INTERNATIONAL ASSOCIATION
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Banking in the crosshairs: Investigations by financial regulators and competition authorities in the banking industry – Libor, Forex, what next?

Banking, Finance and Capital Markets Law Commission

Antitrust Commission

Commercial Fraud Commission

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1. Have the authorities from your jurisdiction proposed or adopted any measures to ensure the necessary integrity of the market and of its benchmarks, guaranteeing that they are not distorted by any conflict of interest, that they reflect economic reality and that they are used correctly? (i.e.: measures to better protect investors, reinforce confidence, address unregulated areas, and/or ensure that supervisors are granted adequate powers to fulfil their tasks)

Because LIBOR is produced in the United Kingdom and not regulated in the United States, any reform efforts by United States authorities are undertaken in concert with the United Kingdom or are focused on creating alternatives to LIBOR. Shortly after the LIBOR became a public issue, the Commodities Futures Trading Commission ("CFTC") in the United States and the United Kingdom Financial Services Authority ("FSA")[1] came together to co-chair the International Organization of Securities Commissions Task Force ("Task Force") on financial market benchmarks. The Task Force's mission was to develop international principles for benchmarks and examine best mechanisms or protocols for a benchmark transition, if needed. In July 2013, the Task Force published *Principles for Financial Benchmarks* ("*Principles*") that set forth several suggested reforms. CFTC former chairman Gary Gensler commented that the *Principles* required "that benchmarks be anchored by observable transactions and subject to robust governance processes that address potential conflicts of interest." In February 2015, the Task Force reported that widespread efforts had been made to implement the reforms.

Jerome H. Powell, a governor of the Federal Reserve, has also detailed several possible reforms in a speech he gave last year. He commended the work of the Financial Stability Board ("FSB") and noted that the FSB's suggested reforms stemmed from two basic ideas. First, he stated that U.S. dollar LIBOR needed to be redefined to include a broader range of transaction types. Second, he argued that the Federal Reserve needed to promote robust alternatives to U.S. dollar LIBOR that better reflected the secured nature of many of today's financial market transactions.

In April 2014, the Federal Reserve began collecting data from banks on a variety of unsecured transactions. Preliminary analysis of the data, reinforced by research done by the Market Participants Group ("MPG"), suggested that there may be enough borrowing activity to create a transactions-based U.S. dollar LIBOR rate. The Federal Reserve has been working closely with the LIBOR administrator and U.K. authorities to redefine LIBOR so that it more closely reflects actual financial transactions.

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[1] The FSA has since been abolished, and its responsibilities have been split between the Prudential Regulation Authority and the Financial Conduct Authority.

The Federal Reserve also has been exploring and promoting alternatives to U.S. dollar LIBOR. Some possible alternatives include rates based on the U.S. Treasury market or rates based on the secured funding markets that have replaced much of the borrowing banks used to do in the unsecured interbank market. The Federal Reserve has been encouraging key market participants to further the work done by the MPG by narrowing down the list of alternatives and developing them into robust reference rates that meet agreed-upon international standards and best practices.

2. Which authority monitors financial bodies in your jurisdiction?

There are a multitude of authorities that regulate financial bodies in the United States, including state and local agencies. The major federal agencies include, but are not limited to:

- Securities and Exchange Commission
- Department of Justice
- Commodities Futures Trading Commission
- Federal Reserve
- Consumer Financial Protection Bureau
- Federal Deposit Insurance Corporation
- Office of the Comptroller of the Currency

3. [For EU and EFTA member states] has your country completed the transposition of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (also known as «MiFID II»)? If not, when will transposition be completed?

Not applicable.

4. Have the authorities in your jurisdiction conducted any inquiry on leading banks or institutions in relation anti-trust practices with regards to essential financial information and/or the clearing system?

As of December 2014, the Department of Justice ("DOJ") has charged eleven individuals and seven companies with illegally manipulating LIBOR. Several of these investigations have resulted in settlements reaching hundreds of millions of dollars. At least two individuals have entered pleas. Additionally, the Commodities Futures

Trading Commission ("CFTC") has obtained over $1.87 billion from banks and brokers for alleged manipulative conduct with respect to LIBOR and other benchmark interest rates. In the past year, the United States authorities have entered into two noteworthy settlements. In July 2014, the DOJ entered into a deferred prosecution agreement ("DPA") with Lloyds Banking Group ("Lloyds"), in which Lloyds paid an $86 million penalty. Additionally, the CFTC entered into a settlement in which Lloyds paid $105 million in penalties. In May 2014, RP Martin settled with the CFTC for $1.2 million in penalties. Although these penalties are not as large as those paid by Barclay's Bank PLC in 2012, these sums indicate that United States authorities are continuing to vigorously prosecute alleged manipulators of LIBOR.

5. Which new requirements have been established in order to reinforce governance and oversight and introducing measures sanctioning those responsible for LIBOR and other index manipulation?

   See responses above.

6. Has any similar scandal-malpractice affected your jurisdiction? Have penalties been imposed? and/or administrative or criminal sanctions? If not, which sanctions are foreseen in your jurisdiction for this type of misconducts?

   See responses above.

7. How are the potential conflicts of interest affecting banks or other financial institutions addressed in your jurisdiction? Which requirements are adopted to ensure that benchmarks reflect economic reality and that they are used correctly?

   See response to Question 1 above.

8. Are any measures foreseen in your jurisdiction for the protection of "whistleblowers"?

   In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") was signed into federal law. Significantly, Dodd-Frank included the Securities Whistleblower Incentives and Protection provisions that incentivize employees and other potential whistleblowers to report directly to the Securities and Exchange Commission ("SEC") suspected violations of the federal securities laws by public companies and/or their subsidiaries. Whistleblowers that voluntarily give the SEC "original information" regarding securities laws violations resulting in a "successful enforcement" action could be paid an award equal to 10 to 30 percent of the total monetary sanctions, if the total sanctions exceed $1 million. Whistleblowers

are also protected from retaliation under Dodd-Frank, meaning that employers may not terminate or take other adverse action against a whistleblower who reports violations to the SEC or who assists the SEC in an investigation based upon such information. Additionally, whistleblowers that assist in administrative or judicial actions relating to information provided to the SEC are protected from retaliation.

In May 2011, the SEC adopted final rules implementing the Securities Whistleblower Incentives and Protection provisions. These rules further incentivized whistleblowers by giving credit to whistleblowers who report original information internally, if the employees' companies pass the information to the SEC, and moreover, giving credit to employees for any additional information companies may gather from internal investigations initiated by employees' internal report. The final rules also extended the "look back" time period from 90 to 120 days, so that employees have more time to report wrongdoing to the SEC (and receive whistleblower credit) after making internal reports.

9. Is there any measure in place in your jurisdiction to guarantee suitable and appropriate evaluation of benchmarks?

   See response to Question 1 above.

10. Which requirements and/or transparency rules –if any- are undertaken in your jurisdiction in order to prevent distortions of competition resulting from divergences between other national laws and/or to provide more legal certainty for market participants? (i.e. to prevent or limit regulatory complexity and potential regulatory arbitrage)

    Although there are multiple regulatory and enforcement bodies in the United States that have overlapping authority over market participants, and there is no statutory or formal method for coordinating their activities and initiatives, there are various informal mechanisms that they routinely use to coordinate their activities. In addition, the United States has an active dialogue and cooperation with authorities in other countries, both bilaterally (as with the UK described above) and multilaterally (such as with the EU).