The Working Group on
Sterling Risk-Free Reference Rates

BY EMAIL

John Glen MP
Economic Secretary to the Treasury
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

21 April 2021

Dear John,

Safe harbour provisions to support the wind-down of critical benchmarks

I am writing to you on behalf of the market-led Working Group on Sterling Risk-Free Reference Rates ("**Working Group**").[1]

As you are aware, the Working Group's mandate is to catalyse a broad-based transition to the Sterling Overnight Index Average ("**SONIA**") as the primary sterling interest rate benchmark, replacing the London Interbank Offered Rate ("**LIBOR**"), as articulated in our roadmap[2].

Given the known challenges posed by "tough legacy" LIBOR contracts[3], the Working Group welcomed the introduction of the Financial Services Bill, which proposes amendments to the UK Benchmarks Regulation to give the Financial Conduct Authority ("FCA") enhanced powers to secure an orderly wind-down of LIBOR. In addition, the Working Group welcomed the recent consultation published by HM Treasury to seek feedback on whether there is a case for also incorporating a legal "safe harbour" provision, to reduce the risk of contractual uncertainty and disputes that may arise from the transition of tough legacy contracts.

The Working Group now understands that the safe harbour protections envisioned in the consultation are unlikely to be included in the Financial Services Bill. It is also the Working Group's understanding this does not represent a substantive decision on the merits of introducing such protections, but we are nonetheless eager to receive a formal update from the Government on the feedback received to HM Treasury's consultation, and how it intends to proceed. Given the impending deadline for GBP LIBOR cessation at the end of 2021, the Working Group believes that timely clarity on this point is critical given the concerns regarding potential market disruption or other unintended consequences that may arise from the transition of tough legacy contracts.

HM Treasury will be fully apprised of the strong and broad support for safe harbour protections, including provisions confirming continuity of contract and providing protection from specific legal claims that may arise against supervised entities, non-supervised entities and the administrator of LIBOR. For example, we are aware that a number of industry bodies have now published their responses to the consultation, in which they broadly support the proposed approach.

[1] The Bank of England and the FCA are each ex-officio members of the Working Group. The views and considerations set out in this letter do not constitute guidance or legal advice from the Bank of England (including the Prudential Regulation Authority (the "**PRA**") or the FCA nor are they necessarily endorsed by the Bank of England (including the PRA) or the FCA.

[2] https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/rfr-working-group-roadmap.pdf?la=en&hash=92D95DFA056D7475CE395B64AA1F6A099DA6AC5D

[3] The Working Group published a paper on tough legacy issues in May 2020: https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/paper-on-the-identification-of-tough-legacy-issues.pdf

LIBOR transition is a global challenge and the UK's leadership role has been recognised by the international regulatory community. The recently introduced New York State LIBOR legislation includes a safe harbour provision for contracts governed by New York law. The Working Group would welcome the addition of safe harbour provisions to complement the existing tough legacy provisions included in the Financial Services Bill, to provide more express protections for contracts governed by UK law.

As transition enters its final months, the Working Group would appreciate an update on whether the Government intends to introduce safe harbour protections. And, if so, an indication of the proposed timing and possible legislative vehicles which may be used in order to provide reassurance that these protections can be put into place ahead of the end 2021 deadline, being mindful that the Queen's Speech is expected to take place on 11 May 2021.

I would welcome the opportunity to discuss any aspects of this letter prior to any formal response. Please do not hesitate to contact me.

Yours sincerely,

Tushar Morzaria
Chair of the Working Group on Sterling Risk-Free Reference Rates