

LIBOR Transition: Managing the Conduct and Compliance Risks

Client communications

June 2020



Disclaimer

LIBOR Transition: Managing the Conduct and Compliance Risks (the “Paper”) is intended for general information only and is not intended to be and should not be relied upon as being legal, financial, investment, tax, regulatory, business or other professional advice. To the extent that any statements in the Paper are attributed to the FCA, the source of those statements is included as a footnote to the relevant statement. Any additional statements in this Paper regarding regulatory expectations relating to LIBOR transition are the views of AFME and Simmons & Simmons LLP. This Paper is provided for information purposes only and does not constitute legal advice. Professional legal advice should be obtained before taking or refraining from any action as a result of the Paper. AFME and Simmons & Simmons LLP do not represent or warrant that the Paper is accurate, suitable or complete and none of AFME Simmons & Simmons LLP, or their respective employees or representatives shall have any liability arising from, or relating to, the use of this Paper or its contents.

Your receipt of this document is subject to paragraphs 3, 4, 5, 9, 10, 11 and 13 of the Terms of Use which are applicable to AFME’s website (available at <http://www.afme.eu/en/about-us/terms-conditions>) and, for the purposes of such Terms of Use, this document shall be considered a “Material” (regardless of whether you have received or accessed it via AFME’s website or otherwise).

June 2020

Executive Summary

This paper is the second in a series that considers the management of conduct risk by firms who are, or will be, engaged in the transition away from the London Interbank Offered Rate in all its tenors and currencies (“**LIBOR**”) to Risk Free Reference Rates (“**RFRs**”) by the end of 2021 (“**LIBOR transition**”). The process of LIBOR transition continues to be complex and challenging for all firms and their clients and has been made even more difficult as a result of COVID-19.

This paper identifies the key considerations for firms when developing a client communications strategy and engaging with clients in relation to LIBOR transition. It focuses on the guiding principles to follow when considering the content of communications, and the benefits in segmenting the client communications plan along client and product lines and aligning it with the firm’s overall LIBOR transition plan. In addition, the paper highlights the need for the client communications strategy to be flexible and adapt to market conditions, as well as the needs of individual clients, thus reinforcing the advantage for both firms and clients in approaching the LIBOR transition process as a collaborative exercise.

This paper is intended as a possible framework to assist firms in developing and strengthening their client engagement strategy and planning. In practice, each firm will approach their client engagement in a way that suits the firm and the firm’s role in any particular transaction, and in a way that aligns with the firm’s wider LIBOR transition plan. The discussion of possible ways and means of engaging with clients and managing risks in this paper should not be treated as comprehensive or a checklist, for any purpose, or as uniformly applicable to a firm’s individual circumstances.

Introduction

The FCA and PRA consider that action in relation to ‘client communications and awareness’ is crucial to delivery of firms’ LIBOR transition plans, and that this should be a key focus (among other things) in firms’ LIBOR transition planning from Q1 2020.¹ The FCA, Bank of England (“**BoE**”) and the Working Group on Sterling Risk-Free Rates (“**RFRWG**”) have acknowledged that progress in LIBOR transition has been disrupted due to COVID-19 and that it is inevitable that some aspects of firms’ transition plans will have been impacted.² However, the deadline of end-2021 for LIBOR transition remains the same and, as such, efforts to compensate for the time lost will have to be intensified, including in relation to client communications.³

Each firm’s client engagement will differ according to the type of business, the type of clients and the differing technical options for implementing the LIBOR transition project. In addition, a firm’s approach to client communication will vary according to the role it plays in a transaction, the scope of the services for which it is responsible and the resulting legal duties that a firm owes to the client and to others. For example, where a firm provides execution-only services for a client, its limited involvement in the client’s activities and lack of visibility across a client’s portfolio is likely to influence the type, content and frequency of client communications. Different considerations will also apply, for example, where a firm is acting as agent or as lender. For most firms a single, one-size-fits-all client engagement strategy will not be sufficient to manage the potential conduct risks and inform clients appropriately.

The previous paper in this series, “Establishing an effective compliance governance framework” identified the ways in which firms can mitigate the potential conduct risks posed by LIBOR transition in the context of the following three phases of LIBOR transition: (i) project planning, (ii) project implementation and (iii) post implementation.⁴ Many of the conduct risks discussed in the previous paper can be mitigated by effective client engagement.

In order to manage the potential conduct risks, firms should be looking to have in place a client engagement strategy that treats the LIBOR transition process as a journey for their clients. Firms should be considering the end-to-end user experience. For some firms, LIBOR transition will present an opportunity to gain a deeper understanding of their clients’ businesses.

Set out below are five areas for firms to consider when planning and developing their client engagement for LIBOR transition:

- (i) Establishing a client communications strategy;
- (ii) Content of client communications;
- (iii) Methods and timing of client communications;
- (iv) Training and internal communications; and
- (v) Monitoring and record keeping.

¹ *Dear SMF letter*, 16 January 2020

² *Further statement from the RFRWG on the impact of Coronavirus on the timeline for firms’ LIBOR transition plans*, 13 May 2020

³ *Ibid*

⁴ www.afme.eu/reports/publications/details/LIBOR-Transition-Managing-the-Conduct-and-Compliance-Risks

Establishing a client communications strategy

Firms should have a clearly articulated client communications strategy which builds a client journey in respect of LIBOR transition, a journey which takes clients through the various stages of the LIBOR transition process – awareness, education, impact and a call to action. Such a strategy will enable firms to demonstrate to key stakeholders and the board how the firm is planning to engage with clients on LIBOR transition and the strategy for managing those communications right through to end-2021 and beyond. Any Senior Manager with responsibility for oversight of the LIBOR transition process will need to be appropriately briefed on the client communications strategy, to have management information to track progress against the strategy and to be able to articulate the risks associated with different asset classes and clients.

A firm's client communications strategy should sit alongside and complement the firm's existing LIBOR transition programme to ensure that the messaging to clients is aligned with what is happening in practice, i.e. there should be parallels between the content of the messaging to clients and (i) the actual progress of transition across the organisation as well as (ii) the way in which the relevant segmented client and product groups are being dealt with for the purposes of LIBOR transition. A firm's client communications strategy will therefore need to be flexible to account for the different needs of clients, and to any changes in their priorities and focus. For example, at the moment there are some clients that may not be responsive to a firm's LIBOR transition client communications because they are prioritising their response to COVID-19. This is likely to have a significant impact on the execution of the firm's LIBOR transition strategy and will need to be factored in accordingly. In order to achieve this integrated client journey, firms may wish to establish a central LIBOR programme team responsible for determining what information is available for distribution to clients and the manner in which this should be distributed to ensure that it is fit for purpose for each client segment, or where appropriate adjust existing client journey BAU processes to take into account LIBOR transition needs.

A firm's client communications strategy also needs to be aligned with developments in the market in order to ensure that engagement with clients continues to be appropriate and effective. By way of example, where conventions for certain products are still evolving across regions and/or currencies, firms will want to consider when is the right time to communicate with clients about alternative reference rates for those product types.

The FCA and PRA have stated that 2020 will be an important year for LIBOR transition and they would expect client communications and awareness to be a key focus in firms' planning from Q1 2020.⁵ However, the FCA, BoE and RFRWG recognise that, in the context of COVID-19, maintaining the smooth flow of credit to the real economy is a priority and they do not necessarily expect firms to be engaging with clients on LIBOR transition in the current environment where it is not practical or sensible to do so. This is particularly important where firms determine that reaching out to clients on LIBOR transition now would distract some clients from the important dialogue around COVID-19. That said, firms should have plans in place for continued client communication in the coming months, for when firms are ready to progress their transition plans with those clients.

The FCA has been clear that, to ensure that clients are appropriately informed about LIBOR transition and alternative rates/products, firms should:

- (A) Engage with clients early to raise awareness and educate them on general implications and timing of LIBOR transition;
- (B) Present information in good time to allow clients to make informed decisions about relevant products and the risks to which the client may be exposed;
- (C) Plan for, and subsequently roll out, increased engagement and client-specific conversations in the run-up to end-2021; and
- (D) Ensure that they have identified any product specific obligations which may require them to take action in the context of LIBOR transition.⁶

A firm's communications strategy should include, at the appropriate time, listening to clients to understand their business needs and determining what alternative rate(s) may be a good fit.

A firm's client communications strategy should identify and distinguish between the two key objectives of (i) client education and (ii) client outreach, both of which will play a part in smooth transition. Proactively engaging with clients early and educating them around the potential effects of LIBOR cessation may assist in ensuring that clients

⁵ Dear SMF letter, 16 January 2020

⁶ Conduct risk during LIBOR transition – Questions and answers for firms about conduct risk during LIBOR transition, 19 November 2019

are adequately informed and prepared for the upcoming transition. The client education element should complement and pave the way for a firm's preparations for contract remediation or the use of alternative reference rates in new products. Such preparations will include client outreach planning to ensure that firms communicate to clients adequately and in good time to enable them to consider all the options available and respond before end-2021.

Firms should consider proactive and reactive communication steps. Proactive steps may include: (i) a plan to coordinate and align the timing and content of all client engagement on LIBOR transition across the organisation to ensure that it mirrors the firm's LIBOR transition plan, (ii) segmenting clients to help ensure that education efforts are appropriately tailored, as different types of clients may have different levels of understanding around LIBOR transition and therefore have different information needs; and (iii) an assessment of which client facing staff should receive training on LIBOR transition to ensure that they are prepared to engage with clients and carry out their responsibilities in this regard. Reactive steps may involve firms planning how they propose to monitor client engagement and respond to clients' queries and how these will be escalated if necessary.

In addition, a firm's client communications strategy will, in some respects, be driven by client classification (e.g. retail, professional, eligible counterparty) and the related regulatory requirements which determine the sales process that a firm has in place for each of those client classifications e.g. a KID is required for retail clients, but not for professional clients. Understanding the documentation that each client receives as a result of their classification will ensure that communications around LIBOR transition can be incorporated into existing client outreach processes where appropriate.

Finally, a firm's client communications strategy needs to be aligned with disclosures required to be made to investors, markets, company filings and regulators. This paper does not cover any specific requirements which arise from those disclosure obligations.

In this context we would suggest that firms consider the following questions:

| | |
|---|--|
| ✓ | Who is responsible for ensuring that the communications strategy aligns with the wider LIBOR transition plan? |
| ✓ | Does the client communications strategy distinguish between education and outreach? |
| ✓ | Does the client communications strategy align with the sales process and documentation that the firm has in place for different client classifications? |
| ✓ | Is there a plan in place for the timing of delivering client communications and the frequency of updates? Does the plan include a recognition that clients need time to take action off the back of the information they receive, therefore that it is important to provide that information in good time? |
| ✓ | Does any analysis need to be done as to how the timing of a firm's client communications interacts with communications to clients on COVID-19? |
| ✓ | Is there a plan for adjusting certain client communication strategies and project plan expectations in light of COVID-19 or other external dependencies? Who is responsible for this? |
| ✓ | What process is in place to ensure client communications remain 'live' documents that are updated to account for market and industry developments? |
| ✓ | Has consideration been given to the risk that certain segments of clients do not fully understand the implications of LIBOR transition and how this could be mitigated? |

Content of Communications

The FCA has been clear that:

- (A) It is essential that firms who continue to market, distribute and or sell LIBOR products that mature beyond end-2021 explain fully what will happen in the event of LIBOR ending and its effect on the customer; and
- (B) To avoid the risk that customers do not understand how the change will affect them, firms should consider offering alternative products that do not reference LIBOR.⁷

The FCA has stated that, when communicating with clients about LIBOR and alternative rates/products, firms must communicate information to clients in a way that is clear, fair and not misleading.⁸ This reflects firms' obligations under Principle 7 of the FCA's Principles for Business, which states that *"a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading"*.

To ensure that customers are appropriately informed, the FCA has set out the following considerations for firms:

- (A) Firms should describe the risks and impacts from LIBOR discontinuation for existing LIBOR-linked products;
- (B) Where alternative options are presented for new products, or to change existing LIBOR-referencing contracts, any range of options should be reasonable and fairly presented, including the benefits, costs and risks;
- (C) Those communications should not disguise, reduce or hide relevant information. Contracts that have "small print" should be avoided; and
- (D) Firms should consider the knowledge and experience of the intended audience (e.g. firms should assume that retail mortgage borrowers have a lower level of knowledge and understanding of LIBOR compared with large corporates).⁹

Many firms will have a range of clients and products that are impacted by LIBOR and firms may wish to segment their client communications plan across client and product lines in order to determine where each client's LIBOR transition journey should start and how the engagement should be built out from there. Firms may wish to consider segmenting their client base according to factors such as client type and sophistication, the type of products they have invested in and the geographical location of clients when assessing the information needs of different clients.

These starting points are likely to be different for different client types, which is why segmenting along client types may assist. For example, a retail client with whom you have a LIBOR-linked loan is likely to be coming from a position where you can assume no LIBOR transition knowledge, whereas a large corporate client or financial institution is likely to have a greater understanding of LIBOR transition and the associated risks.

The information which firms are likely to want clients to understand in the awareness and education phase include that:

- (A) LIBOR is expected to cease at end-2021;
- (B) Robust alternative benchmarks are being established, e.g. SONIA;
- (C) SONIA is not the same as LIBOR and the difference will impact on how interest and valuations are calculated; and
- (D) Clients need to take action, including identifying their LIBOR exposure, finding out if there are any fallbacks and if they work in the event of LIBOR ceasing permanently, and familiarising themselves with SONIA and what it would mean for their business.¹⁰

For more sophisticated clients, firms may consider that they will have this awareness as a market participant and therefore that limited communications are needed.

⁷ Conduct risk during LIBOR transition – Questions and answers for firms about conduct risk during LIBOR transition, 19 November 2019

⁸ Ibid.

⁹ Ibid.

¹⁰ Working Group on Sterling Frisk-Free Reference Rates – Calling time on LIBOR: Why you need to act now, January 2020

As regards point (D) above, firms may wish to consider how they can assess whether their clients are fully aware and engaged with the necessary steps they need to take in order to be ready in time.

Having identified the starting point, it is then necessary to determine (i) where each client segment needs to get to and (ii) what the firm needs to do in order to discharge its obligations. These obligations include treating clients fairly, and providing them with information which is clear, fair and not misleading, in order to allow clients to make informed decisions about relevant products and the risks to which the client may be exposed.¹¹ This should take account of the firm's own role in the transaction, which may not be a leading one. Points which firms may want to consider covering in their client communications include (but are not limited to):

Introduction

- background, reasons for LIBOR reform
- timetable for LIBOR cessation and phase out to end-2021
- explaining market developments and the impact on clients/their products
- structural differences between LIBOR and RFRs

Options for calculating rates in agreements:

- compounded overnight rate in arrears
- forward looking rates (when available)
- fixed rates
- average rates
- central bank rates
- other currency specific rates

Specific transition risks, for example:

- pre-cessation
- volatility and liquidity risks (in LIBOR & RFR)
- availability of products to transition to
- market conventions for using alternative rates (e.g. lag vs shift mechanisms for compounded SONIA) yet to be firmly defined/may change further

Remediation issues for legacy business:

- adjustment spread
- market conventions (as above)
- need for options for calculation – agree number or agree methodology

Options for implementing transition for legacy business, and the risks, costs and benefits of each of these options:

- do nothing
- rely on fallbacks
- direct amendment of agreement now
- agree direct amendment contingent on future date/ cessation/pre-cessation triggers
- agree amendment framework contingent on cessation/pre-cessation triggers with/without fallbacks if no agreement is reached
- terminate agreement
- move to alternative: fixed rate/ central bank rate / local currency alternative rate
- novate to another institution where transition options meet needs better

Firms should also consider whether, at any stage, additional communication steps are needed to explain the options available to clients, so as to mitigate the impact of the asymmetries of information inherent in some client

¹¹ Conduct risk during LIBOR transition – Questions and answers for firms about conduct risk during LIBOR transition, 19 November 2019

relationships. By way of example, whether firms need to explain to clients that market conventions may change in the future as the market is still developing, and what the impact such changes may have on the client (e.g. how material that impact is).

Firms should consider how they describe the alternative benchmarks, taking into account the nature of their client and their expected understanding. Firms may wish to provide context about the alternative benchmark and how it differs from LIBOR. For example, firms may want to explain to certain clients that LIBOR inherently contains an element of credit risk because its methodology is based on the rates at which a bank will lend to another over certain time periods, whereas SONIA is an overnight rate with minimal credit risk implied. Firms should consider how and/or whether to use the term “risk-free rate” when describing the alternative benchmarks, taking into account the level of sophistication of the client segment. For example, for less sophisticated clients, firms may wish to consider whether the term “risk-free rate” could be misunderstood (notwithstanding that it is a term which is widely used in some parts of the market/industry). If the term “risk-free rate” is used, firms should consider providing further context and detail in order to make it clear that the reference to “risk-free” is to the rate being free of credit risk (unlike LIBOR), rather than the rate and underlying product being free of any risk.

The RFRWG’s Tough Legacy paper¹², published recently, proposes that the UK Government considers a legislative solution to address the tough legacy exposures in English law governed contracts. There is, however, no guarantee that a legislative solution will materialise, or that it will cater to all products and circumstances. Also, regulators have been clear that firms should not be waiting for legislative relief.¹³ Firms are likely to want to identify these ‘tough legacy’ contracts so that they can incorporate the relevant considerations into their communication plans.

In presenting alternative options and products, firms should provide an objective overview. The FCA has been clear that firms should not avoid presenting or discussing alternative products because they are concerned about straying into personal recommendations. Firms can provide an objective overview of the benefits, costs and risks of a range of alternatives to a client’s existing LIBOR-linked exposure, without inferring a recommendation.¹⁴

Firms may wish to consider including a prominent risk warning with the relevant contractual documentation to ensure that such clients are appropriately informed of the risks associated with LIBOR ending and how it will affect them. Firms may wish to consider how they explain what will happen to the contract when LIBOR ceases, as part of explaining how LIBOR ending will affect them.

When reviewing communications firms should have regard to potential conflicts of interest and whether they could “result in clients and third parties being misinformed and/or disadvantaged.”¹⁵

In this context we would suggest that firms consider the following questions:

| | |
|---|--|
| ✓ | What process is in place to identify the relevant client and product segments and their sophistication (e.g. retail, small and medium sized enterprises, professional clients, eligible counterparties)? |
| ✓ | Who is responsible for identifying the relevant client and product segments? |
| ✓ | What process is in place to confirm that the content and format of client communications are clear, fair and not misleading? |
| ✓ | Do the client communications also address the necessary steps that clients need to take in order to be ready to transition in time? |
| ✓ | Do the client communications address the issues around ‘tough legacy’ contracts and waiting for a legislative solution? |
| ✓ | Is there a process in place to assist the firm in assessing whether clients are sufficiently engaged and taking the necessary steps in order to be ready in time? |

¹² Working Group on Sterling Frisk-Free Reference Rates, *Paper on the identification of Tough Legacy issues*, 29 May 2020

¹³ Andrew Bailey, Chief Executive of the FCA: *LIBOR: preparing for the end*, 15 July 2019

¹⁴ *Conduct risk during LIBOR transition – Questions and answers for firms about conduct risk during LIBOR transition*, 19 November 2019

¹⁵ *Feedback on the Dear CEO letter on LIBOR transition, section 5: Identification and management of conduct risks associated with the transition*, June 2019

| | |
|---|---|
| ✓ | What process is in place to consider whether risk warnings should be included in the contractual documentation? |
| ✓ | What process is in place to consider the appropriate level of consistency of information across the different client segments, product types and business lines? |
| ✓ | Does the content of the client communications reflect the information in the RFRWG factsheet? |
| ✓ | What process is in place to assess and, if necessary, alter the firm's client communications plan in light of COVID-19? Have the necessary changes been made to the client communications strategy to reflect the challenges created by COVID-19 both for the firm and for clients (e.g. timing, content, types of client)? |

Methods and Timing of Client Communications

Firms will want to consider which methods of information delivery will be appropriate for their clients. Firms are likely to want to consider utilising different communication channels for different client types, in respect of different products, and at different stages of the client journey. Firms will also want to consider the firm's own technological capabilities and how the firm usually communicates with its clients. For example, if a firm usually sends an email or updates its website when communicating with clients, it may be appropriate to maintain this approach when providing clients with information around LIBOR transition. Conversely, firms should consider whether an email or website-only approach risks not engaging some clients, who may also be the clients that need the most support and education around LIBOR transition.

An important consideration is the ease with which clients can access the relevant information. For example, consideration should be given to the signposting for information contained on firm's website to assess whether it is believed that clients will be alerted to its presence and can easily find the information they need.

Firms may wish to consider whether, as part of the ordinary sales process for certain client types or product types, it is appropriate to include a means for the client to confirm that they acknowledge and understand the risks and consequences of LIBOR transition. When considering this, firms should be assessing the conduct risks associated with this approach to ensure clients are treated fairly and that due consideration has been given to differing client needs and levels of understanding.

As regards timing, firms will need to balance the challenge of communicating at a time when the market continues to develop with the need to start communicating with clients (and to explain what the future market developments may be). The FCA has been clear that:

- (A) Information should be presented in good time to allow customers to make informed decisions about relevant products and the risks to which the customer may be exposed. The FCA has encouraged firms to keep their customers appropriately informed about the impact of LIBOR cessation on existing and new financial products and services they offer or distribute; and
- (B) When dealing with existing customers with legacy contracts that need to be amended, firms should communicate in good time to ensure that customers can consider all the options available and respond before end-2021.¹⁶

Firms should be assessing the timing of their client communications strategy in light of the availability of products for clients to transition to. As we move towards end-2021, the availability of new products that reference alternative benchmark rates will increase and therefore firms are likely to want to increase their engagement and client specific conversations. Firms will want to adjust their client communications to reflect market developments and client need as understood from the feedback loop and as they develop.

In addition, firms will want to consider whether:

- (A) They need to co-ordinate the transition of commercially linked exposures (e.g. hedges and linked funding arrangements);
- (B) There is an option to terminate/reprice triggered by LIBOR cessation or other relevant pre-cessation event;
- (C) Their internal systems are ready for transition; and/or
- (D) There is a risk of being 'lost in the crowd' due to congestion in key agency roles as the end of 2021 gets closer

In this context we would suggest that firms consider the following questions:

| | |
|---|--|
| ✓ | Who is responsible for determining which method to use and implementing it across the relevant client segments? |
| ✓ | In what format will information be provided to clients (e.g. FAQ documents, reports and briefings or webinars and update calls)? |

¹⁶ Conduct risk during LIBOR transition – Questions and answers for firms about conduct risk during LIBOR transition, 19 November 2019

| | |
|---|---|
| ✓ | How will the firm respond to requests from the client for further information? Are there trained, designated subject matter experts to whom a relationship manager could refer a client for a detailed conversation? |
| ✓ | What measures are in place to assist clients with questions (e.g. helplines for clients, FAQs, specific LIBOR point of contact)? |
| ✓ | What analysis has been done to determine the extent to which the ordinary sales process should allow clients to confirm they have 'read and understood' the risks around LIBOR discontinuation? Have all the conduct risks around this been considered? |
| ✓ | What consideration has been given to the timing of communications and balancing the needs of customers to have sufficient time and sufficiently certain information being available to communicate so as to ensure that communications are clear fair and not misleading? |
| ✓ | What process is in place to monitor the availability of new products that reference alternative benchmark rates and align this with the timing of client communications? |

Internal Training and Communications

In order for clients to be appropriately and accurately informed about LIBOR transition, the risks associated with LIBOR cessation and how it will affect them, those responsible for providing that information need to have a good understanding of LIBOR transition generally and of the firm's LIBOR transition strategy. Lack of awareness and understanding around LIBOR transition may lead to poor client education and outreach outcomes. For example, this could lead to situations in which clients are given conflicting messages from different parts of the business.

The FCA has been clear that firms need to ensure that client-facing staff have adequate knowledge and competence to understand the implications of LIBOR ending and can respond to client queries appropriately, which may require additional training.¹⁷

Firms will want to implement an internal communications and training strategy that aligns with the firm's LIBOR transition plan and thus ensures a sufficient level of understanding amongst relevant staff. For many firms this is likely to be a rolling programme and may consider the use of:

- (A) specific e-learning modules to cover the basic and fundamental concepts around LIBOR transition;
- (B) separate tailored 'face-to-face' workshops with scenario and case study-based training, which would allow attendees to ask questions, for the front office, legal and compliance, and operations and risk;
- (C) regular internal update meetings within product areas, support functions and across legal and compliance;
- (D) a hotline for questions and escalation of LIBOR transition issues for each business line; and
- (E) internal and external microsite with relevant material.

In this context we would suggest that firms consider the following options:

| | |
|---|---|
| ✓ | Which internal teams should be trained on LIBOR transition and what is the most appropriate way to deliver training? |
| ✓ | What additional training needs to be put in place to mitigate the conduct risks associated with client communications? |
| ✓ | Have playbooks been introduced for frontline staff to assist with client communication? |
| ✓ | Which team(s) are responsible for determining the content of, and delivering, relevant training? |
| ✓ | How will internal teams be kept updated on developments in relation to LIBOR transition, both at an industry level and in relation to the firm's LIBOR transition? |
| ✓ | How will firms ensure that relevant staff attend the training sessions? |
| ✓ | Should training sessions for front office, legal and compliance, and operations and risk, contain scenarios, case studies and examples? |
| ✓ | Has there been a determination as to which staff should be liaising directly with clients? |
| ✓ | Have individuals been trained in relation to the distinction between the presentation of alternative rates and products in an objective way and providing a personal recommendation for which a suitability analysis would be required? |
| ✓ | Has consideration been given to designating key LIBOR client representatives to discuss the detail of LIBOR transition with clients rather than the day-to-day relationship manager or sales person? |

¹⁷ Conduct risk during LIBOR transition – Questions and answers for firms about conduct risk during LIBOR transition, 19 November 2019

| | |
|---|--|
| ✓ | What procedures are in place to ensure training records are kept for the duration of the transition programme? |
|---|--|

Monitoring and Record Keeping

Firms are expected to have in place arrangements to furnish their governing bodies with the management information (“MI”) they need to play their part in measuring, managing and controlling risks of regulatory concern.¹⁸ MI needs to be relevant, reliable, analysed, timely and acted upon. Firms should therefore have MI to assist in monitoring the effectiveness of their various LIBOR transition communications. By way of example, firms may wish to review the ‘footfall’ on the LIBOR transition pages of their websites to determine the effectiveness of the information provided by this medium. Therefore, if the monitoring shows that the information isn’t being accessed in the way and volume anticipated, the client communications strategy can be reviewed and altered accordingly.

Firms have general record keeping obligations which are equally applicable to LIBOR transition.¹⁹ As a project which will generate thousands of project documents, firms will want to consider the appropriate method for organising and storing that material. Firms should consider to what extent current record keeping arrangements need enhancing for the purposes of LIBOR transition, whilst at the same time not introducing record keeping requirements which are inappropriate. Firms will also want to consider how best to record key decisions and the information which passes between the firm and clients which is not otherwise recorded in a written form. By way of example, whether firms need to provide guidance to front line staff to set out the extent to which, and where, they should be recording their verbal communications with clients.

In this context we would suggest that firms consider the following options:

| | |
|---|--|
| ✓ | What MI is required to enable Senior Manager(s) to be appropriately informed and able to decide which clients should and should not receive LIBOR transition communications whilst responding to the consequences of COVID-19 remains a priority for some clients? |
| ✓ | Which individual(s) or team(s) will be responsible for compiling the relevant MI? What process is in place to record the way in which MI is being reviewed and actioned? |
| ✓ | What process is in place to monitor client engagement and consider its effectiveness? |
| ✓ | What process is in place to maintain records of questions and responses from clients and how these were dealt with, escalated, responded to? |
| ✓ | What processes are in place to ensure that effective records of historic client engagement related to LIBOR transition, such as meetings, letters, fact sheets, FAQ documents, webinars, risk disclosures, are maintained and can be easily located and retrieved if needed at a later date? |
| ✓ | What documentation is in place to document why certain decisions around client engagement have been made (e.g. project trackers, product grids, status tables, meeting minutes)? |
| ✓ | What process is in place for determining whether additional record keeping processes are required for the purposes of LIBOR transition, and for assessing the practical feasibility of maintaining and monitoring any additional records? |
| ✓ | What process is in place to ensure records of the decision making around client communications are maintained and can be easily located and retrieved if needed at a later date? |
| ✓ | Does guidance need to be given to front line staff to help them understand what records they need to keep of their verbal communications with clients and where any such information should be recorded? |

¹⁸ SYSC 3.2.11A

¹⁹ “A firm must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the FCA ... to monitor the firm's compliance with ... requirements ...” SYSC 9.1.1R “A firm should have appropriate systems and controls in place with respect to the adequacy of, access to, and the security of its records so that the firm may fulfil its regulatory and statutory obligations. With respect to retention periods, the general principle is that records should be retained for as long as is relevant for the purposes for which they are made.” SYSC 9.1.5G

Contributors to this Paper

We are grateful to our Member firms and the individuals who contributed their time and thoughts in producing this report.

AFME Contacts

Richard Middleton
Managing Director, Head of Policy
richard.middleton@afme.eu
+44 (0)20 3828 2709

Fiona Willis
Associate Director, Policy
fiona.willis@afme.eu
+44 (0)20 3828 2739

Simmons & Simmons Contacts

Caroline Hunter-Yeats
Partner
caroline.hunter-yeats@simmons-simmons.com
+44 (0) 20 7825 4571

Penny Miller
Partner
penny.miller@simmons-simmons.com
+44 (0) 207 825 3532

Rebecca Heller
Of Counsel
rebecca.heller@simmons-simmons.com
+44 (0) 207 825 4043

James Grand
Partner
james.grand@simmons-simmons.com
+44 (0) 207 825 3743

Elizabeth Williams
Partner
elizabeth.williams@simmons-simmons.com
+44 (0)207 825 3081

/ About AFME

The Association for Financial Markets in Europe (AFME) is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues.

We represent the leading global and European banks and other significant capital market players.

We advocate for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society.

We aim to act as a bridge between market participants and policy makers across Europe, drawing on our strong and long-standing relationships, our technical knowledge and fact-based work.

Focus

on a wide range of market, business and prudential issues

Expertise

deep policy and technical skills

Strong relationships

with European and global policy makers

Breadth

broad global and European membership

Pan-European

organisation and perspective

Global reach

via the Global Financial Markets Association (GFMA)



London Office

39th Floor
25 Canada Square London, E14
5LQ
United Kingdom
+44 (0)20 3828 2700

Brussels Office

Rue de la Loi, 82
1040 Brussels
Belgium
+32 (0)2 788 3971

Frankfurt Office

Neue Mainzer Straße 75
60311 Frankfurt am Main
Germany
+49 (0)69 153 258 967

Press enquiries

Patricia Gondim
Interim Head of Media Relations
patricia.gondim@afme.eu
+44 (0)20 3828 2747

Membership

Elena Travaglini
Head of Membership
elena.travaglini@afme.eu
+44 (0)20 3828 2733

Follow AFME on Twitter

@AFME_EU