UK Finance response to Financial Conduct Authority consultation paper CP22/21: Consultation on 'synthetic' US dollar LIBOR

1. **UK Finance is the collective voice for the banking and finance industry. Representing over 300 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.**

2. We welcome the opportunity to respond to this consultation. We summarise our key points on the consultation below and then expand further through the response.

    a) Our membership shares the regulator's view that LIBOR should be wound down as soon as possible. In line with the FCA's guidance, the industry has continued efforts to transition away from synthetic sterling LIBOR and US dollar LIBOR.

    b) However, there remains certain instances where contracts are yet to be transitioned due to various obstacles. Full consideration on the impacts on both customers and the market in these scenarios must be given before a LIBOR tenor is wound down.

    c) In the case of sterling LIBOR, UK Finance supported the decision that 1- and 6-month sterling LIBOR settings cease at end-March 2023 and will continue to work to ensure that the transition for the very small population remaining on these tenors is managed in an orderly way.

    d) The large majority of UK Finance members urged that 3-month sterling LIBOR should be published for at least another year. We therefore agree with the FCA's decision to order that publication continues until the end of March 2024 and welcome this early confirmation. However, there remains some uncertainty over how much further exposures in the form of tough legacy contracts will be reduced before then. These include residential mortgage contracts where customers are either unresponsive or actively unwilling to transition and where collective distribution of the assets and/or dissolution of the original lender has disrupted the relationship.

    e) UK Finance suggests that, on the basis of data monitored in the meantime, this decision is reviewed in September 2023. The period should also be used to consider the options available for transition of the contracts that are at risk of being unable to cope with cessation regardless of the time available. UK Finance is happy to help with coordinating data (where possible) to identify the volume and nature of such situations.

    f) UK Finance agrees with the FCA that it is unlikely that it will be possible to transition all remaining exposures to US dollar LIBOR by end-June 2023. It is also evident that the prevalence of the use of English law outside of the United States means there are consequently a large number of US dollar LIBOR contracts not covered by the US federal legislation intended as a solution for legacy contracts that have no workable fallbacks. These include bonds where consent solicitation is difficult to achieve.

    g) UK Finance members therefore welcome the announcement of the intention to order the publication of a series of synthetic USD settings to be available for all contracts other than cleared derivatives. This should not be permitted to slow down the efforts to achieve active transition where possible and UK Finance will continue to encourage proactivity through its contacts and channels.

h) UK Finance members agree that international coordination to determine an appropriate methodology for a USD synthetic LIBOR rate is critical. The proposal to align with the US LIBOR Act and ARRC recommendation of CME term SOFR plus the ISDA fixed spread adjustment is therefore welcome.

i) UK Finance members are concerned to ensure that where applicable the US LIBOR Act provisions nevertheless take precedence and that there should be no ambiguity in relation to such contracts. If changes to the US Act are necessary to ensure that the interaction does not create conflict and litigation risk, it is important that this is considered. There are some contracts even written under US law which will not be covered and it is helpful that these can use the synthetic rates. The operation of triggers in such circumstances and assignment of unilateral rights complicate transition. We agree with the FCA that in providing for that, unnecessary complexity and legal uncertainty should be avoided. While we recognise that resolving legal uncertainty is clearly not directly in the FCA's gift, the FCA can continue to play a helpful role in identifying such risks with its global market and official sector stakeholders.

j) As regards the end of USD synthetic publication, UK Finance understands why a provisional end date has been announced but notes that end September 2024 is not a long horizon given the volume and diversity of the market and the relatively slow progress in some less advanced jurisdictions and geographies. Again, a review of this deadline should be conducted in, say, September 2023. In the meantime, it will be important that communications and engagement to encourage transition across the globe is stepped up. It would also be ideal if legislation or at least regulatory guidance were to be considered in other jurisdictions to support the orderly transition of remaining contracts following cessation. The FCA's support in encouraging other jurisdictions to ensure they are prepared would be welcome. This could be done by the FSB OSSG which has been a helpful forum throughout the transition. We would also encourage the FCA to explicitly factor into consideration implications on other jurisdictions of the permanent cessation date for USD LIBOR, such as emerging markets.

3. Please note that this response may not necessarily reflect the views of all individual UK Finance members but has been written and approved with input from a representative sub-group of the membership.

Answers to Questions:

Q1: Do you have any views or comments regarding our proposal on a synthetic US dollar LIBOR and its duration – or any other comments on this section of this consultation?

4. UK Finance welcomes the proposal for the development of a suite of USD synthetic LIBOR settings ordered by the FCA under the powers vested in it by the Critical Benchmarks (References and Administrators' Liability) Act 2021 to run until at least end September 2024 but subject to review to consider extension in, say, September 2023. The FCA should monitor progress with active transition in the meantime.

Q2: Do you agree with the manner in which we propose to exercise our methodology change power?

5. UK Finance considers that synthetic rate alignment with US rates applied through the Adjustable Interest Rate (LIBOR) Act (the LIBOR Act) and recommendations of the ARRC to be crucial for market stability and integrity. We therefore support the use of the CME term SOFR rate plus fixed spread adjustment.

Q3: Do you have any other views or comments on our proposed exercise of our methodology change power, including about how this would impact you?

6. Consideration should be given to the interaction of these powers with the application of the US LIBOR Act particularly in terms of the operation of automatic fallbacks following cessation in June 2023, safe harbour provisions and the position of contracts not covered by this legislation.

Q4: Do you agree with the manner in which we propose to exercise our legacy use power?

7. UK Finance welcomes the availability of synthetic USD LIBOR for all contracts other than cleared derivatives in providing for legal certainty and simplicity.

Q5: Do you have any other views or comments on our proposed exercise of our legacy use power, including about how this would impact you?

8. It is important that there remains momentum in active conversion and this may require some communication to raise awareness and encourage engagement including in jurisdictions outside the US. For UK Finance members with clients and counterparties in less advanced economies, this will support their efforts to manage down the exposures relying on synthetic rates.

9. With regard to the proposed end date for 3-month GBP synthetic setting, UK Finance welcomes the advanced notice of the intention to no longer require publication after end March 2024 but suggests that this be subject to a review in September 2023 of data on outstanding exposures particularly for residential mortgages. UK Finance will be pleased to assist in gathering such evidence.

ENDS