



**ASIC**  
Australian Securities &  
Investments Commission

**Australian Securities  
and Investments Commission**

**CATHIE ARMOUR**  
Commissioner

Office address (inc courier deliveries):  
Level 5, 100 Market Street,  
Sydney NSW 2000

Mail address for Sydney office:  
GPO Box 9827,  
Brisbane QLD 4001

Pieter Bierkens  
Chair  
IBOR Transformation Australian Working Group  
Level 25, Angel Place, 123 Pitt Street  
Sydney NSW 2000

David Love  
Secretariat  
Australian Financial Markets Association  
Level 25, Angel Place, 123 Pitt Street  
Sydney NSW 2000



[asic.gov.au](http://asic.gov.au)



30 March 2020

Dear Pieter

**Response to the IBOR Transformation Australian Working Group's letter requesting guidance on matters associated with IBOR transition**

We refer to your letter to the Council of Financial Regulators (the Council) dated 19 December 2019 seeking regulatory guidance on matters associated with the transition from LIBOR to alternative reference rates (ARRs). The letter and this response have been discussed by the Council at a council meeting. Due to the conduct focus of the letter, ASIC is responding to your guidance request on behalf of the Council.

We appreciate the work of the IBOR Transformation Australian Working Group (the Working Group) on strategic considerations relating to IBOR transition, and welcome early engagement with the regulators on the issues that may arise during the transition process.

We have considered the matters raised by the Working Group and provide our response in this letter.

**1. Conduct risk in relation to the transition from LIBOR to ARR**

ASIC recognises the various conduct risks associated with LIBOR transition and the complexities financial institutions face during the transition process. In addressing the

Working Group's guidance request on matters related to the concept of fairness, we consider it opportune to draw from some observations from the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation, and Financial Services Industry on how entities can conduct themselves to produce fair outcomes for clients. We consider those observations applicable to matters associated with benchmark reform.

Fairness involves even-handedness, professionalism, and sound ethical values and judgment when dealing with clients. It should be embedded in all aspects of the business. In particular:

- i) Entities should consider the connection between conduct and reward. Conduct issues are often driven by the pursuit of gains and profit by individuals and entities. How staff are paid can also change the nature of their roles. ASIC expects entities to be vigilant during the transition process and ensure that providing a service does not become secondary to sales.

Members of the Working Group are encouraged to review the remuneration structure for staff responsible for the transition process. The design of the remuneration system should distinguish between sales and service, as well as how services are performed. Incentives, bonuses, and commission schemes should be appropriately applied to reward successful transition and used to measure compliance with ethical values and standards.

We also recommend the Working Group to consider the aim of LIBOR transition. The motive of the transition should not be profit-making. Firms should consider implementing mechanisms to ensure the transition process is not used for financial gains.

- ii) In addition to appropriate corporate governance structures, ASIC expects entities to address any imbalance of power and knowledge between entities and their clients, including through effective communication and clear documentation.

We recommend entities document their decision-making process during the transition, including the reasons for selecting specific dates to transition from LIBOR to ARR. This improves transparency, reduces the asymmetry of information, fosters trust, and most importantly, supports the notion that fairness involves entities making well-informed decisions and acting with integrity.

Some clients may lack the knowledge and understanding of the transactions they enter into and have very limited ability to negotiate terms. This asymmetry of power and information between entities and their clients extends across most products and services offered by financial institutions, including those relevant to LIBOR transition. ASIC expects Members of the Working Group to utilise their existing governance arrangements to manage, mitigate or, where possible, eliminate the asymmetry of power and information.

In practice, using the value transfer example provided by the Working Group, this involves, but is not limited to, acting in the best interest of clients and

disclosing in a timely manner why there will be value transfer during contract renegotiation and what the potential cost will be.

How entities can adopt a clear and effective communication strategy will be discussed in section two.

- iii) ASIC expects entities to act in the best interest of their clients and ensure the management of conflicts is not forgone in pursuit of self-interest. ASIC recognises the Working Group's acknowledgement of conflicts of interest issues and recommend that in addition to each entity's existing arrangement, they should be aware that a 'good enough' outcome or a compromise will not be considered as 'fair'.

Given the range of possible circumstances facing members of the Working Group, it is incumbent on each entity to do what is needed in their circumstances to avoid disadvantaging clients.

Entities should evidence how they have identified and managed conflicts of interest, especially regarding the process they have used to manage conflicts in order to achieve fair outcomes for clients.

- iv) ASIC expects entities to be held accountable when they break the law. Accountability is linked to fairness and although there are challenges ahead, entities are still fully accountable for their actions in relation to LIBOR transition.

We recommend members of the Working Group ensure that their governance framework is appropriate in dealing with LIBOR transition issues, especially regarding senior management and director responsibility and accountability.

## **2. Client communication issues**

While we acknowledge the contextual uncertainties to be resolved, there is significant work that can be done now to ensure effective communication as LIBOR cessation approaches.

In relation to communication, we recommend members of the Working Group to consider the following:

- i) Entities should not take a 'one size fits all' approach in delivering information. Communication strategies should be tailored to the sophistication of respective client segments and the complexity of the products and services they are associated with, including timing, content, channel, and framing.
- ii) Communications should be oriented from the client's perspective. We recommend entities consider:
  - a. The content that clients need to be familiar with. Entities should prioritise clients' understanding on the range of possible ARR and ensure they are familiar with the language used in benchmarks reform.

- b. The time or transition stage at which clients would be most receptive to this information.
  - c. Whether communications are clear on what the transition means for the client in practical terms.
  - d. Messages should be layered, with key messages, or more relevant messages for the client, upfront.
  - e. Additional information repositories should be made available for clients, including general education content on benchmarks reform and ongoing disclosure of the entity's approach to transition.
- iii) Where possible, test communications and consider the best channels for message delivery.
  - iv) Be transparent in the communication process, including timing, next steps, and actions required of clients. Entities are encouraged to disclose developments in the industry and the impact they may have on the entity's transition progress.

When interacting with clients, entities should bear in mind that methods such as communicating through warnings and disclosures have limited effectiveness. Although disclosures play an important role in providing information on products and services to ensure market transparency, their effectiveness in communicating the complexity of LIBOR transition should not be assumed.

We recommend that entities consider the limited use of disclosures and adopt an outcome-focused approach during the transition process. Entities should focus on ensuring their clients understand the impact of LIBOR transition, the implications on their business, and various dependencies associated with the transition process. Additional documentation regarding potential and actual conflicts of interest may be required as supplementary material.

For further information on the limitations of disclosures we refer the Working Group to the joint publication from ASIC and the Dutch Authority for the Financial Markets (AFM) – Disclosure: Why it shouldn't be the default.

ASIC recognises the important role regulators play in communicating to a broad audience. Thus, to assist in the dissemination of LIBOR transition knowledge and best practice recommendations, we will be sending a letter to large Australian corporations and financial services licensees to improve public outreach. The letter is expected to be sent in the coming weeks.

It is crucial that entities are well-prepared in the coming months to ensure a smooth and successful transition. We appreciate the Working Group's commitment to address various challenges faced by the industry and encourage members to continue their engagement with regulators on matters related to LIBOR transition.

Should you have further questions or feedback, please do not hesitate to contact the ASIC Benchmarks team at [Benchmark.Reform@asic.gov.au](mailto:Benchmark.Reform@asic.gov.au).

Sincerely,

A handwritten signature in black ink, appearing to read "Cathie Armour". The signature is fluid and cursive, with a prominent initial 'C'.

**Cathie Armour**  
Commissioner  
Australian Securities and Investments Commission