that there will likely remain a relatively small but still material subset of contracts (for example bonds and loans) that will not be able to transition away from using the US Dollar LIBOR Versions before or on 30 June 2023. Further, given the wide use of US Dollar LIBOR, it is likely that consumers are exposed to one of the US Dollar LIBOR Versions through their pensions or other investments (for example bonds and securitisations). Therefore, there is a risk to consumer protection should the US Dollar LIBOR Versions cease after publication is concluded on 30 June 2023.

4.19. The Authority considers that through its use of the Article 23D(2) power, legacy contracts would continue to function and consumers would achieve fair outcomes as the US Dollar LIBOR Versions continue under a robust, synthetic methodology that provides a fair approximation of the value panel-bank US dollar LIBOR would have had.

Integrity of the UK financial system

4.20. The Authority considers that using the Article 23D(2) power will advance market integrity. The Authority considers that sustaining the US Dollar LIBOR Versions on a changed, synthetic basis will reduce market disruption by allowing relevant transactions to continue operating as intended and help maintain the orderliness of the financial system.

4.21. The Authority also considers that it will help maintain transparency and resilience in the market, as it allows outstanding US Dollar LIBOR-referencing contracts to continue to function in line with the already defined rights and obligations in the contracts through the wind-down period.

4.22. The Authority has chosen robust and transparent component inputs for the changed methodology, which means that the US Dollar LIBOR Versions will be robust against market abuse, maintaining the cleanliness of the financial system.

4.23. The Authority considers it feasible to produce the US Dollar LIBOR Versions through the changed methodology, as set out below in paragraphs 4.36-4.40 of this Notice.

Reasons for Decision on how to exercise Article 23D(2)

4.24. The Authority has taken into account the factors in paragraphs 2.13 – 2.26 of the Article 23D Statement of Policy in deciding how to exercise the Article 23D(2) power to impose a requirement on IBA to change the methodology of the US Dollar LIBOR Versions.

Fair approximation of the value the benchmark would have had

4.25. LIBOR's administrator, IBA, states in its benchmark statement that the panel-bank LIBOR methodology is 'designed to produce an average rate that is representative of the rates at which large, leading internationally active banks with access to the wholesale, unsecured funding market could fund themselves in such market in particular currencies for certain tenors'.

4.26. In the Authority's view, in economic terms, LIBOR is composed of:

1) a measure of the expectation of RFRs over a fixed period; plus

2) an adjustment reflecting bank credit risk and liquidity conditions in funding markets over the corresponding fixed period.

4.27. In its June 2021 analysis of the methodology for synthetic sterling and yen LIBOR, the Authority concluded that a model based on the sum of the relevant forward-looking term risk free rate plus the ISDA spread adjustment for the corresponding LIBOR setting, would achieve a fair and reasonable approximation of the value panel-bank LIBOR would have had. The detailed analysis took account of the Authority's Statement of Policy and considered other alternative approaches (see paragraphs 3.27-3.49 of CP21/19).

4.28. For the methodology of a potential synthetic US Dollar LIBOR, the Authority's assessment of how to achieve a fair and reasonable approximation of the economic components of a panel-bank LIBOR remains the same as that of sterling and yen. The Authority proposed in CP22/21 that it should follow the same approach as the one for sterling and yen LIBOR settings. Specifically, the Authority proposed that a synthetic US Dollar LIBOR should be calculated on the basis of the relevant CME Term SOFR Reference Rate plus the ISDA Spread Adjustment for the corresponding setting. 39 of the 41 respondents supported this approach. Two responses were neutral.

Least disturbance or disadvantage to affected parties

4.29. In the case of the US Dollar LIBOR Versions, the Authority considers that there will likely remain a relatively small but still material subset of contracts that will not be able to transition away from using US Dollar LIBOR by end-June 2023. These contracts would continue to reference US Dollar LIBOR under the changed methodology. The Authority has sought to ensure the least disturbance or disadvantage to these affected parties in requiring the changed methodology.

4.30. The methodology, based on the relevant CME Term SOFR Reference Rate and the corresponding ISDA spread adjustment, provides certainty on the interest payment due to be calculated, made or received on dates specified in the contract in a way very similar to how these legacy contracts would have operated under panel-bank US Dollar LIBOR. This will allow those parties to continue to use US Dollar LIBOR and minimise the need for parties to make consequential changes to ensure their contracts continue to operate after the US Dollar LIBOR panel ends.

4.31. The ARRC formally recommended the use of the term SOFR Reference Rates produced by CME as an alternative reference rate for US Dollar LIBOR in certain cases where such use is in line with its Best Practice Recommendations, including in legacy contracts that have adopted the ARRC's recommended fallback language.

4.32. The US' LIBOR Act provides a mechanism for contracts governed by US law to transition away from LIBOR to appropriate alternative rates when the US Dollar LIBOR panel ends (and thus the relevant LIBOR settings either cease or become unrepresentative of the markets they are intended to measure), if they do not contain clear, workable fallback provisions. In December 2022, the Federal Reserve Board (FRB) published its final rule to implement the US' LIBOR Act to use the CME Term SOFR Reference Rate and the spread adjustment specified in the US' LIBOR Act as benchmark replacement rates for LIBOR for non-derivative products.

4.33. The synthetic methodology and its specific components, being the relevant CME Term SOFR Reference Rate and the corresponding ISDA spread adjustment, align with the mechanism in the US' LIBOR Act and the ARRC's recommended fallbacks. Alignment between the US Dollar synthetic LIBOR methodology and the fallbacks/replacement rates used in US law contracts reduces the risk of bifurcation of international markets, therefore ensuring the least disturbance for affected parties where they have both exposures in scope of the US' LIBOR Act and exposures referencing synthetic US Dollar LIBOR.

Market support

4.34. The Authority has taken into account market support that has already been established on a fair way of calculating a replacement value for LIBOR, i.e. relevant forward-looking term RFRs plus the relevant ISDA spread adjustment. The synthetic methodology for the US Dollar LIBOR Versions aligns with the ARRC's recommended fallbacks for legacy contracts referencing US Dollar LIBOR and the FRB rules to implement the US' LIBOR Act as described in paragraphs 4.31-4.33.

4.35. As with synthetic sterling and yen LIBOR, the Authority's choice of the ISDA spread adjustment is also consistent with wide support for calculating the spread between LIBOR and risk-free rates. This market consensus has been established through a series of consultations by ISDA which asked for and received feedback from market participants internationally. Cross-market working groups in the UK, the US, EU, Switzerland and Japan have also endorsed this approach to be incorporated in fallback arrangements in cash contracts such as bonds and loans. The Financial Stability Board's Official Sector Steering Group has also supported the use of ISDA spread adjustments for fallbacks in cash products.

Availability to the benchmark administrator of robust and transparent inputs

4.36. The Authority has established that robust and transparent inputs required to produce the US Dollar LIBOR Versions under the synthetic methodology already exist and can be made available to IBA.

4.37. The Authority has been informed by both CME and IBA that the CME Term SOFR Reference Rate will be made available to IBA for this purpose, and that IBA will be operationally able to produce the synthetic US Dollar LIBOR Versions using this input.

4.38. The Authority has been informed that IBA has secured the ISDA spread adjustment to be used as an input in the production of the synthetic US Dollar LIBOR Versions.

Impact on the benchmark administrator

4.39. The Authority has taken account of the impact that a change in the methodology may have on the benchmark administrator. In particular, whether the administrator is operationally able to produce the benchmark under the changed methodology, as well as the financial or commercial impact this would have on the benchmark administrator.

4.40. The Authority has established that IBA will operationally be able to produce the US Dollar LIBOR Versions on a synthetic basis using the available inputs.

4.41. Further, the Authority considers that each of the US Dollar LIBOR Versions (which the Authority decided to designate as Article 23A benchmarks) will be of limited remaining commercial value to IBA. This is because their use by supervised entities in the UK will be restricted to permitted legacy use only. The Authority has taken this into account in assessing that its imposed methodology change would not subject IBA to unreasonable financial or commercial loss.

Length of publication on a changed basis

4.42. There is no legal constraint on the length of the Article 23D power in the BMR. However, the Authority intends to intervene for as short a time as appropriate to ensure an orderly wind-down in line with the Authority's consumer protection and integrity objectives. The Authority's requirement for a synthetic US Dollar LIBOR will be imposed in conjunction with its Article 21(3) decision.

4.43. The Authority is required to review whether the form in which it uses its Article 23D(2) power has advanced its consumer protection/integrity objectives, at least every 2 years under Article 23E.

Likely effect outside the UK of exercising the power

4.44. The US Dollar LIBOR Versions are used both within and outside the UK. In CP22/21, the Authority noted the wide use of US Dollar LIBOR globally and the relatively slower transition in some developing markets where some extra time would be needed to transition legacy contracts referencing one of the US Dollar LIBOR Versions.

4.45. In making the Article 23D(2) decision to require the changed methodology for the US Dollar LIBOR Versions, the Authority has engaged with a range of international and overseas authorities and considered consultation responses received from within and beyond the UK.

5. EFFECT OF ACTION ON SUPERVISED ENTITIES

5.1. The Authority's exercise of the Article 23D(2) power as described in this notice will be relevant to supervised entities who are permitted to use the US Dollar LIBOR Versions under Article 23C of the BMR. The Authority is, in conjunction with its Article 21(3) decision, requiring IBA to continue to publish the US Dollar LIBOR Versions under a changed, synthetic, methodology which will be unrepresentative of the underlying market that LIBOR was intended to measure, from 1 July 2023.

6. PROCEDURAL MATTERS

6.1. The Notice will be given to IBA under Article 23D(2) of the Benchmarks Regulation and shall be deemed to have been received in accordance with regulation 6(b) of The Benchmarks (Provision of Information and Documents) Regulations 2021.

6.2. The Notice will be given to the Treasury pursuant to Article 23D(10) (a) of the Benchmarks Regulation and will be published under Article 23D(9) of the Benchmarks Regulation.

7. **AUTHORITY CONTACTS**

7.1. For more information concerning this matter generally, contact Vanessa LeBlanc at the Authority (email: Vanessa.LeBlanc@fca.org.uk).

JON RELLEEN

Director of Infrastructure and Exchanges (Supervision, Policy and Competition Division), for and on behalf of the Authority

SIMON WALLS

Director of Wholesale Sell-Side (Supervision, Policy and Competition Division), for and on behalf of the Authority

Annex 1

Technical Specifications

1. The Authority requires IBA to change the way the following US dollar LIBOR Versions are determined, which will take immediate effect after their Article 23A designations become effective on 1 July 2023:
    1. 1-month US dollar LIBOR is to be calculated as the sum of the CME 1-month Term SOFR Reference Rate and the ISDA Spread Adjustment for 1-month US dollar LIBOR.
    2. 3-month US dollar LIBOR is to be calculated as the sum of the CME 3-month Term SOFR Reference Rate and the ISDA Spread Adjustment for 3-month US dollar LIBOR.
    3. 6-month US dollar LIBOR is to be calculated as the sum of the CME 6-month Term SOFR Reference Rate and the ISDA Spread Adjustment for 6-month US dollar LIBOR.
2. Each of the US dollar LIBOR Versions under the methodology in paragraphs 1.1-1.3 should continue to be published at or around 11:55 am London time on each applicable London business day, except for London public holidays, for as long as the Authority continues to compel IBA to determine and publish the relevant version.
3. IBA should use the latest available value of the required input data, under the methodology in paragraphs 1.1-1.3, as published by their provider prior to the scheduled publication time for the relevant US Dollar LIBOR Version on an applicable London business day, subject to the below.
4. IBA should use the required input data, under the methodology in paragraphs 1.1-1.3 for the relevant US Dollar LIBOR Version, in the same form as they are published by the respective provider.
5. Each of the US dollar LIBOR Versions under the methodology in paragraphs 1.1-1.3 should continue to be rounded and published to 5 decimal places. Where any input data are published to fewer than 5 decimal places, IBA should continue to publish the relevant US Dollar LIBOR Version to 5 decimal places, by adding zero(s) at the end of the decimal value of the relevant US Dollar LIBOR Version.
6. In the event that any of the required input data, under the methodology in paragraphs 1.1-1.3 for the relevant US Dollar LIBOR Version, are not published by the relevant

provider for an applicable London business day in accordance with its normal publication schedule, IBA should use the last published value for the relevant input data to produce the relevant US Dollar LIBOR Version under the methodology in paragraphs 1.1-1.3 unless the Authority decides and notifies IBA otherwise before publication.

7. In the event that any of the required input data under the methodology in paragraphs 1.1-1.3 for the relevant US Dollar LIBOR Version are not available 30 minutes prior to the scheduled publication time for the relevant US Dollar LIBOR Version on an applicable London business day in accordance with their normal publication schedule, IBA should act in accordance with the requirement in either subparagraph 1) or subparagraph 2) below.

    1. Where IBA has been informed by the relevant provider of the input data that the required input data will become available within 1 hour after the scheduled publication time for the relevant US Dollar LIBOR Version on that applicable London business day, IBA should delay the publication of the relevant US Dollar LIBOR Version and publish as soon as practicable once the required input data become available to IBA for that applicable London business day. If the required input data do not become available to IBA within 1 hour after the scheduled publication time for the relevant US Dollar LIBOR Version on that applicable London business day, IBA should use the last published value for that input data to produce the relevant US Dollar LIBOR Version under the methodology in paragraphs 1.1-1.3 for that applicable London business day and publish as soon as practicable after the 1 hour delay, unless the Authority decides and notifies IBA otherwise before publication.

    2. In other circumstances except the one described under subparagraph 1), IBA should use the last published value for that input data to produce the relevant US Dollar LIBOR Version under the methodology in paragraphs 1.1-1.3 for that applicable London business day unless the Authority decides and notifies IBA otherwise before publication.

8. In the event that, after the publication of the relevant US Dollar LIBOR Version on an applicable London business day, IBA is notified that the CME Term SOFR Reference Rate is subsequently republished by its provider on that day, IBA should re-calculate and re-publish the relevant US Dollar LIBOR Version using the republished value of the CME Term SOFR Reference Rate for that applicable London business day.