

**Joint ISDA, GFXD, UK Finance and LMA response to His Majesty's Treasury
("HM Treasury") consultation on the future regulatory regime for benchmarks and
benchmark administrators**

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Introduction

The International Swaps and Derivatives Association, Inc. (ISDA), the Global Foreign Exchange Division (GFXD) of the Global Financial Markets Association (GFMA), UK Finance and the Loan Market Association (LMA) (together "the Associations") welcome the opportunity to respond to HM Treasury's (HMT's) consultation on the future UK regulatory regime for benchmarks and benchmark administrators ("the consultation").

We support the government's aim under the proposed Specified Authorised Benchmarks Regime ("SABR") to create a proportionate and internationally competitive regime that focuses regulatory tools on benchmarks capable of generating systemic disruption to the UK economy if they become unreliable or cease. However, as described in this response, certain aspects of the proposals could have unintended consequences with the potential to create cliff-edge risks.

Our response addresses each chapter in turn (excluding chapters 1 and 7, which contain no questions), with answers to the questions in each chapter followed by general comments on sections where further views have invited or the Associations have considered it necessary to express views. Alternative drafting suggestions are provided where relevant. Marked up drafting revisions are provided in an annex.

Executive Summary:

- The Associations support a targeted, effects-based regime that regulates only those benchmarks whose cessation or loss of representativeness could cause significant adverse impacts to UK market integrity and users. This is consistent with the consultation's objective to reduce scope and focus on systemic risk.

- We recommend refining the criteria for designation of benchmarks that may have an impact on the integrity of the UK financial system to remove ambiguity that, if left unresolved, may lead to over-designation or fail to provide sufficient certainty.
- We do not support administrator-level designation on the basis that an administrator provides large numbers of benchmarks. Without clear evidence of aggregate systemic risk across such an administrator's benchmarks, this risks disproportionality. Regulation of smaller benchmarks that are predominant in a market should be addressed through benchmark-level designation.
- On notice periods for authorised firms to transition to new benchmarks, we recommend avoiding fixed 'hard stop' timelines. The time needed for orderly transition depends on market structure, availability of alternatives and legacy exposures. Powers should be flexible and reviewable.
- While global administrator members of ISDA who provided views strongly support retention of a third country benchmarks regime, there is strong support among GFXD, UK Finance, LMA members who gave feedback and other ISDA members who gave feedback for the removal of third country benchmarks from the SABR designation regime.
- We recommend HMT retains and adapts London Interbank Offered Rate (LIBOR)-style wind-down powers for any benchmark regardless of designation, usage or location; and ensure that legacy use and transition management permissions are clearly defined whenever new-use prohibitions apply.

Chapter 2: Scope of regulation

Question 1: Do you agree with the proposed approach to the regulation of benchmarks in the UK, in particular:

- ***A narrower regime with only benchmarks and administrators, which may have an impact on the integrity of the financial system and consumers, required to be regulated;***
- ***A designation regime based on qualitative criteria to determine which benchmarks are regulated;***
- ***Not having an opt-in regime;***
- ***Administrators of designated benchmarks and designated benchmark administrators to be regulated by the FCA as authorised firms?***

The Associations strongly support the principles in HMT's proposed approach to the regulation of benchmarks in the UK, in particular narrowing the regime such that only benchmarks designated as systemically important would be subject to SABR, and the removal of quantitative assessment in favour of qualitative criteria. However, we have several concerns with the current proposals and accompanying drafting, which we address in our comments and responses to later questions below.

There has been limited engagement from members on whether or not a voluntary regime should be introduced. The principal arguments for enabling administrators to opt in included offering users greater confidence in the benchmark's governance standards and control frameworks and providing administrators a formal way to evidence robustness that otherwise might require them to undertake costly external audit-type approaches to demonstrate compliance with the International Organisation of Securities Commission (IOSCO)'s principles.

Should a voluntary regime be implemented, it is important that there would be no wider regulatory impact on administrators, and that there was clear guidance from the FCA that benchmarks voluntarily complying with the regime are as robust as designated benchmarks.

Conversely, should there not be a voluntary regime, then HMT should consider the impact on firms in scope of The Public Offers and Admissions to Trading Regulations 2024 that have been relying on the UK authorised administrator exemption to provide relief from the requirement to include detailed disclosures in their prospectus, as the number of authorised administrators will be significantly reduced.

The Associations support the proposal to delegate detailed firm facing requirements to the FCA Handbook, including governance, conflicts of interest, oversight function, transparency of methodology and record keeping. We also support the stipulation that these requirements should have regard to relevant international standards such as the IOSCO principles. We note also that the FCA would have the flexibility to set requirements in a way that is proportionate to different types of benchmarks and the relative risks posed by them. We stress that it is critical that this proportionality should be a guiding principle for the FCA. However, that should not be taken to the extent of different compliance requirements applying on a benchmark-by-benchmark basis, as this would be overly complex and difficult to manage.

Question 2: Do you have any comments on the criteria for designation? Do the proposed criteria capture the right risks? If not, what would you change?

We note that the designation criteria assess whether a benchmark or, for administrators the combined effect of all benchmarks they provide, could impact the integrity of the UK financial system, users, or the market the benchmark measures.

The proposed criteria for designation relating to impact on the integrity of the UK financial system and consumers reference the below:

The benchmark has no or few substitutes, or it is not reasonably practicable for one or more users of the benchmark to switch to one of the substitutes

The Associations note that the phrases “no or few substitutes” is ambiguous. We recognise that HM Treasury may wish to provide stability and continuity with the current regime (where this wording is also used) but would note that as the determination of whether a benchmark meets these criteria will be transferred from administrators to HM Treasury, it will become extremely important that the eventual criteria for designation are clearly defined.

With respect to whether substitutes exist, there are a number of potential scenarios:

Scenario 1: There are no alternative benchmarks available to which users could transition their new or legacy business.

Scenario 2: There are one or more alternative benchmarks available that, between them, allow all users to transition their new and legacy business off the compromised benchmark (though note that – per LIBOR - it is likely a spread would be required to address any difference between the benchmarks which may make transition very difficult).

Scenario 3: There are one or more alternative benchmarks available, but it is only reasonable for a sub-group of users to use it/them to transition their new and/or legacy business off the compromised benchmark, and not other groups of users (also note that as per scenario 2, note that a spread may be required for any transition).

Whether one or more ‘substitutes’ exist is therefore only relevant if users are able to transition their new and legacy business to use them. Given this, we would suggest it is better to structure the criteria by reference to (i) the events that would jeopardise the integrity of the benchmark (ii) the impact on users of the benchmark if one of those events occurred; and (iii) the resulting effect on the systemic risk to the UK financial system. We do not think that this would result in a different outcome for benchmarks already considered Critical under current UK BMR.

We are also concerned that the phrase “one or more users” may lead to over-designation.

We also note that the use of the term “consumers” is unlikely to be broad enough to capture benchmarks used in wholesale markets and we would suggest “users of benchmarks” instead.

The Associations propose the following alternative drafting for this limb:

Impact on the integrity of the UK financial system and users

If a benchmark were:

- (i) to cease to be provided without sufficient notice; or*
- (ii) to be provided on the basis of data no longer fully representative of the underlying market or economic reality, or on the basis of unreliable data; and*

it would not be reasonably practicable for a significant proportion of users to switch to one or more suitable alternative benchmarks for new transactions or to manage legacy positions, resulting in a risk of significant and adverse impacts on the integrity of the UK financial system and users of the benchmark.

In respect of the proposed criteria for designation based on the impact on the market the benchmark seeks to measure, the Associations note that many benchmarks do not measure a market or may not measure the market which would be disrupted by the benchmark becoming compromised. For example, a nickel benchmark that becomes compromised would not necessarily impact the nickel market it was measuring. It may have significant impacts on industries that rely on nickel, such as car manufacturers.

The Associations also note that the current drafting for this limb does not require there to be any kind of systemic impact from the risk events occurring to the benchmark. While we recognise the intention is to allow designation of a smaller benchmark to the extent it is widely used in a particular market, we believe it goes too far - meaning that even a small benchmark used in a small market could be designated.

We believe that such an outcome would be disproportionate and highly undesirable and would seem to run counter to the general intent of the proposed new regime. We recommend limiting designation to circumstances in which a market with systemic importance to the United Kingdom or the United Kingdom’s position within global financial markets is impacted.

The Associations therefore propose the following alternative drafting for these designation criteria:

Impact on markets that rely upon the benchmark

If a benchmark were:

- (i) to cease to be provided without sufficient notice; or*
- (ii) provided on the basis of data no longer fully representative of the underlying market or economic reality, or on the basis of unreliable data;*
and

there could be significant and adverse impacts on markets that rely upon the benchmark which, individually or collectively, are systemically important to the United Kingdom or to the United Kingdom's position within global financial markets.

Finally, while the Associations strongly support HM Treasury's removal of hard quantitative thresholds for the determination of scope, some members noted that an advisory threshold may have some merit as one of the factors to be considered as part of a decision to designate a benchmark or otherwise. However, caution would be needed to prevent such criteria becoming a de facto hard threshold. We urge that any proposal to incorporate quantitative inputs is closely examined in the FCA's subsequent consultation.

Similarly, clarity on what constitutes "significant and adverse impacts" would be beneficial, but this should not lead to a de facto hard threshold.

Question 3: In reference to the designation criteria, do you have views on what is the appropriate notice period for an authorised firm to transition to a new benchmark should a designated benchmark it uses cease to be provided?

The Associations note HM Treasury's request for views on what notice period should be considered 'sufficient' to allow an orderly transition away from a designated benchmark that is due to cease.

The amount of time required to complete a transition is dependent on a wide number of factors, including:

- the availability of one or more suitable alternative benchmarks to transition to
- the size, geography and nature of the markets for the products in which the benchmark is referenced
- the contractual terms on which products are traded
- the typical duration of products referencing the benchmark

As such, the Associations oppose a generic fixed time limit by when usage must be transitioned away from a designated benchmark that is due to cease. Given the intended

outcome is a very limited set of designated benchmarks, it should be feasible to address potential cessation on a case-by-case basis.

We note that, according to the Bank of England, the LIBOR transition took ‘well over a decade’¹. While an extreme example, LIBOR reform was a fundamental driver of the original Benchmarks Regulation, and so perfectly illustrates why a fixed time limit for transition is inherently problematic.

For this reason, we recommend a **minimum** period of 12 months for transition, noting that any benchmark that is designated will by definition be deeply embedded in UK markets.

Question 4: Do you agree that HMT should have the option to designate benchmark administrators at an entity-level as well as individual benchmarks?

The Associations disagree with the proposal to allow for the designation of administrators with large numbers of benchmarks. There is little or no evidence that the simultaneous cessation or compromise of numerous small benchmarks would generate systemic risk. We note as an example that Lehman Brothers was administrator for a wide range of non-systemically important benchmarks, and that the fallout from ceasing to publish those benchmarks did not appear to create systemic issues. We also note that designation of smaller benchmarks that are predominant in a market will be possible under the criteria for designating benchmarks (provided, under our proposed drafting, there is corresponding systemic risk).

The proposal will broaden the regime’s scope to include several administrators, and potentially millions of benchmarks, that would otherwise be excluded, raising concerns about proportionality relative to the risks identified.

We also note that, should a large benchmark administrator get into financial difficulty, commercial solutions (such as a sale or acquisition) would likely ensure continuity of any valuable benchmarks. It is also the case that post-LIBOR, robust contractual fallbacks are much more likely to reduce the potential for disruption.

The Associations strongly believe that this proposal should be discarded entirely. As such, we have not provided alternative drafting.

Further comments on Chapter 2:

¹ [The end of LIBOR | Bank of England](#)

Exemptions

The Associations agree that SABR should not bring into scope benchmarks currently exempted under Article 2 of UK BMR, such as those administered by central banks. However, we strongly believe that the exemption should be expanded to include private companies that administer benchmarks pursuant to authorisation by or under the auspices of governments or central banks (such as Financial Benchmarks India Pvt. Ltd in India). We address this in more depth in our response to Chapter 5.

Publicly available list of designated benchmarks and administrators

The consultation envisages that a list of designated benchmarks and administrators would be maintained and made publicly available. It is crucial that this list acts as a true golden source of information for benchmark users on which benchmarks are in scope of SABR and their status (including where an administrator has been designated rather than an individual benchmark, should that possibility eventuate). It should not be left to benchmark users to interpret the list to determine whether a benchmark is permitted for use or otherwise. The status of each benchmark contained within the register must be made clear. The final rules should clarify that benchmarks not included in the register, or that are provided by an administrator that is not in the register, are permitted for use.

General comments on the process for designation

The Associations note that designating a benchmark (or its administrator) as in scope of SABR could adversely impact UK users' ability to access that benchmark (or the wider suite of benchmarks provided by that administrator). There have been instances of some administrators using their licensing terms to prohibit use of a benchmark in a way which would bring them into scope of UK or EU BMR. This has the same effect on users within the jurisdiction as the benchmark ceasing publication.

Given the global nature of markets that use benchmarks, such an effect under SABR would place UK users at a competitive disadvantage relative to their third country peers who are able to continue using the benchmark unhindered. We therefore recommend ensuring that HMT has sufficient discretion to avoid being forced to designate a benchmark which otherwise satisfies the criteria where designation would be contrary to the public interest or have a disproportionately adverse impact on the competitive position of UK users.

To avoid cliff-edges and consequent market disruption, the Associations believe that the designation process should involve interaction with the administrator of the benchmark being considered for designation, with sufficient notice to enable the administrator to respond to any requirements for compliance or re-evaluate its benchmark offering in the UK.

The Associations agree that should a designated benchmark no longer meet the criteria for designation, there should be a process to revoke its designation. That process should also ensure that a benchmark for which the designation is revoked is simultaneously removed from the list of designated benchmarks.

ESG Benchmarks

Question 5: Do you have any views on this approach to ESG benchmarks?

We note that as part of the narrower scope provided under SABR, ESG benchmarks which are not ‘systematically important’ may instead fall under the UK ESG Ratings Regime, which regulates providers of ESG ratings used for investment decisions.

The Associations welcome HM Treasury’s recognition in paragraph 2.41 of the consultation that narrowing the scope of the benchmarks regime under SABR may have implications for the recently introduced ESG ratings regime. In our view, benchmark administrators should be required to seek FCA authorisation as ESG ratings providers only where their ESG assessments are offered as a separate product or service, rather than being used solely within index methodologies.

This position reflects the structure of the Financial Services and Markets Act 2000 (Regulated Activities) (ESG Ratings) Order 2025, which specifies the provision of an ESG rating as a regulated activity (Article 63U RAO) but sets out targeted exclusions (Articles 63V–63Z6). It is also in line with the current FCA consultation CP25/34² on the proposed approach to the regulation of ESG ratings. We note in particular the exclusions for regulated products and services and for unregulated benchmarks. Where an administrator’s ESG assessments are used only to create or operate a benchmark and are not otherwise made available, the "unregulated benchmarks" exclusion should apply. Conversely, where an ESG rating is separately commissioned by a rated entity or distributed by subscription or other licensing arrangements independent of index provision, this would constitute standalone provision and fall within scope of the ESG ratings regime.

To promote legal certainty and operational practicability, we recommend that HMT (with the FCA) confirm in the final policy materials and Perimeter Guidance Manual (PERG) that: (i) the loss of benchmark regulatory status under SABR does not in itself bring an administrator into the ESG ratings regime, provided its ESG assessments remain solely embedded in index methodologies and are not made available separately; and (ii) the FCA will provide bright-line examples distinguishing necessary methodology disclosures

² [CP25/34: ESG \(environmental, social, governance\) ratings: proposed approach to regulation](#)

from activity that amounts to "making available" an ESG rating (e.g., subscription data-feeds of entity-level ESG scores). We would also welcome guidance on intra-group arrangements and the conditions for relying on the relevant exclusions.

We support HMT's and the FCA's objectives of proportionality and clarity. Calibrating the regulatory perimeter in this way will reduce the risk of duplicative or unintended authorisation for administrators whose ESG assessments are integral to index construction, while ensuring that ESG ratings marketed as standalone products are appropriately brought within FCA supervision.

Question 6: Do you have any views on whether the UK should maintain the PAB and CTB labels and regulate the use of the labels?

We note the consideration of whether to retain EU-inherited labels like "Paris-Aligned Benchmark" and "Climate Transition Benchmark" labels.

The Associations do not see a need for the Paris-Aligned Benchmarks (PAB) and Climate Transition Benchmarks (CTB) labels to be maintained as a feature of SABR. Given the policy intention that very few climate benchmarks would be designated, it is likely that if the labels were maintained under the UK regime as a requirement for designated climate benchmarks, the conditions for their application would inevitably diverge from the EU in any case. We note that climate benchmarks used in both the EU and UK will retain these labels in their name, but that this would not carry any significance from a UK regulatory perspective.

However, we strongly believe that to the extent any disclosure requirements are ultimately put in place for ESG benchmarks designated under SABR, these disclosures should be consistent with EU disclosure requirements.

The Associations support the HMT's proposal to remove the statutory requirement in legislation for regulated administrators to endeavour to provide PAB and CTB benchmarks. This requirement is at odds with the overall approach of focusing the regime on benchmarks and administrators of systemic importance. Moreover, this requirement is highly problematic as it requires a benchmark administrator to provide a benchmark regardless of whether it considers the underlying methodology is sound or is capable of managing the benchmark. This goes against the principle of benchmark administrators' independence in terms of methodological decisions. In addition, requiring administrators that may not have necessary expertise on climate benchmarks to attempt to provide benchmarks which may not be fit-for-purpose potentially introduces market risk. This could expose benchmark administrators and, in turn, regulatory authorities, to

litigation risk. The revised EU BMR also deleted the old requirement that EU-regulated benchmark administrators must “endeavour to provide” EU PABs and CTBs.

Commodity benchmarks

Question 7: Do you agree that commodity benchmarks should be designated under the same criteria as other benchmarks (set out in Chapter 2)?

The Associations agree that commodity benchmarks should be designated under the same criteria as other benchmarks.

Question 8: Do you agree that there should no longer be a separate regime in legislation for designated commodity benchmarks?

The Associations received limited feedback from members on this question but, where received, there was support for maintaining a separate regime for designated commodity benchmarks, with that regime having due regard for IOSCO’s Principles for Oil Price Reporting Agencies.

Chapter 3: Benchmark Contributors

Question 9: Do you have views on the proposed approach for contributors to designated benchmarks?

The Associations agree that under SABR, contributors who are not authorised persons should not be subject to requirements under the new regime, and that accordingly the FCA should not have powers over such contributors. A minority view was advanced that there may be some benefits to non-authorised contributors being subject to some requirements - for example, conflicts of interest.

Question 10: Do you agree that the FCA needs powers over non-price contributors?

The Associations would question what additional powers HMT envisages for the FCA in this respect. We believe that any such oversight should be limited to data that involves judgement or discretion that could be applied to influence or manipulate a benchmark, in line with the role of an input-data contributor. Further, any additional oversight should not extend to data that is generated purely quantitatively, such as economic indicators or

other fundamental data, nor to data already produced by regulated entities, for example an asset manager acting as an Index Selection Agent.

Chapter 4: Users of benchmarks

We note that under the current BMR, users are legally required to only use those benchmarks listed on the FCA Benchmarks Register or Third Country Register. Under the new proposal (SABR), the “use” restriction will be removed allowing firms to use both designated and non-designated benchmarks.

Question 11: Do you agree with the proposed approach for users to benchmarks?

The Associations agree that SABR should remove the existing prohibition of use of a benchmark unless it is listed on the FCA Benchmarks Register or the Third Country Benchmarks Register under the current UK Benchmarks.

We note that the FCA will consult on detailed firm facing requirements for users of benchmarks. Preparatory to that consultation, we encourage the FCA to review the current requirements for users under Article 28(2) of the UK Benchmark Regulation relating to robust written plans that include the designation of one or more suitable alternative benchmarks. The level of effort that goes into the drafting of these plans is disproportionate to their practical utility, especially now that contractual fallbacks, such as those provided within ISDA’s definitions, are so widely adopted (whether the benchmarks referenced are systemically important or not). Should the requirement for robust written plans be retained by the FCA, it is important to avoid rules that would require firms to maintain separate robust plans for the UK and the EU and so would encourage the FCA to consider the recent revision to Article 28(2) in the EU Benchmark Regulation referring specifically to fallback provisions. Robust plans should also not require pre-nominated scenarios or benchmarks, as decisions on outcomes will need to take into consideration the facts and circumstances at the time, and market consensus on the appropriate alternative to achieve the best outcome for clients.

The Associations also note that paragraphs 4.3-4.4 of the consultation paper contemplate the FCA having intervention powers over users in relation to non-regulated (i.e. non-designated) benchmarks. It is important that any such powers are proportionate and consistent with the fact that it has not been deemed necessary to designate these benchmarks.

Question 12: Do you have views on how references to financial benchmarks should be approached in practice in other regulatory regimes?

There will be a number of policy decisions for HMT to make with respect to references to financial benchmarks, including whether HMT considers it appropriate to continue to reference benchmarks as defined, regardless of whether the relevant benchmark is designated as critical or not.

For example:

- Market Abuse Regulation (MAR) – benchmarks are referenced in the context of the offence of manipulating a benchmark. It may be appropriate to continue to apply the offence of manipulating a benchmark to all benchmarks..
- Markets in Financial Instruments Regulation (MiFIR) – benchmarks are referenced in order to require fair, reasonable and commercial access to benchmarks. It should not be necessary to amend the existing definition of a benchmark in this context.
- **Regulated Activities Order (RAO):**
 - **ESG Ratings**– Article 63V currently provides that the need for benchmark administrators to seek FCA authorisation as ESG ratings providers should arise only where their ESG assessments are offered as a separate product or service, rather than being used solely within index methodologies. HMT should consider whether any transitional provisions may be necessary for firms that were previously required to be authorized as benchmark administrators, who may need to give up that authorization only to re-apply in connection with provision of ESG ratings (particularly as there is no current intention to provide for voluntary opt-in to the benchmark regime, which would otherwise have mitigated the need for transitional provisions). HMT will also need to amend the definition of "market access arrangement" and the scope of Article 63W (unregulated benchmarks) under the RAO appropriately.
 - **Swiss mutual recognition:** HMT may also need to consider whether there would be any impact for registered Swiss mutual recognition firms currently providing ESG ratings into the UK.
- **FSMA 2000:** s178 (notification of acquisitions of control) provides an exclusion in relation to acquisition of control over a UK firm where the only regulated activity carried on by the firm is administration of a benchmark (there is no equivalent exclusion in relation to administration of ESG ratings). It may be necessary to address the treatment of firms that formerly benefited from this exemption but cease to do so.
- **Prospectus requirements (including UCITS KIDs and securities prospectuses):** HMT should ensure that any requirements regarding references to benchmarks in prospectuses are amended as appropriate. We also note that firms in scope of The Public Offers and Admissions to Trading Regulations 2024

(previously the Prospectus Regulation) may have been relying on the UK authorised administrator exemption to provide relief from the requirement to include detailed disclosures in their prospectus.

Question 13: Do you have views on what FCA guidance may be helpful for informing authorised firms' approach to using non-regulated benchmarks?

This will be dependent what the FCA's eventual powers are in relation to non-regulated benchmarks, but as a general point, clear guidance on its expectations regarding the use of such benchmarks would be beneficial.

Chapter 5: Overseas benchmarks

General comments

The SABR regime proposed by the consultation would allow for the designation of overseas benchmarks where they satisfy the criteria for being 'systemically important' as set out in Chapter 2.

It should be noted that ISDA's membership is diverse, including benchmark users, contributors and administrators and there is a divergence of views within ISDA's membership in respect of whether overseas benchmarks should be captured by the new regime. GFXD, UK Finance do not have such a divergence of views within their memberships. LMA's membership is diverse but expressed less divergence of views.

Administrators

ISDA members that are global administrators have strongly expressed the view that removing the third country regime could significantly harm UK competitiveness by reducing competitive neutrality, disadvantaging UK providers and incentivising relocation of benchmarks outside the UK. They have further noted that removal of the regime may may undermine legal certainty for third country administrators already compliant with the UK regime.

Users

ISDA members that are benchmark users and that have provided feedback, and GFXD, UK Finance and LMA members, have expressed a strong preference for third country benchmarks to be out of scope for designation on the basis that the problems which have resulted in the third country benchmark regime being deferred for 8 years to avoid a 'cliff-edge' scenario that could restrict UK firms' access to global benchmarks under the existing BMR will continue to be problematic under the SABR regime.

Where an administrator does not wish to comply with SABR, it may simply ignore the regulation as its focus is on its local markets rather than the UK, or could even eventually use its licensing terms to prohibit use of the benchmark in the UK (as has been the case in relation to UK and EU BMR historically). Both of these outcomes would have the same impact for UK users as cessation of the benchmark and put UK users at a significant competitive disadvantage compared to their non-UK peers.

Outside of EU BMR (which continues to show the problems associated with regulating third country benchmarks) no other jurisdiction applies this extra-territorial approach to their benchmark regime.

There have been no significant risk events related to third country benchmarks during the time in which the third country regime has been suspended.

FCA powers

The Associations note that it is difficult to see how the powers envisaged for the FCA over the administrators of designated benchmarks would be able to be applied to overseas administrators, unless they do so voluntarily, or set up a branch or subsidiary in the UK and become regulated by the FCA.

Please note our responses in Chapter 6 with respect to powers over users nevertheless support extending the FCA's powers to include the restriction of use by authorised users of overseas benchmarks where there is a risk of significant market disruption.

Extension of exemptions

However, if HM Treasury maintains an overseas benchmark regime, additional exemptions would be required to prevent the possibility of benchmarks inadvertently becoming prohibited from use to the detriment of UK benchmark users and the wider UK market. It is important to recognise that in most cases, the benchmarks of concern are not provided by entities whose main business purpose is the monetisation of the benchmarks they administer. Many of these benchmarks are used for monetary policy in their own jurisdictions.

In the event that an overseas benchmark regime is retained, we strongly recommend that the existing exemptions under Article 2 be extended as follows:

Firstly, as noted in our further comments on Chapter 2 regarding exemptions, benchmarks operated by private entities (that are not central banks or public authorities) under the authority or auspices of governments or central banks should be exempted from designation.

Secondly, benchmarks that are used to set and implement monetary policy in their home jurisdiction should be exempted.

In both cases, given the fundamental importance of the rates to each domestic economy, central banks would not permit a third party to have any oversight or control over the production or publication of such benchmarks.

Foreign exchange (FX) rates

Thirdly, FX rates used in relation to NDF contracts should be exempted. These benchmarks are a particularly acute example of the types of benchmarks addressed by the two additional exemptions proposed immediately above. These FX rates have no available substitute, as they are calculated based on rates from trades executed on-shore (i.e. in other jurisdictions). Therefore, trade level data is not available to administrators located in the UK. Use of a benchmark based on offshore executed rates, i.e. NDF trades, would result in unmatched (i.e. imperfect) hedges, meaning there would be basis risk between the onshore rate and the offshore fix. This could lead to potentially significant losses or commercial risk for FX market participants transacting through the London market. For example, prices used in transactions executed in offshore markets would not match prices used in transactions executed in onshore restricted currency markets.

The use of several of these FX rates is significantly in excess of the threshold for significant benchmarks under the revised EU Benchmark Regulation. We note that the UK FX market, according to the Bank for International Settlements (BIS) triennial survey, is approximately 8 times larger than the EU market. We also note that analysis carried out in response to the European Commissions targeted consultation on the exemption of certain spot FX rates from the EU Benchmark Regulation identified that the majority of activity in these rates was used by end users to hedge on shore exposures.

An inability to access these rates would result in end users closing out their exposures thereby impacting returns, or moving their FX hedging activities to another jurisdiction, impacting the UK's competitiveness.

These rates are used to set and implement monetary policy and as such their respective central banks would not permit them to be determined and published outside of their home jurisdictions. Nor, as mentioned above, would their respective central banks permit a third party to have any oversight/control over the production or publication of these rates.

As these FX rates are not predominantly produced for commercial gain, there is no economic incentive to access the UK through recognition or endorsement, and many of the administrators would lack the resources to pursue these avenues.

Interest rate benchmarks

It should be noted that many of the above arguments relating to FX rates apply equally to interest rate benchmarks such as the Mumbai Interbank Offered Rate (MIBOR), the Korea Overnight Financing Repo Rate (KOFR) and the Korean Certificate of Deposit (CD) Rate, and the Taipei Interbank Offered Rate (TAIBOR). However, we would expect the first two exemptions proposed to capture these.

Question 14: Do you consider that an Overseas Recognition Regime and FCA's approach to international firms are sufficient to ensure continued access for UK users to designated overseas benchmarks?

The Associations consider that an Overseas Recognition Regime and the FCA's approach to international firms are unlikely to be sufficient. We note that designing a framework to regulate third country benchmarks is a complex task.

For example, under the proposed approach, absent the requested exemption, several third country spot FX benchmarks would be in scope for designation under SABR but would not meet the standard of being regulated in their own jurisdictions. It is also uncertain whether or not those jurisdictions could obtain an ORR designation.

As outlined in our general comments on Chapter 5, the central banks of the jurisdictions of these benchmarks would not permit third country oversight of these benchmarks as required under the FCA's approach to international firms.

Question 15: If not, what specifically would the endorsement and recognition routes add, and why is this needed?

The recognition and endorsement routes under the existing UK Benchmarks Regulation and the reformed EU Benchmarks Regulation have proved unattractive to all but large third country benchmark administrators.

Because of the constraints on many of the overseas benchmarks that we articulate above, such as economic viability or requirements of their own central bank or regulators, should an overseas regime continue to apply without the additional exemptions we propose in our general comments above, none of the proposed mechanisms to enable a designated third country benchmark to be permitted for use would be effective for the third country benchmarks identified in our general comments on Chapter 5.

Chapter 6: Intervention and wind-down powers

General comments

The intervention and wind-down powers used for LIBOR were invaluable in ensuring a smooth transition off the compromised benchmark. We support the expansion of these powers to a wider group of benchmarks.

While the consultation states it does not envisage the FCA should need access to such powers over UK benchmark administrators where there has not been a designation, the Associations suggest that its powers should not be constrained in this way. Instead, the FCA should be able to exercise its powers with respect to any benchmark (including use of any third country benchmark by FCA regulated entities) where failure to act might result in significant disruption in the markets that reference the benchmark or risk to the UK financial system.

This reflects the view that, depending on the facts and circumstances prevailing at the time, cessation of any benchmark may be very disruptive even if it has not been designated under SABR.

Any such powers should automatically allow for ongoing use of the benchmark for the purposes of transitioning off the benchmark or managing existing exposures. These activities will always be necessary whenever a transition is required.

We note that the consultation proposes that the FCA would have powers over the use of non-designated benchmarks. Their final form should be closely examined in the subsequent FCA consultation.

Question 16: Do you agree the FCA should continue to have powers similar to the wind-down powers that FCA currently has over critical benchmarks for designated benchmarks? Do you agree that such powers should be adapted so that they are appropriate for the wind-down of any designated benchmark?

The Associations agree that the FCA should continue to have powers similar to the wind-down powers the FCA currently has over critical benchmarks for designated benchmarks. Those powers should be adapted so that they are appropriate for the wind-down of any designated benchmark. As stated in our general comments above, we believe that these powers should extend to any benchmark where the FCA considers failing to exercise them might result in significant disruption in the markets which reference the benchmark or risk to the UK financial system.

Question 17: Do you agree that the FCA should be able to direct authorised firms to restrict some or all use of a benchmark in certain circumstances, for example, where it is being wound down in the UK or abroad?

The Associations agree that the FCA should be able to direct authorised firms to restrict some or all use of a benchmark in certain circumstances. However, such powers should be applied judiciously and not prevent ongoing use of the benchmark for the purposes of transitioning off the benchmark or managing existing exposures.

Question 18: Do you have views on whether the FCA should have powers to intervene where a designated administrator gives notice of cessation, for example to mandate continued publication of all its benchmarks?

The Associations agree that FCA should have powers to intervene where a designated administrator gives notice of cessation, including the power to mandate continued publication where cessation might result in significant disruption in the markets which reference the benchmark or risk to the UK financial system.

Question 19: Do you think any other changes could be made to the FCA's existing wind-down powers to make them more effective under the proposed regime?

As stated in our general comments above, the Associations believe that the FCA's wind-down powers should extend beyond designated benchmarks under the proposed regime, to include any benchmark where failure to exercise such powers might result in significant disruption in the markets which reference the benchmark or risk to the UK financial system.

Conclusion

The Associations thank HM Treasury again for the opportunity to respond to this important consultation. We remain at your disposal should you require any further information or assistance.

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 78 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on [LinkedIn](#) and [YouTube](#).

About GFXD

The Global Foreign Exchange Division (GFXD) was formed in co-operation with the Association for Financial Markets in Europe, Securities Industry and Financial Markets Association and ASIFMA. Its members comprise 25 global foreign exchange (FX) market participants, collectively representing a significant portion of the FX inter-dealer market. Both the GFXD and its members are committed to ensuring a robust, open and fair marketplace and welcome the opportunity for continued dialogue with global regulators.

About UK Finance

UK Finance is the collective voice for the banking and finance industry. Representing more than 300 firms across the industry, it seeks to enhance competitiveness, support customers and facilitate innovation. Our primary role is to help our members ensure that the UK retains its position as a global leader in financial services. To do this, we facilitate industry-wide collaboration, provide data and evidence-backed representation with policy makers and regulators, and promote the actions necessary to protect the financial system. UK Finance's operational activity enhances members' own services in situations where collective industry action adds value. Our members include both large and small firms, national and regional, domestic and international, corporate and mutual, retail and wholesale, physical and virtual, banks and non-banks. More information is available on our [website](#).

About LMA

The LMA represents the interests of the loan markets across Europe, the Middle East and Africa (EMEA). Today, with over 870 members in more than 60 jurisdictions, we represent an ever-growing diversity of participants in international capital markets, including institutional investors, private and public sector issuers, banks, non-banks, technology solution platforms and market infrastructure providers. Through member representation on the LMA's various working groups, we actively engage with our members to ensure their voices are heard. Their input and guidance help shape the future of the loan markets, and these groups drive the delivery of positive outcomes. For more information, please visit our website: www.lma.eu.com.

Annex – Marked Up Drafting

Impact on the integrity of the UK financial system and consumers

- ~~The benchmark has no or few substitutes, or it is not reasonably practicable for one or more users of the benchmark to switch to one of the substitutes, and~~
- ~~In the event that the~~ If a benchmark were:
 - (i) ~~to ceases~~ to be provided without sufficient notice or
 - (ii) ~~is~~ provided on the basis of data no longer fully representative of the underlying market or economic reality or on the basis of unreliable data, and

~~it would not be reasonably practicable for a significant proportion of users of the benchmark to switch to using one or more suitable, alternative benchmarks that are available (whether in respect of new transactions or their legacy positions) resulting in the risk of there would be significant and adverse impacts on the integrity of the UK financial system and consumers~~users of the benchmark

Impact on market that the benchmark seeks to measure

- ~~The benchmark has no or few substitutes, or it is not reasonably practicable for one or more users of the benchmark to switch to one of the substitutes, and~~
- ~~In the event that the~~ If a benchmark were:
 - (i) ~~to ceases~~ to be provided without sufficient notice or
 - (ii) ~~is~~ provided on the basis of data no longer fully representative of the underlying market or economic reality or on the basis of unreliable data ;and
- ~~There would be significant and adverse impacts on the market that the benchmark seeks to measure, and/or~~

there could be significant and adverse impacts on markets ~~that rely upon the benchmark which individually or collectively are systemically important to the United Kingdom or important to the United Kingdom's place within the global financial markets. materially connected to the market the benchmark~~