

British Bankers' Association  
Pinners Hall  
105-108 Old Broad Street  
London EC2N 1EX

6 December 2012

Dear Sirs,

**Response submission from the International Capital Market Association (ICMA)**

**Re: consultative paper “Strengthening LIBOR – proposal to implement recommendation number 6 of The Wheatley Review of LIBOR”**

**Introduction:**

The ICMA<sup>1</sup> is a pan-European self regulatory organisation and an influential voice for the global capital market. It has a membership of over 420 firms and represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as asset managers, exchanges and other venues, central banks, law firms and other professional advisers. The ICMA's market conventions and standards have been the pillars of the international debt market for well over 40 years.

The ICMA notes that on 8 November the consultative paper “*Strengthening LIBOR – proposal to implement recommendation number 6 of The Wheatley Review of LIBOR*” was published; and that this consultation outlines the British Bankers' Association (BBA's) proposed timescale for a phased discontinuation of certain LIBOR currencies and maturities in line with the sixth recommendation of the Wheatley Review:

“The BBA should cease the compilation and publication of LIBOR for those currencies and tenors for which there is insufficient trade data to corroborate submissions, immediately engaging in consultation with users and submitters to plan and implement a phased removal of these rates.”

The ICMA further notes that on 17 October 2012, the Government fully endorsed every one of the Wheatley Review's 10 recommendations and stated, “All institutions involved in the process of setting LIBOR should implement them.”; and that the BBA also supports the recommendations. Accordingly in this consultative paper the BBA is now proposing a phased removal of those currencies and maturities, whose underlying trade data is considered insufficient, from the current LIBOR compilation process by the end of March 2013.

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<sup>1</sup> For more information regarding ICMA please go to <http://www.icmagroup.org/>

## Overall commentary on proposals:

Under date of 7 September the ICMA submitted its [response to the Wheatley Review](#). Amongst the overall points made in this earlier response the ICMA stated that “it is important that any reform of the rate-setting process for existing transactions referenced to LIBOR does not disrupt the international capital market”. The response subsequently elaborated on this point, addressing (in section “A”) how changes to, or transition from, LIBOR could affect certain types of financial contract. These earlier ICMA comments are of direct relevance to the topic considered by the current BBA consultative paper, so the ICMA therefore respectfully requests that they be carefully reviewed and considered as a fully integral part of this response.

In the Annex (below) the ICMA responds specifically to each of the 13 individual questions laid out in the current BBA consultative paper. In summary, from the ICMA’s own individual perspective (the strictly limited basis for which is as explained in this response) it is the case that:

- a) the GBP Repo benchmark can be dropped henceforth;
- b) the proposed range of intermediate maturity LIBOR fixings can potentially be promptly dropped, but, even from its limited perspective, the ICMA is unable to express a definitive view on this;
- c) the DKK, SEK and NZD LIBOR fixings can be promptly dropped; and
- d) the number of transactions impacted by the proposed change to CAD and AUD LIBOR fixings appears low enough to make it feasible to drop these fixings, but, in order to limit any consequent disputes, there should be a longer transition period to allow for those involved in these transactions to fully review all the applicable details and agree how to assimilate this change.

Nevertheless the ICMA wishes to comprehensively underscore that (aside from the separate questions regarding the GBP Repo benchmark) its enquiries have been focussed specifically on outstanding FRN data as revealed by a limited review of Dealogic data<sup>i</sup>. Any definitive decision on changes to LIBOR fixings should not be determined without full and proper assessment by the BBA of how the proposals may impact the whole market – appropriately aggregating the ICMA’s strictly limited perspective as reported in this response with the views of others covering the full range of financial market activities (e.g. the LMA with respect to loans and ISDA with respect to OTC derivatives); and noting that there may be certain private transactions.

## Concluding statement:

The ICMA appreciates the valuable contribution made by the BBA through this public consultative process and would like to thank the BBA for its careful consideration of the points made in this response, which the ICMA would be happy to discuss in a meeting with the BBA team should they consider such to be helpful. The ICMA will continue to closely follow related developments and remains at your disposal to discuss any of the above points, or any further questions which may be relevant to the assessment of international capital market impacts as work progresses.

Yours faithfully,



David Hiscock  
Senior Director - Market Practice and Regulatory Policy  
ICMA

## Annex

### Specific responses to individual questions:

#### 1. Do respondents agree that the GBP Repo benchmark may be discontinued?

The ICMA notes that the GBP Repo (repurchase agreement) benchmark was not specifically discussed by the Wheatley review. Through the activities of its European Repo Council (ERC), the ICMA plays a very active part in the international repo market. The ICMA ERC's work is coordinated through an elected committee of ERC members, with whom the ICMA has specifically consulted on this question. Consistent with the view found by the BBA, the ICMA is advised that the GBP Repo benchmark is not used in the financial markets; and hence from the ICMA's perspective its calculation and publication may be discontinued without causing disruption in the international capital market.

#### 2. Do respondents agree that the end of December 2012 is a suitable date to cease calculation and publication of the GBP Repo benchmark?

Since the ICMA has been advised that the GBP Repo benchmark is not used in the financial markets, the end of December 2012 (or indeed sooner) is from the ICMA's perspective a suitable date to cease calculation and publication.

#### 3. Do respondents agree that each of these tenors may be removed from all LIBOR currencies?

Within the population of Dealogic FRN data reviewed by the ICMA, there is no record of any outstanding transactions which specifically reference the 2 Week, 2 Month, 4 Month, 5 Month, 7 Month, 8 Month, 9 Month, 10 Month or 11 Month LIBOR tenors. Hence from the ICMA's limited perspective it may appear to be the case that each of these tenors may be removed from all LIBOR currencies without causing disruption in the international capital market. Nevertheless, there are quite a significant number of LIBOR FRN records within the Dealogic data which do not specify which one of the LIBOR tenors is the applicable fixing. Therefore, even from the limited perspective being adopted, the ICMA is unable to confirm a definitive view on this question.

#### 4. Do respondents agree that the end of January 2013 is a suitable date to make this change?

Subject to the major reservation expressed in response to question #3, above, since the ICMA's Dealogic FRN data review does not reveal any outstanding transactions which specifically reference these interim LIBOR tenors, the end of January 2013 (or indeed sooner) is seemingly from the ICMA's limited perspective a suitable date to cease.

#### 5. Do respondents agree that these are the correct maturities to be retained?

The ICMA agrees, since within the population of Dealogic FRN data reviewed by the ICMA it appears that outstanding transactions are all referenced to one of the 1, 3, 6 or 12 Month LIBOR tenors (but, the same major reservation expressed in response to question #3, above, applies).

The ICMA notes that the retention of the very short term tenors (overnight/spot-next and 1 Week) plays an important part in allowing the ongoing identification of the shape of the LIBOR curve, which is necessary, for instance, to interpolate rates for short or long coupons. Assuming that several LIBOR tenors are indeed discontinued (as contemplated in question #3, above), there will be a diminution in the perceived level of accuracy with which the LIBOR curve can be derived (with a consequent increase in reliance upon the accuracy of the remaining handful of LIBOR tenors).

## **6. Do respondents agree that the AUD LIBOR fixings may be discontinued?**

Within the population of Dealogic FRN data reviewed by the ICMA, there are four outstanding transactions which reference AUD LIBOR; with an aggregate face value of US\$ 0.1bn equivalent. As such there is a need to carefully consider the continuity of contract concerns elaborated on by ICMA in its earlier Wheatley Review response; and to specifically consider how these individual transactions will be affected in case the AUD LIBOR fixings are discontinued. Since the number of transactions impacted is small (but note the point regarding certain private placements in the response to question #8, below), the ICMA considers that disruptive effects in the international capital market will be relatively minor.

Nevertheless there are real costs which will be borne by those involved in these affected transactions. Details of the individual legal documents will need to be thoroughly agreed to determine how fall-back provisions would operate in case the AUD LIBOR fixings are discontinued; and the possibility of negotiating any desirable documentation changes will have to be carefully examined.

## **7. Do respondents agree that the NZD LIBOR fixings may be discontinued?**

Within the population of Dealogic FRN data reviewed by the ICMA, there was just one outstanding transaction which references NZD LIBOR. This, however, had a maturity date of 4 December 2012 and hence is no longer outstanding. Accordingly, from the ICMA's limited perspective the NZD LIBOR fixings may be discontinued without causing disruption in the international capital market.

## **8. Do respondents agree that the end of February 2013 is a suitable date to make these changes?**

Whilst there are only a handful of directly affected transactions evident in the ICMA's Dealogic FRN data review, the ICMA considers that it would be unreasonably hasty to discontinue the AUD LIBOR fixings as soon as the end of February 2013. In case underlying legal documents leave uncertainties regarding the future rate settings, which impact transactions with final maturity dates stretching out to 2035, there may need to be time consuming exercises to agree suitable documentary changes. The likely need to communicate with securities holders, in order to obtain agreement for any such changes, dictates that more time should be made available. The ICMA suggests that, in order to limit any consequent disputes, this should be a period of at least six months following the announcement of the conclusions from this consultation; and that fixing discontinuation dates be well publicised.

Furthermore, the ICMA has been informed that (outside of the Dealogic FRN data which it has been reviewing) there could be some number of private placement transactions outstanding which reference AUD LIBOR. The ICMA does not have any data to make comments on just how significant a number this is (it may be that (I)CSDs and/or clearing systems can offer data which would help in this regard); and appreciates that the typically bilateral nature of such transactions may mean that, if needed, they are more readily susceptible to contractual modification. The ICMA nevertheless calls upon the BBA to carefully consider the significance of this point and to err on the side of caution by, at least, allowing for a longer period prior to any discontinuation of daily fixings.

Since the ICMA's Dealogic FRN data review does not reveal any remaining outstanding transactions which reference NZD LIBOR, the end of February 2013 (or indeed sooner) is from the ICMA's limited perspective a suitable date to discontinue the NZD LIBOR fixings. The ICMA cautions that again, however, there may well be transactions falling outside the scope of its limited review of Dealogic FRN data.

**9. Do respondents agree that the CAD LIBOR fixings may be discontinued?**

The ICMA's response to this question is the same as its response to question #6, above (including with respect to potential outstanding private placement transactions), save that within the population of Dealogic FRN data reviewed by the ICMA, there are eleven outstanding transactions (relating to just six different issuers) which reference CAD LIBOR; with an aggregate face value of US\$ 2.2bn equivalent.

**10. Do respondents agree that the DKK LIBOR fixings may be discontinued?**

Within the population of Dealogic FRN data reviewed by the ICMA, there were no outstanding transactions which reference DKK LIBOR; and hence from the ICMA's limited perspective the DKK LIBOR fixings may be discontinued without causing disruption in the international capital market.

**11. Do respondents agree that the SEK LIBOR fixings may be discontinued?**

Within the population of Dealogic FRN data reviewed by the ICMA, there were no outstanding transactions which reference SEK LIBOR; and hence from the ICMA's limited perspective the SEK LIBOR fixings may be discontinued without causing disruption in the international capital market.

**12. Do respondents agree that the end of March 2013 is a suitable date to make these changes?**

With respect to CAD LIBOR fixings, the ICMA's response to this question is the same as its response to that about AUD LIBOR fixings (see at question #8, above – including as to potential outstanding private placement transactions), save that in this case there is a transaction with a final maturity date in 2040.

Since the ICMA's Dealogic FRN data review does not reveal any remaining outstanding transactions which reference either DKK or SEK LIBOR, the end of March 2013 (or indeed sooner) is from the ICMA's limited perspective a suitable date to discontinue DKK and SEK LIBOR fixings (although, as in relation to NZD at question #8 above, the ICMA cautions that there may well be transactions falling outside the scope of its limited review of Dealogic FRN data).

**13. Are there any other issues or concerns about any of the proposals or timescales in this paper which respondents would like to highlight?**

The ICMA notes that the publication of daily LIBOR fixings facilitates easy identification of underlying interest levels, useful for both lenders and borrowers in actual and contemplated transactions. Setting to one side questions over the accuracy of fixings, the ICMA notes that there will be some decrease in overall market transparency as a consequence of less data points being routinely published.

The ICMA draws particular attention to the points concerning back-up (or fall back) provisions within its earlier Wheatley Review response. It may be that concerns similar to those leading to the proposed discontinuation of certain LIBOR fixings could serve to undermine the effectiveness of the typical first back-up, involving the solicitation of direct quotes of London interbank offered rates from those banks who were previously contributing to published rates. Given the even more disruptive nature of such an outcome, the ICMA considers that care should be taken to try to guard against this occurring. Accordingly the ICMA believes that co-ordinated attention should be paid to this concern by all involved in giving effect to the Wheatley Review's recommendations.

From its review of Dealogic FRN data the ICMA notes that euro denominated FRNs are predominantly referenced to EURIBOR rather than EUR LIBOR. It may therefore be the case that there is some scope to further examine the case of EUR LIBOR fixings, which from ICMA's limited perspective appear to be relevant to 36 transactions with an aggregate face value of US\$ 12.3bn equivalent and final maturity dates stretching out to 2055.

The ICMA wishes to emphasise the limited nature of the data review in which it has been able to engage. There may be FRN transactions (including, as already noted above, certain private placements) not reflected in (or in some manner inaccurately reflected in) Dealogic FRN data and/or ICMA's review thereof; or other ways in which LIBOR fixings may be relevant to debt securities transactions. Accordingly, the ICMA wishes to underscore the importance of avoiding overly hasty changes unless it is evident that all other potential usage of the applicable LIBOR fixings has been appropriately considered. In this respect the BBA should consider not only other response submissions to this consultation, but also the possibility of making its own enquiries directly with applicable market participants (including infrastructures and data providers, such as Dealogic).

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<sup>i</sup> For the purposes of its limited analysis of LIBOR based FRNs, the ICMA has reviewed data from Dealogic to identify transactions with FRN issue types. In order to formulate the responses given herein, this data has then been sorted to identify those transactions referenced to the applicable LIBOR currencies and tenors.