Drapers Gardens, 12 Throgmorton Ave
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18 January 2021

By email: benchmark-article23A@fca.org.uk
benchmark-article23D@fca.org.uk

Re: Consultation on proposed policy with respect to the designation of benchmarks under new Article 23A and the exercise of the FCA's powers under new Article 23D

BlackRock appreciates the opportunity to comment on the FCA's consultations in respect of the designation of benchmarks under new Article 23A and the exercise of the FCA's powers under new Article 23D. We have focused our responses on the exercise of FCA's powers under new Article 23D. In relation to the Article 23A consultation, we are supportive of, and have contributed to industry-wide responses, such as that of the Investment Association.

BlackRock has convened a Steering Committee to drive internal efforts via several workstreams and we are committed to supporting our clients throughout IBOR transition. We have dedicated significant resources to the transition and continue to invest in the development of analytics, tools, and processes to support the transition to ARRs. These and details of transition planning are summarised in BlackRock's Guide to LIBOR Transition.

The key message in respect of this consultation, as it is with the wider transition process, is the importance of consistency and clarity in the FCA's approach and communication to the timing and process and allowing stakeholders enough time to adapt. Detailed responses to the Article 23D Consultation follow.

Q1: Do you have any view on how best to consult in respect of our prospective decisions to exercise our Article 23D(2) power in respect of LIBOR?

We believe the public consultation process that the FCA normally follows will be effective. We find that thorough description of the topics including pros and cons when included in the consultation documents are very useful to the readers.

FCA should remain open to limited ad-hoc engagement with stakeholders outside of the formal consultation process. For example, we would be interested to further engage with the FCA regarding prospective decisions to exercise the Article 23D(2) power in respect of LIBOR.

Q2: How should we evaluate the practicality of transition and the scale of "tough legacy"?

We agree with the approach described in paragraph 2.10. We believe that the information collected on the number of affected instruments will be important to assess the practicality of transition. Whilst contracts and/or instruments may lend themselves to active transition with appropriate mechanisms, we believe that the scale of the tough legacy is linked to not only the number of contracts and/or instruments but also to the number of steps that parties need to take, the consent requirements and the availability of resources in the market when it comes to required legal and agency support to affect transition.

Q3: Do you agree that the scale of "tough legacy" must be significant in order to justify intervention?

Yes, in principle. An intervention in the publication of a critical benchmark should be justified and in the case of LIBOR, the scale of tough legacy should meet this hurdle. With respect to LIBOR transition, we are mindful of the vast use of LIBOR in contracts spanning from consumers to capital markets and business contracts in a variety of sectors. We are wary of a strict determination of what should constitute "significant" in the context of your powers under Article 23D(2). Given the wide use of LIBOR globally, it may be impossible to size the scale and scope to a reported figure. However, in our opinion, this challenge should not cloud the decision-making process and negatively affect the justification for intervention.

Q4: Under what circumstances might orderly transition be achieved without the use of Article 23D powers?

We believe an orderly transition around the end-2021 date for LIBOR cessation could only be possible with the assistance from the authorities. If not achieved under Article 23D, we think another legislative solution (which may require more than just UK legislation to be most effective given LIBOR's global use) would be required to assist with an orderly transition.

Q5: Do you have any views on how we intend to consider whether intervention is desirable?

We believe the FCA's intent, as explained under paragraphs 2.18, 2.19 and 2.20, is sufficiently comprehensive.

Q6: Do you think we have identified all the relevant factors?

Yes, we do not have additional factors to highlight.

Q7: Are there any further issues which we need to consider in our approach to using our powers?

We understand that the FCA's policy intention is to intervene for as short a time as is appropriate. However, in the case of LIBOR transition, we would expect that the stakeholders would want to better understand the ten-year term in which you would be empowered and whether or not the ten-year term could be extended. This is considering that tough legacy instruments with reference to LIBOR may have maturities beyond ten years during which time the circumstances around their transition to a new benchmark will not change and remain as difficult as they were at the outset of LIBOR transition. We believe that detailed communication around this time frame will be very helpful to the various stakeholders in LIBOR transition and reduce future uncertainty.

We trust that these remarks make a constructive contribution to the exercise of the FCA's powers under new Article 23D. Please do not hesitate to contact the undersigned to discuss further.

Sincerely,

Deniz Yegenaga
Global Fixed Income Group

Stephen Fisher
Global Public Policy Group

Robert Mitchelson
Global Trading Group