



**LEADING TREASURY
PROFESSIONALS**

The Association of Corporate Treasurers

Comments in response to

Fair, reasonable and non-discriminatory access to regulated benchmarks

Financial Conduct Authority,

June 2015

August 2015

The Association of Corporate Treasurers (ACT)

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

Contact details and a link to our approach regarding policy submissions can also be found at the back of these comments.

We canvas the opinion of our members through seminars and conferences, our monthly e-newsletter to members and others, *The Treasurer magazine*, topic-specific working groups and our Policy and Technical Committee.

General

The ACT welcomes the opportunity to comment on this matter.

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The Association of Corporate Treasurers, London, August 2015

Relative to financial institutions, corporates are light users of benchmarks. Corporates use a wide range of benchmarks. Of the eight benchmarks currently regulated by the Financial Conduct Authority, LIBOR is one of the most common used by corporates. These uses are primarily as reference rates in loans from banks, derivatives with banks such as interest rate swaps and forward rate agreements, intra-group (intercompany) loans to fund business units, penalty interest rates for late payment by customers, early payment discounts from suppliers, and internal derivatives with subsidiaries some of which may offset the external derivatives. Additionally the WM/Reuters (WMR) London 4pm Closing Spot Rate is generally used to retranslate foreign denominated transactions and balances into local or reporting currency for accounting valuation and risk management reporting purposes (where accuracy is less important as they are not cash flows).

Corporates, in the main, do not use benchmarks in trading rates but typically use them only as a reference rate in hedges. This is an important distinction from financial institutions who will often speculate and trade the value of the benchmark. There are a small number of non-financial industries where this is the exception, for example oil and gas companies will often trade in these commodities using benchmarks such as the Brent Index. However these exceptions are few and far between.

The Question 1: Do you agree with our proposals to introduce FRAND rules and guidance?

In principle we agree with the introduction of Fair, Reasonable and Non-Discriminatory (FRAND) requirements to address competition concerns relating to access to regulated benchmarks. We also agree with the principle that different fees can be charged to different users where this is objectively justified - indeed consider it important that they should be. In determining the level of fees we would stress that corporates typically are "light" users of benchmarks. Hence they should be charged a different fee level, as distinct from merely being charged a different fee.

If we take LIBOR as an example there is an end user fee of US\$10/mth for live LIBOR rate information. This charge is collected via distributors such as Bloomberg or Reuters, but not charged if data is delayed by a minimum of 4 hours. Corporates in the main do not have a problem with this fee. However there is also a usage licence fee for any party using LIBOR rates in valuation and pricing activities or using LIBOR as a reference rate in transactions and financial products. The usage licence is US\$8k per year for a single currency and US\$16k per year for multiple currencies.

These are not insignificant overhead sums for a corporate treasury function that typically only has a team of 2-5 people. ICE Benchmark have stated that this usage licence fee is charged depending on how critical LIBOR is to the corporate's business. This is determined by being based on whether a corporate is taking a live LIBOR data feed directly to their Treasury Management System (TMS) or other relevant system. However there will be situations where a corporate has a live data feed but is only using the live rate for a small quantity of transactions or to simply fix the interest rate on the floating leg of a swap dealt after 11a.m. This point is not intended to be critical of ICE Benchmark Administration but to highlight that there will be situations where fees charged by benchmark administrators to corporates do not take into account all the individual facts and there possibly needs to be a number of categories for corporate users with different fee levels. Where the corporate is effectively dealing with a

benchmark that is a monopoly, they have no other choice but to use the benchmark. The FCA have stated that they will not approve or 'sign-off' on benchmark administrators' pricing structures but we would encourage some oversight on user fees to corporates.

We also note that whilst FRAND rules and guidance will be applicable to all users and potential users of the eight currently regulated benchmarks we presume that over time many more benchmarks will be regulated. Corporates as wide users of benchmarks will potentially be paying numerous benchmark users fees which could not only add up to not insignificant sums but may also be an administrative burden.

Question 2: Do you agree with the wording of the FRAND rules and guidance as set out in Appendix 1 of this consultation paper?

We agree in principle with non-discriminatory access to relevant price and data feeds. Generally we would expect that information on the composition, methodology and pricing of a specified benchmark and information about licences or other arrangements to use that specified benchmark would be publicly available free of charge.

Where a benchmark is used in the pricing of products to customers (so the bank is the “user”), the bank’s customer needs to have free availability of information from the benchmark provider on what the benchmark is, how it is compiled and overseen, etc.

We believe that giving benchmark administrators three months to provide access to a benchmark upon a written request by a user is too long a period. Benchmark data should be readily available to users after completion of subscription formalities. We do not understand why such a long period has been suggested and believe the period should be in days not months.

Please refer to our comments in question 1 above regarding charging fees for access to and users of benchmarks.

Question 3: Do you have any comments on the Cost Benefit Analysis?

When assessing the materiality of costs on corporate benchmark users, the nature of use of the benchmark should be taken into account. The majority of non-financial corporates are not in the business of trading the value of the benchmark, but simply using the benchmark as a reference rate in or in valuation of a relatively small number of contracts.

The Association of Corporate Treasurers

The Association of Corporate Treasurers (ACT) is the leading professional body for international treasury, operating in the public interest under Royal Charter. We provide 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 4,400 members work widely in companies of all sizes through industry, commerce and professional service firms.

For further information visit www.treasurers.org

Guidelines about our approach to policy and technical matters are available at <http://www.treasurers.org/technical/manifesto>.

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The Association of Corporate Treasurers, established by Royal Charter



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