The Association of Corporate Treasurers

Comments in response to

Joint Consultation Paper on LIBOR Re-Fixing

Interim LIBOR Oversight Committee and BBA LIBOR Ltd

7 October 2013

29 November 2013

The Association of Corporate Treasurers (ACT)

The ACT is a professional body for those working in corporate treasury, risk and corporate finance. Further information is provided at the back of these comments and on our website www.treasurers.org.

Contact details are also at the back of these comments.

We canvassed the opinion of our members through a number of channels, in this case including a conference, a round-table discussion, our monthly e-newsletter to members and others, our LinkedIn group, our twitter audience, and our Policy and Technical Committee.

General

The ACT welcomes the opportunity to comment on this matter.

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We see small advantage in publishing for the information of users any re-calculation that materially changes a Libor but see no advantage in making that publication a “re-fixing” replacing the rate issued soon after 11 am.

Specific questions

Q1: In principle, do you support the introduction of re-fixing for LIBOR, in line with international standards on the accuracy and transparency of financial benchmarks?

No. We prefer the publication of the rate as final calculated on the basis of original submissions as providing maximum certainty. The world does not need another thing to worry about until 3.01 pm has passed with no new rate publication.

Once a rate has been published in the morning and noted most corporate users want to be free to move on to using it and to other business without worrying about later re-work being necessary.

If the possibility of re-fixing after 11.45 were considered, from their point of view they would on balance probably prefer rather that *any* rate publication be deferred to 3 pm[1] and for that to be final so that that day's confirmations, valuations, etc. can be completed by cut-offs at 4.00 pm[2]. Deferring publication until 4 pm will not allow processing before cut-off times.

We acknowledge that some, mostly financial services, users may find publication deferral inconvenient. And that deferral of publication may give rise to conflicts of interest for those that know the calculation result and potentially increased opportunities to abuse the information. So making the 11.45 publication "final" may be a better solution.

We agree that a starting position is to acknowledge the importance of "the guideline principles of accuracy and transparency endorsed by national and supranational regulatory authorities". But we believe a sense of proportion and a need to be practical are important considerations too. Corporate treasuries are generally small and very much a "cost" centre and always asked to do more with less. Additional work for what will, over time, is most likely to be no reward is to be avoided.

The consequences of an error that may have affected the published rate could still be published and recorded, perhaps as a footnote, for the information of those that track movements in Libor to improve their tracking of the underlying markets – but not as a re-fixing. Publishing the footnote at 3 pm on the day seems attractive versus publishing next day as it permits earlier updating of trend analyses and so on. Indeed, publishing after 3 pm seem simply to add confusion for very little advantage at all.

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[1] We acknowledge that the consultation paper says the banks would likely not be able to re-submit revised rates until 3 pm (last submission 3.30 pm per consultation paper at 31) so that re-fixing would probably be for 4 pm (or later). We simply do not believe that banks need from 11 to 3 to spot an error. And if they do, they are far too late to re-fix and affect the published rate at all. Such timing would seem to be for the banks' convenience and not considering the needs of users in London time-zones and even more for those on Central European time.

[2] For most purposes London banks operate a 4 pm cut-off time with clients. This drives the work cycles in corporate treasury operations and associated back-offices that are very small in staff numbers.

Rather than forcing all users to suffer disruption from having to apply a late re-fix our proposal to publish any change "for information only" would allow the parties to be free to contract to adjust if there is a memo recalculation published, or not to adjust, as they so choose in their relevant contracts.

If a re-fix were to be done, it is very important that the original fixing rate remain easily available.

Q2: Do you agree the initial fixing published at or about 11.45 am each day should continue to be presented as the "final" rate?

Yes. (And we believe it should actually be the "final rate" – see response to Question1. above.)

Q3: Do you consider that observing a *de minimis* threshold (and ignoring errors below that threshold) is a good idea when implementing intraday re-fixing?

Yes, definitely. But we would apply that in determining the publication or not of the footnoted, information only, rate at 3 pm on the day that we advocate – see response to 1. above.

You are right to identify that each published "re-fixing "is likely to cause inconvenience and difficulty for market participants."

Furthermore, we note that there are sense checks against other rate contributors and previous contributions from that contributor required under the Libor Code as part of the routine rate calculation. Such checks are very likely to have eliminated those erroneous submission that are likely to cause material movement in the Libor fix from that that may have been reported without the error. Accordingly, we are reinforced in the view that the best approach to adopt in this particular benchmark is for there to be no "re-fixing".

Q4: Do you agree that this would achieve an acceptable *de minimis* threshold for errors? If not, what threshold would you like to see?

Yes – for the footnoted, information only, rate at 3 pm on the day that we advocate – see response to Question 1. above.

Q5: Do you consider that rounding the published values for LIBOR to fewer decimal places is a satisfactory way to implement a *de minimis* threshold? If so, is rounding to three decimal places the right approach?

By chance we have over the summer of 2013 discussed suggesting that Libor proposed in Loan Market Association (primary) model documents for syndicated loans be rounded to fewer decimal places. We received very strong push-back from lending banks that did not agree. And some treasurers noted that the practice of rounding up, rather than to, the nearest x decimal places penalised borrowers[3] more the fewer the decimal places. Given the responses, we do not advocate reducing the number of decimal places.

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[3] Note that rates submitted by banks are to not fewer than two and not more than 5 decimal points of a percent (http://www.bbalibor.com/technical-aspects/setting-bbalibor at F). As the submission system requires 5 places, we understand that while most banks submit information to 2 or 3

Q6: Do you agree with this proposal to restrict re-fixing to a single re-fix, where necessary, at the cut-off?

We agree with the consultation paper's point (at 25.) that, if there is to be a re-fix, "we take the view that predictability will be improved if a policy is adopted of publishing (at most) a single re-fixing at or shortly before the cut-off. In line with our proposal in paragraph 16 above, re-publication would only occur where an adjustment proves necessary."

As we disagree that there should be a re-fix, we would apply the idea from 25. of the paper in determining the publication or not of the footnoted, information only, rate at 3 pm on the day that we advocate – see response to 1. above.

Q7: Do you agree that a 4.00 pm re-fix cut-off strikes the right balance between accuracy and expediency? If not, do you think a re-fix cut-off at 5.00 pm would better serve the objectives of integrity and transparency? Would you support next-day re-fixing?

No we do not agree. 3 pm is that last practical time for re-fix publication given the practice of 4 pm cut-offs (although we would prefer no re-fix at all, merely a footnoted, for information publication at 3pm).

5 pm might be OK for the footnote only publication and ditto next day but its utility diminishes the later the publication.

We find it very difficult to believe that it takes a serious institution until 3 pm to verify its input number. Banks' processes and checking are in no way more complex than processes routinely carried out in commerce and industry. Given that there is no physical need for, for example, cooling, crystallisation, or bacteriological development times to elapse, it is purely a matter of effective or ineffective internal organisation. This should not be baked into any new requirement for re-fixing (although we would prefer no re-fixing, see 1. above). "(P)romptly after the 11 am submission deadline" is stated in the consultation paper (31.) and ignored in the development of the concept.

Q8: Are you aware of any problems which the proposed 4.00 pm re-fix cut-off may cause for specific financial activities or contracts? In your opinion, how may these problems best be mitigated?

Non-financial companies' corporate treasuries generally organise operational workloads around the banks' practice and with a 4 pm London cut-off time applied for many purposes by banks, that is an important time for corporates, even – or especially – well organised ones.

Given that companies generally would prefer no re-fix, to set a time for any re-fix as very late in the day simply adds to the problem.

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decimal places, they fill with zeros. In calculating Libor, the truncated average is rounded up to five decimal points. The Consultation paper says at 23. that "The Administrator will, however, still require Panel Banks to contribute individual submissions rounded to five decimal places."

Q9: Do you take the view that it is feasible for banks to identify inaccuracies in their 11:00 am submissions before 3.30 pm the same day? If not, what are the reasons for this? Would a 5.00 pm re-fix cut-off better accommodate the review processes involved?

We are convinced that reviews can be carried out and errors identified much quicker that a 3.30 pm deadline implies. We wonder whether the extra time is being allowed for a senior level sign off and that senior level is not willing to prioritise the job? See also answer to 7. above.

Q10: Do you agree that eight weeks is an appropriate notice period for implementing changes of this kind to LIBOR? If not, what, in your view, would be an appropriate period?

Of course we would prefer no re-fixing.

However, given that introducing re-fixing would require significant work we think that 6 months notice would be more sensible.

First, and perhaps most simply, non-financial companies would need to re-write internal procedural manuals for operations staff and for back-offices and, given that corporate treasuries will be dealing internally with subsidiaries around the world, corresponding changes would be needed in those subsidiaries.

Second, separate negotiations will be required will all affected counterparties as to whether they would contractually use any re-fix or apply only the initially published fix in any transaction or set of transactions.

The consultation paper rightly observes that standard terms commonly used would themselves refer to the original 11 am fixing and ignore re-fixes. But many contracts are “bespoke” and will require individual examination and, if appropriate, attempts at re-negotiation. New agreements may be desirable for new contracts.

And as, often, there is a positive and negative legs offsetting in transactions, the answers may not always be obvious.

Maybe it should be more than 6 months.

Q11: Do you agree with our understanding of market standard terms discussed above: in effect, allowing the parties to disregard any re-fixing? Are you aware of any other market standard terms which take a different approach?

Yes to the first question. For the second question, we are not aware of other terms in common usage.

Q12: Do you agree that intraday re-fixing would have little impact on parties’ performance of existing contracts?

Yes for many contracts but there is a significant task in reviewing all contracts to ensure that that is true in all cases. See also highlighted words above.

Q13: Do you agree that parties to existing agreements are unlikely to amend them to take account of the introduction of intraday re-fixing?

We think that the most likely amendment to existing contracts will be to ignore any re-fix where that is not the effect of current wordings already.

As set out above, we think it would be better to abandon any idea of a re-fix as such and publish any revised calculation, if at all, as a footnoted, for information only item, not any kind of "fix".

Q14: Do you agree that market participants would expect to revise market standard terms in order to benefit from more accurate re-fixed interest rates in respect of future contracts?

We would expect any revised standard wording *at most* to offer the alternatives of using re-fixes or using the initial, 11 am fixing, to be specified by the parties at time of contract.

An attempted imposition of re-fixing by financial services trade bodies would be seen as a gratuitous, hostile act.

Given that existing standard terms mostly would ignore re-fixing and given the matching inbound/outbound position of many market participants, requiring new contracts to recognise re-fixing or to default to re-fixing would inconvenient, and quite unnecessary.

Q15: Do you agree with our assessment that the revision of market standard terms to reflect the introduction of intraday re-fixing need not give rise to significant problems in the context of an orderly market transition?

Provided the orderly market transition is to a situation in which the "re-fix" (if such it was) was to be ignored, that would be very orderly.

Q16: Do you foresee any problems which we have not taken into account?

See variously, above.

The Association of Corporate Treasurers

The Association of Corporate Treasurers (ACT) is the leading professional body for international treasury providing the widest scope of benchmark qualifications for those working in treasury, risk and corporate finance. Membership is by examination. We define standards, promote best practice and support continuing professional development. We are the professional voice of corporate treasury, representing our members.

Our 4,300 members work widely in companies of all sizes through industry, commerce and professional service firms. We have students in 102 countries and bring together a global community of 26,500 treasury, risk and financial professionals.

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