



EUROPEAN CENTRAL BANK

EUROSYSTEM

Third public consultation by the working group on euro risk-free rates

on the EONIA to €STR Legal Action
Plan

May 2019



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1 Executive summary

The euro overnight index average (EONIA) is extensively used as a reference rate in contracts for variable interest rate products denominated in euro and with different contractual maturities that may extend beyond 30 years. Owing to its systemic importance, the European Commission added EONIA to the list of critical benchmarks on 28 June 2017 pursuant to Article 20 of the EU Benchmarks Regulation¹ (BMR). Under its current methodology, however, EONIA is not compliant with the BMR and, consequently, there is a need for a swift and smooth transition to a more robust risk-free rate.

The European Central Bank (ECB) is developing a euro short-term rate (€STR) which will reflect the wholesale euro unsecured overnight borrowing costs of euro area banks. The ECB will begin publishing €STR on 2 October 2019.

In the light of this and after extensive work and public consultations, the working group on euro risk-free rates (“the working group”) recommended on 13 September 2018 that €STR should serve as the alternative euro risk-free rate and the replacement for EONIA. Moreover, on 14 March 2019 the **working group recommended that the European Money Markets Institute (EMMI), as the administrator of EONIA, modify the current EONIA methodology to become €STR plus a fixed spread (the “Spread”) from the first publication date of €STR, i.e. 2 October 2019, and to consider ceasing publication of EONIA at the end of 2021, i.e. 3 January 2022.**

As part of its mandate, the working group on euro risk-free rates is tasked with the development of a market adoption plan, which should include a legal action plan for legacy and new contracts referencing EONIA and should consider best practices for contract design to ensure a smooth transition from EONIA to €STR. To this end, **the present legal action plan for the transition from EONIA to €STR (“Legal Action Plan”) is published as a consultation paper** describing the different legal options discussed by the working group over the last few months with a view to obtaining feedback on the Legal Action Plan from a broad range of market participants.

The working group recommends that market participants consider replacing EONIA with €STR as a reference rate for all products and contracts and make all operational adjustments necessary for using €STR as their standard benchmark as soon as possible. In particular, **it is recommended that new contracts referencing EONIA include robust fallback provisions and an acknowledgement that references to EONIA will be understood to be references to EONIA as modified after the change to its methodology on 2 October 2019.**

The working group recommends that, after 2 October 2019, whenever operationally feasible, market participants should consider no longer entering

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R1011>

into new contracts referencing EONIA, in particular new contracts maturing after 31 December 2021.

For legacy contracts referencing EONIA and maturing after December 2021, market participants should consider replacing EONIA as a primary rate as soon as possible or embedding robust fallback clauses with reference to the recommended fallback rate for EONIA.

If new contracts and legacy contracts that mature after 2021 do not include robust fallbacks or are not amended or cancelled by the end of December 2021, market participants should be aware that this may generate uncertainty in relation to their contractual obligations and, consequently, may affect their commercial and legal interests, although the general principle of contract continuity (as it may exist in each jurisdiction) may help to mitigate such issues.

To support a smooth transition, the **working group intends to recommend €STR plus a spread as the EONIA fallback rate**. The ECB will provide the computation of the “Spread” as a one-off spread between €STR and EONIA in accordance with the methodology publicly recommended by the working group.

The **Legal Action Plan for the transition from EONIA to €STR relies to a great extent on the engagement of market participants and on private contractual solutions**. Where feasible and appropriate, the working group intends to recommend that market participants consider:

- using and/or amending, where necessary, existing master agreements and standard documentation to embed robust fallbacks in new contracts, such as the ISDA Benchmarks Supplement developed by the International Swaps and Derivatives Association (ISDA), the European local master agreements or the template wording recommended by the Loan Market Association (LMA);
- using existing multilateral protocols such as the ISDA Benchmarks Supplement Protocol, or developing new ones, and using new amendment agreement templates being developed by the LMA for syndicated loans and by the sponsors of local master agreements, in order to amend legacy contracts so as to either embed an EONIA fallback provision or to switch from EONIA to €STR plus the Spread as the reference rate in legacy contracts; and
- in cases for which there are no recommended forms of fallback provisions or templates for amendment agreements (which may be the case for certain cash products), using the fallback language templates and bilateral amendment agreement templates developed by the working group to assist market participants in commencing their bilateral negotiations.

Finally, **the working group draws attention of all market participants that their application of the recommendations contained in the EONIA to €STR Legal Action Plan will be on a voluntary basis**. Each market participant will need to make its own independent decision about whether and, if so, to what extent, any suggested recommendations are adopted and used in their respective contracts.

Responses to this consultation should be sent to EuroRFR@ecb.europa.eu by 17:00 CET on 12 June 2019. The ECB will evaluate all the responses and prepare an anonymised summary of the feedback. This summary will be discussed by the working group and published on the ECB's website with other documents related to the working group's meeting on 4 July 2019.

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2 Introduction

The euro overnight index average (EONIA) is the overnight unsecured interbank lending rate for the euro area. The administrator of EONIA is the European Money Market Institute² (EMMI) and its calculation agent is the European Central Bank (ECB). EONIA was first published on 4 January 1999. Since then, it has become one of the most widely used interest rate benchmarks in the euro area. EONIA is used as a reference rate in financial instruments and contracts, and as a discounting curve for collateralised euro cash flows, including those referencing the euro interbank offered rate (EURIBOR).

In the light of the extensive use of EONIA and its importance for financial stability, on 28 June 2017 it was designated as a critical benchmark³ by the European Commission pursuant to Article 20 of the EU Benchmarks Regulation⁴ (BMR).

The provision of EONIA and its use in the EU are regulated by the BMR. Article 28(2) of the BMR requires EU supervised entities (which include a wide range of EU regulated buy- and sell-side entities) using a benchmark to produce and maintain robust “written plans” setting out the actions that they would take if a benchmark they are using materially changes or ceases to be provided. Where feasible and appropriate, such plans should nominate one or more alternative benchmark(s) that could be used as a reference in place of benchmarks that are no longer provided or are materially changed. The supervised entities shall, upon request, provide the competent authorities with those written plans and shall reflect them in their contractual relationships with clients.

Article 28(2) of the BMR took effect on 1 January 2018 and does not benefit from any transition period. The European Securities and Markets Authority (ESMA) clarified in a Q&A⁵ that Article 28(2) applies with effect from 1 January 2018. This means that supervised entities are required to produce written plans to be reflected in financial instruments and financial contracts entered into after 1 January 2018. For financial instruments and contracts entered into prior to 1 January 2018, it is expected that supervised entities will amend them where practicable and on a best-efforts basis.

The International Organization of Securities Commissions (IOSCO) published a statement⁶ in January 2018 recommending that users of benchmarks produce and maintain clear, comprehensive and robust written policies and procedures on actions they would take in the event that a benchmark were no longer available or changed materially, in order to mitigate the potential risks involved. The IOSCO statement does not make reference to any date after which users of benchmarks should produce contingency plans.

² <https://www.emmi-benchmarks.eu/>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1498740635033&uri=CELEX:32017R1147>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R1011>

⁵ See Q&As 8.1, 8.2, 8.3 of the ESMA Q&As on the [Benchmarks Regulation](#).

⁶ IOSCO statement on [Matters to Consider in the Use of Financial Benchmarks](#).

Pursuant to the BMR, only benchmarks that have registered or authorised administrators can be used in new contracts by supervised entities in the European Union after the end of the BMR's transition period (for which a political agreement has been reached for an extension to 31 December 2021 but which has yet to become law). The EMMI has concluded that – in its current form – EONIA's compliance with the BMR cannot be warranted. In the light of this, in March 2019 the working group recommended that the EMMI (i) modify the current EONIA methodology to become €STR plus a Spread; (ii) ensure the compliance of EONIA, under its evolved methodology, with the BMR; and (iii) consider ceasing the publication of EONIA at the end of 2021.⁷ Subsequently, the EMMI launched a public consultation on the recalibration of the EONIA methodology in line with the working group's recommendation.⁸

The working group also published in January 2019 a set of guiding principles for fallback provisions in new contracts for euro-denominated cash products.⁹ The development of more robust fallback language that deals with the permanent discontinuation of the benchmark for new cash product contracts referencing EURIBOR or EONIA can help to enhance legal certainty and reduce the risks stemming from the use of existing euro benchmarks.

Finally, with the publication of the present consultation the working group has started the process towards the adoption of a legal action plan to facilitate a smooth transition from EONIA to €STR. The Legal Action Plan will cover legacy and new contracts referencing EONIA in all asset classes that use EONIA (namely derivative transactions, collateral agreements and cash products).

⁷ https://www.ecb.europa.eu/pub/pdf/annex/ecb.sp190314_annex_recommendation.en.pdf

⁸ <https://www.emmi-benchmarks.eu/euribor-eonia-org/eonia-consultations.html>

⁹ <https://www.ecb.europa.eu/pub/pdf/other/ecb.sg3guidingprinciples201901.en.pdf>

3 Background, objectives and scope

3.1 Background and objectives of the consultation paper

In September 2017 the ECB, the Financial Services and Markets Authority (FSMA), the ESMA and the European Commission announced the launch of the working group on euro risk-free rates (“the working group”). The working group was tasked with identifying and adopting a “risk-free overnight rate” which can serve as a basis for an alternative to the current benchmarks used in a variety of financial instruments and contracts in the euro area.

As part of its mandate,¹⁰ the working group is expected to develop a recommended adoption plan for legacy contracts referencing existing benchmarks and to consider best practices for contract design that ensure that new contracts are robust and resilient to the possible cessation of the underlying benchmark. Furthermore, the working group will consider the factors that could facilitate the adoption of the recommended risk-free rates and the adoption of best practices for contract robustness among a broad group of market participants.

Following consultations:

- on 13 September 2018 the working group recommended the euro short-term rate (€STR) as the alternative euro risk-free rate and replacement for EONIA;¹¹
- on 14 March 2019 the working group recommended that the EMMI modify the current EONIA methodology to become €STR plus the Spread (as defined) from the first publication date of €STR on 2 October 2019 and that it consider ceasing publication of EONIA at the end of 2021, among other recommendations (see Section 3.3 for a full account of the recommendations);¹² and
- on 20 March 2019 the EMMI launched a public consultation on the recalibration of the EONIA methodology in line with the working group's recommendation. Additionally, the EMMI also proposed that the last publication date of EONIA would be 3 January 2022.¹³

In the light of this, **the working group has developed the Legal Action Plan to facilitate a smooth transition from EONIA to €STR. The Legal Action Plan is intended to cover legacy and new contracts referencing EONIA in all asset classes that use EONIA (derivative transactions, collateral agreements and cash products as described in Section 3.2).**

¹⁰ [Terms of reference for the Working Group on Euro Risk-Free Rates](#)

¹¹ <https://www.ecb.europa.eu/press/pr/date/2018/html/ecb.pr180913.en.html>

¹² https://www.ecb.europa.eu/pub/pdf/annex/ecb.sp190314_annex_recommendation.en.pdf

¹³ <https://www.emmi-benchmarks.eu/euribor-eonia-org/eonia-consultations.html>

As shown in the diagram below, market participants should consider using €STR as a reference rate for all products and contracts, which would otherwise reference EONIA, as soon as possible, and should make all operational adjustments necessary for using €STR as their standard benchmark from 2 October 2019.

For any new contracts still referencing EONIA, particularly those maturing after December 2021, market participants are recommended to include robust fallback provisions to deal with EONIA's discontinuation, and to replace EONIA with €STR plus the Spread as the primary rate wherever possible and appropriate.

For legacy contracts referencing EONIA and maturing after December 2021, the Legal Action Plan aims primarily at defining actions with regard to contracts and encouraging market participants to replace EONIA as the primary rate as soon as possible or to embed robust fallback clauses with reference to the recommended EONIA fallback rate.

Additionally, in the case of both new and legacy contracts, if amendments will be implemented before 2 October 2019 (the date on which publication of €STR starts and EONIA's methodology evolves to become €STR plus the Spread), market participants may also amend their contracts to enhance transparency and legal certainty in anticipation of the evolution of EONIA's methodology, by acknowledging that the methodology is expected to change and that references in contracts to EONIA shall be understood to be references to EONIA as changed, unless otherwise agreed by the parties.¹⁴ ¹⁵ As the EMMI has already clarified, the change to the EONIA methodology does not alter the economic value that EONIA seeks to represent.¹⁶

¹⁴ This acknowledgment would be useful not only in the context of the current evolution from EONIA to the €STR plus the Spread, but also for other benchmarks in the future, particularly in view of Article 5.3(a) of the BMR which requires benchmark administrators to review the definition and methodology of benchmarks at least annually.

¹⁵ This acknowledgment is complementary to a potential clarification by EONIA's administrator and any European authority that the evolution of the EONIA methodology is not intended to alter the underlying interest, as noted in the [Report by the working group on euro risk-free rates on the transition from EONIA to ESTER](#) published in December 2018.

¹⁶ [Consultation paper on the recommendations for EONIA of the Working Group on Euro risk-free rates.](#)

New contracts

Market participants should consider using €STR as a reference rate for all new products and contracts

Market participants may adapt their new contracts referencing EONIA in anticipation of the evolution of EONIA's methodology

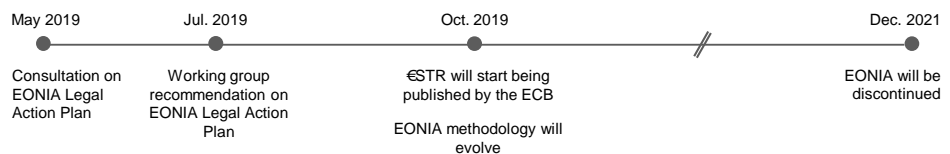
Market participants may adapt their new contracts referencing EONIA in anticipation of EONIA's discontinuation including robust fallback provisions

Legacy contracts

Market participants may adapt their legacy contracts referencing EONIA in anticipation of the evolution of EONIA's methodology

Market participants may embed robust fallbacks in their legacy contracts referencing EONIA in anticipation of EONIA's discontinuation

Market participants may replace EONIA in anticipation of EONIA's discontinuation



The purpose of this third consultation by the working group is twofold. On the one hand, it describes the different legal options discussed by the working group over the last few months to ensure a smooth transition from EONIA to €STR. On the other hand, market participants are invited to give feedback on the working group's recommended legal actions to ensure a market-wide smooth transition from EONIA to €STR. The working group strongly encourages market participants to respond to this public consultation; it hopes to receive feedback from as broad a range of market participants as possible, including stakeholders in EONIA-linked products from different sectors and product categories as described in Section 3.2.

The consultation on the EONIA to €STR Legal Action Plan is structured in four sections:

1. Recommended EONIA fallback rate that should be used upon cessation of EONIA in new and legacy contracts, wherever possible and appropriate.
2. Continued use of EONIA in new contracts.
3. Legacy contracts maturing before December 2021, the EONIA discontinuation date.
4. Legacy contracts maturing after December 2021.

Responses to this consultation should be sent to EuroRFR@ecb.europa.eu by 17:00 CET on 12 June 2019. The ECB provides the secretariat for the working group and is publishing the public consultation document solely in this capacity. The ECB does not however accept any responsibility or liability for the contents of the document, and the fact that the ECB provides the secretariat for the working group should not be taken as implying in any way that it shares the views expressed in the document. The ECB will evaluate all the responses and prepare an anonymised summary of the feedback. This summary will be discussed by the working group and published on the ECB's website with other documents related to the working group's meeting on 4 July 2019.

3.2 EONIA use in products¹⁷

EONIA is commonly used as a reference rate for variable rate products with contractual maturity dates that may exceed 30 years. This section provides an overview of the products for which EONIA is used most often.

- **Derivative transactions / Overnight index swaps (OIS):** EONIA swaps are used as a way to hedge interest rate risk or take a position on interest rate expectations. Although their usage has declined following the financial crisis, changes in OIS rates have been correlated with changes in sovereign and corporate bond yields, indicating a clear transmission of moves in the unsecured overnight rate to market-based funding costs and, as indicated below, the volume of EONIA swaps remains considerable.
- **Collateral remuneration for cleared and non-cleared derivatives:** Collateral remuneration through initial and variation margin calls for cleared derivatives and for non-cleared derivatives under collateral agreements such as ISDA's Credit Support Annex (CSAs) is mainly based on EONIA in the case of euro-denominated collateral. EONIA is also used as a discount rate for valuation purposes under such agreements.
- **Cash products:**
 - **Debt capital markets:** In the euro-denominated primary debt market, the quantity of EONIA-linked issuances is currently very limited.
 - **Commercial paper (CP) and certificates of deposit (CD):** For short-term variable rate CP and CDs, EONIA is widely used, although practices vary across countries.
 - **Repurchase agreements (repos) and securities lending:** Repo desks can quote repos as a fixed rate, or as a variable rate referencing EONIA. Bank treasurers or buy-side players may consider entering into EONIA

¹⁷ See Section 4.1 "EONIA use in products" of the [Report on the transition from EONIA to ESTR](#).

repos, as the operation is then directly comparable with the unsecured market conditions, which may mitigate interest rate risk.

- **Swingline loans:** Swingline loans are loans typically granted to support a borrower's CP programme. They can usually be requested on a same-day basis for very short drawing periods (typically one to seven days). Swinglines denominated in euro mostly refer to EONIA plus a spread.
- **Default interest or penalty rates for syndicated loans:** In some euro area countries, by law or common market practice, default interest or penalty rates accrue on overdue amounts on a day-to-day basis. The reference rate used may be EONIA.
- **Current accounts, overdraft facilities and savings accounts:** EONIA is also used to remunerate accounts held by clients, ranging from households to professional market participants.
- **Funds:** There are no official quantitative data on EONIA usage as an investment objective for funds across the asset management sector. Nonetheless, a number of investment firms are in the process of conducting inventories of benchmark usage in anticipation of implementing the BMR and assessing compliance.
- **Guarantees:** Interest rates charged by banks if a guarantee is called by the beneficiary may refer to EONIA.
- **Guaranteed investment contracts (GICs):** In GICs, often used in asset securitisation structures, the interest rates at which special purpose vehicles (SPVs) would deposit/lend their excess cash may also refer to EONIA.
- **Intercompany transactions:** For longer-term intercompany agreements, EURIBOR is more prevalent. However, for daily intragroup cash sweeps and short-term intercompany agreements, EONIA may be used.

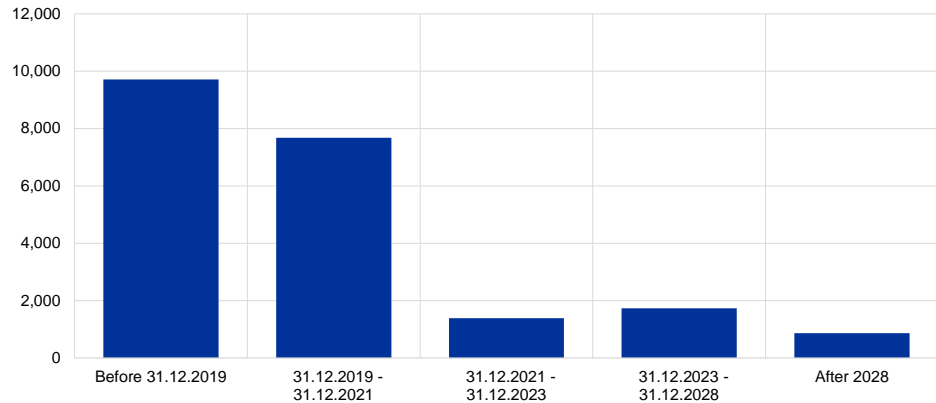
For illustrative purposes only, the following charts are based on data as at the end of March 2019 provided by trade repositories to ESMA under the European Market Infrastructure Regulation (EMIR).¹⁸ Although in terms of notional amount, most of the derivatives will expire before the end of 2021, there are a significant number of derivative trades referencing EONIA and covered by trade repository data that are not due to expire until after 2021.

¹⁸ More information about EMIR data and trade repositories can be found in the [ESMA Annual Statistical Report](#).

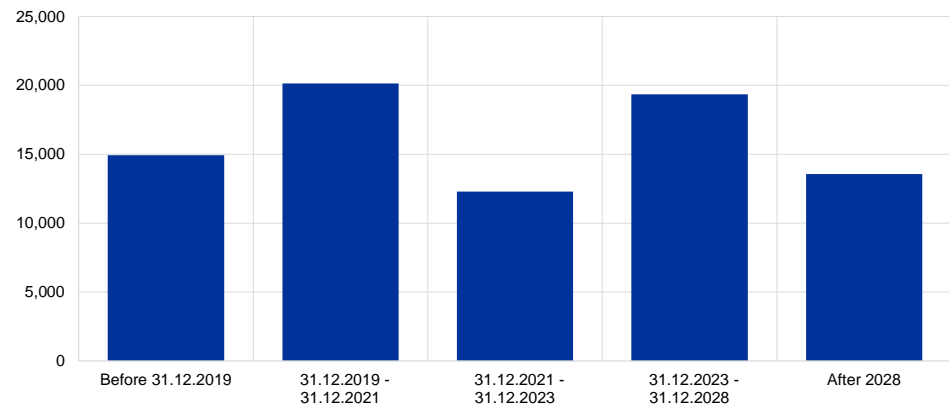
Chart 1

Derivatives referencing EONIA: notional/maturity date

(EUR billions)



Derivatives referencing EONIA: number of trades/maturity date



Sources: Trade repositories and ESMA

3.3 Recommendation on the EONIA to €STR transition plan

Under its current methodology, EONIA's compliance with the BMR cannot be warranted and, consequently, it cannot be used by supervised entities after the expiry of the BMR transition period (expected to be 31 December 2021), at least for new contracts. This would have a material impact on a wide range of instruments and contracts. €STR is being developed by the ECB and will reflect the wholesale euro unsecured overnight borrowing costs of euro area banks. The ECB will begin publishing €STR on 2 October 2019. In this context, the working group published in December 2018 a report analysing the different paths to ensure a smooth transition from EONIA to €STR.¹⁹

¹⁹ [Report by the working group on euro risk-free rates on the transition from EONIA to ESTER](#)

Based on the feedback received from more than 60 market participants,²⁰ on **14 March 2019 the working group made the following recommendations regarding the transition from EONIA to €STR:**²¹

1. The working group recommends that the EMMI, as the administrator of EONIA, takes the following steps before 1 January 2020:
 - (a) Modify the current EONIA methodology to become the €STR plus a Spread for a limited period, in accordance with Financial Stability Board (FSB) recommendations and the IOSCO Principles for Financial Benchmarks, in order to further anchor EONIA's methodology in transactions;
 - (b) Engage with the relevant authorities to ensure the compliance of EONIA, under its evolved methodology, with the BMR;
 - (c) Consider and consult market participants on discontinuing the publication of EONIA under its evolved methodology, after a transition period that ensures market participants can achieve a smooth transition to the €STR and that pays due regard to the existing EONIA legacy book. This transition period should last until the end of 2021, which is consistent with benchmark transitions in other jurisdictions.
2. The working group also invites the EMMI to take the following considerations into account:
 - (a) An EONIA-€STR spread methodology based on a simple average with an observation period of at least 12 months, combined with a 15% trimming mechanism;
 - (b) That the recalibration methodology and the effective determination of the Spread are announced at the same time and before the first publication date of €STR;
 - (c) That the recalibration date is the first €STR publication date for reasons of simplicity.
3. The working group recommends that market participants consider gradually replacing EONIA with €STR as a reference rate for all products and contracts, and that they make all adjustments necessary for using €STR as their standard benchmark after the transition period (including making the appropriate changes to their systems to enable a T+1 publication).
4. The working group encourages market participants to consider replacing EONIA with €STR as a basis for collateral interest for both legacy and new trades with each of their counterparties (clean discounting).

²⁰ [Feedback on the report on the transition from EONIA to ESTER by the working group on euro risk-free rates.](#)

²¹ https://www.ecb.europa.eu/pub/pdf/annex/ecb.sp190314_annex_recommendation.en.pdf

EONIA - €STR Spread. The ECB has committed to calculating and publishing the spread referred to in paragraph 2(a) above. In this paper, unless the context requires otherwise, all references to “spread” or “Spread” are to the spread described in paragraph 2(a), as calculated and published by the ECB.²²

²² <https://www.ecb.europa.eu/press/pr/date/2019/html/ecb.pr190314~28790a71ef.en.html>

4 EONIA to €STR Legal Action Plan

4.1 EONIA fallback rate recommendation

On 13 September 2018 the working group recommended €STR as the alternative euro risk-free rate and replacement for EONIA²³. €STR reflects the wholesale euro unsecured overnight borrowing costs of euro area banks and will be published by the ECB from 2 October 2019.²⁴

As described in Section 3.3, the working group recommended in March 2019, among other things, that the EMMI modify the current EONIA methodology to become €STR plus the Spread and consider ceasing to publish EONIA, under its evolved methodology, after the end of 2021.

The one-off computation of the Spread between €STR and EONIA for the purposes of the proposed revised EONIA methodology will be provided by the ECB²⁵ on the day on which the change in the methodology of EONIA is announced.

In view of the above recommendations and considerations, **market participants are recommended to consider switching from using EONIA to using €STR plus the Spread** (particularly for legacy contracts and financial instruments maturing after December 2021) **and including fallback provisions in new and legacy EONIA contracts** to deal with its discontinuation, wherever feasible and appropriate.²⁶

In order to encourage a standardised outcome from applying robust fallback clauses in new and legacy contracts that use EONIA, the working group intends to recommend €STR plus the Spread as the EONIA fallback rate.

This recommendation would be consistent with the guiding principles for fallback provisions published by the working group in January 2019.²⁷ The working group recommended, among other things, that i) fallback provisions should seek to use €STR as the primary basis for a fallback rate; and ii) fallback provisions should seek to minimise any potential transfer of value between parties when the fallback is implemented, by including a provision for an adjustment spread to be applied to the fallback rate.

Since, for the purposes of this consultation, it is assumed that EONIA's methodology will evolve to be €STR plus the Spread, falling back to €STR plus the Spread will ensure that there is no transfer of value when using the fallback. This is also the

²³ <https://www.ecb.europa.eu/press/pr/date/2018/html/ecb.pr180913.en.html>

²⁴ <https://www.ecb.europa.eu/press/pr/date/2019/html/ecb.pr190314~28790a71ef.en.html>

²⁵ <https://www.ecb.europa.eu/press/pr/date/2019/html/ecb.pr190314~28790a71ef.en.html>

²⁶ The number of new EONIA contracts is expected to be limited because it is assumed that market participants will reference €STR itself wherever possible once EONIA is published as €STR plus the Spread.

²⁷ <https://www.ecb.europa.eu/pub/pdf/other/ecb.sg3guidingprinciples201901.en.pdf>

rationale behind the proposal that parties use €STR plus the Spread as the basis for replacing EONIA in legacy contracts.

QUESTION 1:

The working group intends to recommend €STR plus the Spread (as defined) as the primary fallback rate to be included in new and legacy contracts referencing EONIA. Do you agree with that fallback rate for EONIA? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “no” and propose any alternative fallback rate for EONIA.

4.2 Continued use of EONIA in new contracts

The working group has recommended that market participants consider using €STR instead of EONIA as soon as practicable; however, the ECB will not commence publication of €STR until 2 October 2019. Until that date (and most likely beyond for a limited period, as market participants will move gradually from using EONIA to using €STR), market participants will continue to reference EONIA in at least some of their newly executed contracts and instruments.

The working group recommends that, after 2 October 2019, whenever operationally feasible, market participants should consider no longer entering into new contracts referencing EONIA, in particular new contracts maturing after 31 December 2021.

In order to comply with the BMR (to the extent applicable) and/or in the interests of ensuring a smooth transition to deal with the proposed EONIA discontinuation in December 2021, any new contracts still referencing EONIA should include robust fallback provisions.

Additionally, for new contracts executed before 2 October 2019 (the date on which EONIA is expected to change its methodology), to enhance the transparency, legal certainty and contractual robustness of their contractual terms in anticipation of the change to the EONIA methodology, parties may wish to explicitly address in those contractual terms the consequences of the change to the methodology.²⁸

Therefore and in addition to the aforementioned recommendation, **the working group recommends that market participants consider taking the following steps to ensure that:**

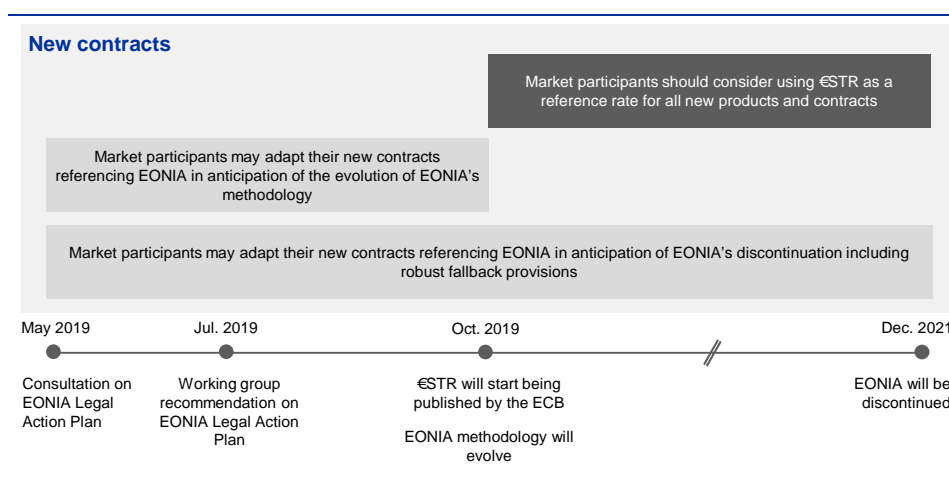
²⁸ In the interests of transparency, the terms of new EONIA transactions should cover what will happen if the benchmark's methodology changes during the period of the transactions. In circumstances such as those applicable to EONIA, it may not be appropriate for the change to the methodology to trigger a change of the benchmark used under the terms of a transaction. Instead, it may be appropriate for the parties to agree that they will continue using the benchmark as changed. Equally, parties may wish to use the change to the methodology as a trigger to switch the transaction to using €STR or to instigate a discussion of the most suitable course of action given the circumstances prevailing at the time

1. **the terms of new contracts which reference EONIA contain an acknowledgment that its methodology is expected to change during the period of the contract;**
2. **the parties acknowledge that references in the contract to EONIA will be to EONIA as changed;²⁹ and**
3. **robust and specific fallbacks terms are included in all new contracts referencing EONIA³⁰ which will apply upon its cessation and are capable of resulting in the working group's recommended fallback rate being used.**

Each market participant will need to make its own independent decision about whether and, if so, to what extent any of the above-mentioned recommendations are adopted and used in their contracts. Market participants should discuss the introduction of these provisions with all parties involved as part of the sales process/pre-contractual process in a fair and transparent manner.

If new contracts and legacy contracts that mature after 2021 do not include robust fallbacks or are not amended or cancelled by the end of December 2021, market participants should be aware that this may generate uncertainty in relation to their contractual obligations and, consequently, may affect their commercial and legal interests, although the general principle of contract continuity (as it may exist in each jurisdiction) may help to mitigate such issues.

As shown in the diagram below, the above-mentioned actions with regard to new contracts referencing EONIA seek to deal with two separate challenges in different periods of time: first, the evolution of the EONIA methodology on 2 October 2019 and, second, EONIA's discontinuation in December 2021.



²⁹ This acknowledgment is not a novelty. As described in Section 4.2.1.1., an acknowledgment that the methodology of a benchmark may change is already included in Article 5 of the ISDA Benchmarks Supplement.

³⁰ At least, those that mature after December 2021 or fall within the scope of the BMR.

As described in Section 3.2., EONIA is commonly used as a reference rate for variable rate products ranging from OIS, collateral agreements and repurchase agreements to syndicated loans, among others. Given the different characteristics of the asset classes involved, the Legal Action Plan for new contracts referencing EONIA is divided into three categories:

1. derivative transactions;
2. collateral agreements; and
3. cash products.

4.2.1 New derivative transactions

4.2.1.1 The ISDA Benchmarks Supplement and the 2006 ISDA Definitions

For **over the counter (OTC) derivative transactions** using the 2006 ISDA Definitions, the working group notes that the **ISDA Benchmarks Supplement contains a generic acknowledgement³¹ which would result in EONIA as changed being used for the remaining period of such transactions and also provides generic fallbacks³² which would apply upon the cessation of EONIA.**

In the event that the working group recommends €STR plus the Spread as the fallback rate for EONIA, under the terms of the ISDA Benchmarks Supplement this would result in transactions falling back to €STR plus the Spread upon cessation of EONIA unless the parties had agreed otherwise bilaterally.

The working group recognises that the ISDA Benchmarks Supplement covers a wide variety of benchmarks – not just EONIA but all benchmarks referenced in ISDA's standard definition booklets relating to interest rate derivatives, equity derivatives, commodity derivatives and foreign exchange derivatives. It is therefore important that market participants ensure for themselves that it is appropriate for their particular needs before agreeing to incorporate it. For example, consideration should be given to use of the ISDA Benchmarks Supplement in a transaction which hedges a cash product, unless the terms of that cash product are sufficiently aligned. To the extent that the terms of a relevant cash product are not sufficiently aligned, parties could not apply the ISDA Benchmarks Supplement with respect to that particular trade. In any case, it is worth noting that:

1. EU supervised entities³³ (which include regulated buy- and sell-side entities) are required to comply with Article 28(2) of the BMR in relation to their use of all in-scope benchmarks;

³¹ Article 5 of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement

³² Article 1 of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement

³³ Article 3 (17) of the BMR

2. entities not subject to the BMR may consider that use of the ISDA Benchmarks Supplement helps them demonstrate compliance with regulations in force or coming into force in their own jurisdiction or is an appropriate response to the IOSCO's Statement on Matters to Consider in the Use of Financial Benchmarks;
3. other entities may consider that its use enhances the contractual robustness of their derivative transactions.
4. many transactions are used to hedge general or portfolio interest rate risk rather than being mapped to a specific cash product.
5. parties may bilaterally agree to incorporate the ISDA Benchmarks Supplement into just their new transactions referencing EONIA on a trade-by-trade basis and not into their other transactions.

The working group considers that the ISDA Benchmarks Supplement may provide a convenient way for market participants to implement the aforesaid recommended steps for new transactions executed under existing ISDA Master Agreements, namely (i) the acknowledgement that the benchmark methodology is expected to change and references to EONIA shall be understood to be references to EONIA as changed and (ii) the inclusion of robust written fallback provisions.

In addition, once €STR and the Spread are published, assuming EONIA's methodology is revised as envisaged in the working group's recommendation, **the working group intends to recommend that the ISDA update the definition of EONIA contained in the 2006 ISDA Definitions in order to include a specific "index cessation event" fallback trigger which would result in a fallback to €STR plus the Spread upon the cessation of EONIA**. This amendment would mean that all new trades referencing EONIA which incorporate the 2006 ISDA Definitions would include this specific fallback³⁴ (unless otherwise agreed between the parties), whether or not the parties have applied the ISDA Benchmarks Supplement.

³⁴ Which, additionally, would be a 'Priority Fallback' for the purposes of the ISDA Benchmarks Supplement (in respect of any transaction which incorporates both the ISDA Benchmarks Supplement and the 2006 ISDA Definitions and is entered into after the updated definition of EONIA (which includes the index cessation event trigger) is launched), meaning that such fallback would take precedence over any of the fallback provisions in the ISDA Benchmarks Supplement upon the occurrence of an index cessation event.

QUESTION 2:

Do you agree in principle that the working group should recommend that ISDA consider amending the definition of EONIA in the 2006 ISDA Definitions so as to include a fallback to €STR plus the Spread (as defined) triggered by the cessation of EONIA? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “no” and propose any alternative course of action.

With respect to **cleared OTC derivatives and exchange-traded derivatives**, while there is a high level of standardisation across different forms of clearing agreements and exchange-traded contracts used by market participants, each clearing house (central counterparty – CCP) and exchange (“Exchange”) have different rules governing their contracts, the trigger events and fallback provisions, and how contracts can be amended.

It would be helpful, in order to achieve a smooth transition from EONIA to €STR, if CCPs and Exchanges could amend their rulebooks to (i) introduce €STR as a potential reference in the contracts cleared or traded therein; and (ii) incorporate in new contracts referencing EONIA (a) an acknowledgment that the methodology of EONIA is expected to change during the period of the contract and that references to EONIA shall be understood to be references to EONIA as changed, and (b) robust and specific fallback terms which will apply upon EONIA cessation. Such amendments should result in the working group’s recommended fallback rate being used. Additionally, CCPs and Exchanges should clarify in advance the date on which they amend their rulebooks. Coordination on this matter would help to implement a legal solution. Consequently, **the working group’s aim is to encourage CCPs and Exchanges to consider amending their rulebooks and specific regulations in this regard.**

QUESTION 3:

Do you agree that the working group should encourage CCPs and Exchanges to clarify their position with respect to the transition to €STR and modify their rulebooks as detailed in this consultation paper? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “no” and propose any alternative course of action.

4.2.1.2 European local master agreements

Apart from ISDA master agreements, there are other derivatives master agreements widely used in Europe:

- The Master Agreement for Financial Transactions, commonly known as the European Master Agreement (EMA) sponsored by the European Banking Federation, in cooperation with the European Savings Bank Group and the European Association of Cooperative Banks.³⁵
- The French Master Agreement relating to transactions on forward financial instruments sponsored by the French Banking Federation (Fédération Bancaire Française – FBF).³⁶
- The Spanish Master Agreement (*Contrato Marco de Operaciones Financieras – CMOF*) sponsored by the Spanish Banking Association (Asociación Española de Banca).³⁷
- The German Master Agreement for Financial Derivative Transactions (*Deutscher Rahmenvertrag für Finanztermingeschäfte – DRV*) developed by German banks with the support of the Association of German Banks (Bundesverband Deutscher Banken).³⁸

The latest version of the German Master Agreement includes a generic fallback provision to deal with a permanent benchmark discontinuation, the non-compliance of the benchmark during the period of the transaction or a material change to the benchmark.³⁹ The sponsors of other master agreements used in Europe are currently assessing the possibility of including fallback provisions, be they generic or specific in nature.

In this regard, **the working group intends to recommend that existing local master agreements used in Europe should include robust fallback provisions.** Additionally, the working group acknowledges the benefits of **including an acknowledgement that the methodology of a benchmark is expected to change and that, unless otherwise agreed by the parties, following any such change the applicable benchmark should be considered to be the benchmark as changed.**

Consideration should be given to whether the new fallback provisions should be generic or specific to EONIA. Additionally, the approaches adopted by other master agreements and products should be taken into account in implementing these recommendations so that the impact does not differ across jurisdictions.

New fallback provisions should, at least, include a permanent cessation trigger event and minimise any potential transfer of value between parties when the fallback is implemented, by including (if needed) a provision for an adjustment spread to be

³⁵ <https://www.ebf.eu/home/european-master-agreement-ema/>

³⁶ [FBF Master Agreement relating to transactions on forward financial instruments](https://www.fbf.fr/le-ma-fbf)

³⁷ <https://www.aebanca.es/contrato-marco-de-operaciones-financieras/>

³⁸ https://bankenverband.de/media/files/drv_2018_annotated_version_04_09_2018.pdf and <https://bankenverband.de/service/rahmenvertraege-fuer-finanzgeschaefte/rahmenvertrag-fur-finanztermingeschaefte/>

³⁹ See clause 5 (2) in the 2018 DRV

applied to the fallback rate. In the case of a specific fallback from EONIA to €STR, the adjustment spread should be the Spread as defined in Section 3.3.⁴⁰

QUESTION 4:

Do you agree that the working group should recommend that the sponsors of European local master agreements consider amending these agreements to include (i) fallback provisions dealing with the permanent cessation of a benchmark and (ii) an acknowledgment that the EONIA methodology is expected to change and that references in contracts to EONIA shall be understood to be references to EONIA as changed? (yes/no/no opinion) If applicable, please elaborate on the reason for choosing “no” and propose any alternative course of action.

Sponsors of local master agreements are particularly invited to comment on this.

4.2.1.3 Bilateral agreements

For new derivative transactions that do not incorporate any of the standardised amendments described above in relation to ISDA and local master agreements, **market participants are recommended to directly include €STR as the primary rate or robust fallback provisions applicable to EONIA’s discontinuation in their bilateral agreements.**

Additionally, for new transactions entered into before October 2019, the working group notes the benefits of **including an acknowledgement that the benchmark methodology is expected to change and that references in the contract to EONIA shall be understood to be references to EONIA as changed.** Market participants are recommended to consider the approaches taken for other products and in other jurisdictions when implementing these recommendations.

4.2.2 New collateral agreements

EONIA is often used to specify the interest rate payable on euro cash collateral under derivatives collateral agreements, such as ISDA’s Credit Support Annex and those included in the derivative local master agreements, and consequently (although not typically part of the contractual terms of such agreements) is used as the discount rate for determining the value of euro-denominated positions.

⁴⁰ An alternative would be to replace EONIA with, or to fall back to, €STR plus relevant compensation or payment.

EONIA is also sometimes used to specify the interest rate payable on euro cash collateral in repurchase transactions and securities lending transactions: the most common master agreements for such transactions are the Global Master Repurchase Agreement (GMRA) and the Global Master Securities Lending Agreement (GMSLA) sponsored by the International Capital Markets Association (ICMA) and the International Securities Lending Association (ISLA), respectively.

Historically, such agreements have tended not to include fallback provisions contemplating a change to the methodology, or the cessation of, an applicable interest rate. Additionally, collateral agreements are not subject to the BMR and are not covered by the 2006 ISDA Definitions (unless terms defined in the 2006 ISDA Definitions are specifically referenced “as defined in the 2006 ISDA Definitions” by the parties to those collateral agreements) or by the ISDA Benchmarks Supplement.

In view of the above, the working group has identified options for consideration when preparing new collateral agreements referencing EONIA:

1. Include fallback provisions in new collateral agreements.

Despite not being a common practice in collateral agreements to date, fallback language which would result in such collateral agreements switching to reference €STR or €STR plus the Spread⁴¹ upon the permanent discontinuation of EONIA could be developed, subject to the parties agreeing the terms on which such a switch should take place (including the date on which the fallback applies and any adjustments that may be required).

The introduction of fallback provisions would help to enhance legal certainty upon the discontinuation of EONIA in December 2021, mainly in those new collateral agreements using EONIA which will not be amended.

2. No fallback provisions and switch to €STR plus the Spread prior to EONIA’s discontinuation.

The working group also acknowledges that in practice market participants may prefer such new agreements to transition from EONIA to €STR or €STR plus the Spread⁴² ahead of EONIA’s discontinuation (perhaps, for example, around the time that one or more clearing houses change their price alignment interest to reference €STR so that collateral discounting practices are consistent between their cleared and non-cleared derivatives portfolios). Therefore, the introduction of fallback provisions may not be needed.

The working group acknowledges that amending all legacy collateral agreements may be a challenging task. There might be collateral agreements using EONIA that cannot be modified before EONIA’s discontinuation. In the absence of amendments and fallbacks, parties would need to negotiate an appropriate

⁴¹ At the present time CCPs are yet to confirm whether they will use €STR flat (and include a compensation payment when they transition their price alignment interest arrangements) rather than €STR plus the Spread.

⁴² See footnote 41.

alternative rate and necessary adjustments or otherwise determine their position as a matter of law. New collateral agreements referencing EONIA without any fallback provision will be treated as a legacy issue needing to be cancelled or amended by December 2021 in line with the considerations described in Section 4.4.2.

The two above-mentioned options are not mutually exclusive. As previously stated, market participants may wish to apply one or both of the options on a voluntary basis.

Whether new collateral agreements include fallbacks or not, for those agreements executed before 2 October 2019 (the date on which EONIA evolves its methodology), the working group notes the benefits of **including an acknowledgement that the EONIA methodology is expected to change and that references to EONIA should be considered to be references to EONIA as changed, unless otherwise agreed.**

QUESTION 5:

Would market participants value robust fallback provisions in new collateral contracts?

Please elaborate on your preference.

4.2.3 New cash products

In January 2019 the working group recommended a set of guiding principles to **develop more robust fallback language that deals with the permanent discontinuation of the benchmark for new cash product contracts.** Chief among them are:

1. New fallback provisions should include a permanent cessation trigger event.
2. €STR should be used as the primary basis for a fallback rate, where this is considered appropriate and feasible.
3. Any potential transfer of value between parties when the fallback is implemented should be minimised, by including a provision for an adjustment spread to be applied to the fallback rate.
4. There should be consistency between financial products.

Additionally, for new cash products implemented before October 2019 (the date on which EONIA's methodology is planned to evolve), the working group notes **the benefits of including an acknowledgement that the EONIA methodology is expected to change and that references to EONIA should be understood to be references to EONIA as changed.**

EONIA is used as the underlying or reference rate for a number of cash products, such as repurchase transactions, securities lending transactions and syndicated loans, as detailed in Section 3.2. In view of the different characteristics of cash products using EONIA, the working group understands that it is useful to classify the Legal Action Plan into four categories with regard to new cash products:

1. Debt securities which include, among others, commercial paper and certificates of deposit.
2. Repurchase transactions and securities lending transactions.
3. Loans which include, among others, swingline loans, business loans and syndicated loans.
4. Other cash products such as current accounts, overdraft facilities and savings accounts and guarantees.

4.2.3.1 Debt securities

Indices used as benchmarks for debt securities traded on a trading venue fall within the scope of the BMR. Therefore, EU supervised entities are required to produce and maintain robust “written plans” setting out the actions that they would take if a benchmark they are using for bond issuances materially changes or ceases to be provided.

In the light of this, the **working group has developed EONIA discontinuation fallback language, to be used as an initial basis for new EONIA cash products**, that market participants may wish to apply after €STR’s publication (see Annex 1: EONIA discontinuation fallback language templates for new EONIA cash products).

In addition, in respect of those debt securities (e.g. bonds/obligations) which do not fall within the scope of the BMR (for instance, because they are not traded on a trading venue) but mature after December 2021, the working group also recommends that robust fallbacks dealing with EONIA’s discontinuation be included.

On the other hand, the working group acknowledges that, given the short-term nature of European commercial paper and certificates of deposit, any new issuance of these types of product will likely roll over before the permanent cessation of EONIA.

Therefore, rather than including detailed fallbacks, it seems more likely that new issuances will simply reference €STR instead of EONIA as soon as feasible. In any case, the working group recommends introducing robust fallbacks, at least, in those new contracts that mature after December 2021 or that fall within the scope of the BMR.

Finally, market participants should pay particular attention to those debt securities that roll over automatically at their maturity date, as they should be treated as new contracts. Market participants should consider gradually replacing EONIA with €STR plus the Spread or embedding robust fallbacks, when appropriate and applicable.

4.2.3.2 Repurchase transactions and securities lending transactions

EONIA may be used as the underlying rate in repurchase transactions and securities lending transactions.

As described in Section 4.2.2., historically the most common master agreements covering repurchase transactions and securities lending transactions (GMRA and GMSLA) have tended not to include fallback provisions contemplating a change to the methodology, or the cessation, of an applicable interest rate, consistent with the fact that these master agreements do not themselves specify applicable interest rate benchmarks. Additionally, repurchase transactions and securities lending transactions are not subject to the BMR.

The working group acknowledges that given the short-term nature of repurchase transactions and securities lending transactions, it is likely that a significant amount of new contracts will roll over before the permanent cessation of EONIA. Therefore, rather than including detailed fallbacks, it seems more likely that new issuances will simply reference €STR as soon as feasible.

For new contracts for transactions referencing EONIA which mature after the date of EONIA discontinuation, the working group recommends introducing robust fallbacks applying upon EONIA cessation.

4.2.3.3 Loans

There may be various types of loan using EONIA. For syndicated loans (including swingline loans documented as part of a syndicated loan), the proposed EONIA discontinuation fallback language specified in Annex 1 is not necessarily appropriate for use with syndicated loans based on the Loan Market Association (LMA) recommended documentation. The **LMA will be producing language for its standard form documentation which contains references to EONIA**. In the meantime, the Revised Replacement of Screen Rate Clause published by the LMA in 2018 may assist parties in the transition from EONIA to €STR.

Note that one of the triggers for the application of the LMA Revised Replacement of Screen Rate Clause is where the methodology, formula or other means of determining a relevant screen rate has, in the opinion of the majority lenders (or other specified majority) and the borrower, materially changed. One of the purposes of this trigger is to protect the borrower and lenders should the screen rate under the revised methodology be significantly different to the rate under the previous methodology. It is important to note that this is a trigger for an amendment process rather than leading to any hardwired changes and that it can only operate where the specified majority of lenders and the borrower agree that there has been a material change. The trigger is optional in the LMA recommended form clause and parties should carefully consider whether this particular trigger is appropriate in the context of their transaction. The scope of the trigger should also be considered in the light of the recommendation made in Sections 4.2 and 4.4 of this consultation paper to include an acknowledgment

that the methodology of EONIA is expected to change and that references in the contract to EONIA shall be understood to be references to EONIA as changed. Parties may also wish to consider whether the trigger is appropriate in the context of loans hedged by derivative transactions which include the aforementioned acknowledgment. However, given the limited usage of EONIA in syndicated loan documentation, hedging considerations are likely to be of less relevance to EONIA usage in this context.

Swingline loans are for very short drawing periods (typically one to seven days). Where swingline loans are documented separately from a syndicated loan, as they will likely roll over before the permanent cessation of EONIA, it may not be necessary to include any fallback provisions.

For other types of loan referencing EONIA, and at least for new contracts that mature after December 2021 or that fall within the scope of the BMR, the working group intends to recommend that market participants consider using as an initial basis the EONIA discontinuation fallback language described in Annex 1.

4.2.3.4 Other cash products

For other cash products, such as current accounts, overdraft facilities, savings accounts and guarantees, it would be advisable to introduce robust fallbacks ahead of December 2021, and at least in new contracts that mature after December 2021 or that fall within the scope of the BMR.

To this end, **the working group intends to recommend that market participants consider using as an initial basis the EONIA discontinuation fallback language** described in Annex 1.

QUESTION 6:

Do you agree that new cash contracts and instruments that mature after December 2021 should include fallback provisions? (yes / no / no opinion)
If applicable, please elaborate on the reason for choosing “no”.

QUESTION 7:

Regarding the EONIA discontinuation fallback language templates described in Annex 1 for new cash products referencing EONIA, which alternative do you prefer? (alternative 1 / alternative 2 / other options)

If applicable, please elaborate on the reason for choosing “other options”.

Do you have any further comments or suggestions regarding the suggested templates? (yes / no)

If applicable, please elaborate on the reason for choosing “yes”.

4.3 Legacy contracts maturing before 2022

As shown in Section 3.2., a large majority of existing EONIA derivative transactions will mature before December 2021. Less than 10% of euro repo transactions were open or had maturities longer than 12 months, whereas all others had maturities of less than one year.⁴³ Euro commercial paper financing programmes and certificates of deposit have a maximum maturity of one year.

Legacy contracts with EONIA as the underlying/reference rate that mature before December 2021 should be covered by the continuing publication of EONIA, as it is not scheduled to be discontinued until the end of December 2021. The need for fallback clauses in such contracts is therefore limited compared with contracts maturing after December 2021. Therefore, **the working group intends to recommend that market participants consider focusing their efforts on amending legacy contracts maturing after December 2021.**

Nevertheless, while priority should be given to contracts maturing after 2021, **market participants are recommended to consider substituting EONIA or embedding a robust fallback in all contracts, when applicable, feasible and appropriate.**

Amending all legacy contracts regardless of their maturity would help, among other things, to comply with the ESMA guidelines on the BMR and ensure consistency across all contracts. As described in Section 4.4, if market participants use multilateral agreement protocols to amend legacy contracts maturing after 2021, this may amend all contracts within the scope of the protocol, regardless of their maturity, as protocols do not usually distinguish between maturities.

⁴³ See the “European Repo Market Survey” (International Capital Market Association). October 2018.

QUESTION 8:

Do you agree with the proposed recommendation that priority should be given to legacy contracts maturing after December 2021? (yes / no / no opinion)
If applicable, please elaborate on the reason for choosing “no”.

4.4 Legacy contracts maturing after 2022

Although a large majority of existing EONIA derivative transactions will mature before December 2021, a large number of derivative transactions will mature after that date. Additionally, collateral agreements do not, generally, have a termination date. And there are also cash products using EONIA, particularly syndicated loans, which mature after December 2021.

In the light of this, the working group would like to highlight the **potential challenges if derivative transactions, collateral agreements or cash products referencing EONIA which mature after 2021 are not amended or cancelled before December 2021**. Although the general principle of contract continuity (as it may exist in each jurisdiction) may help to mitigate those challenges, market participants may be concerned that the failure to amend or cancel contracts could generate uncertainty in relation to their and their counterparties' respective contractual obligations and consequently affect their commercial and legal interests. In fact, all parties should be informed in a fair and transparent manner that EONIA will be discontinued at the end of 2021.

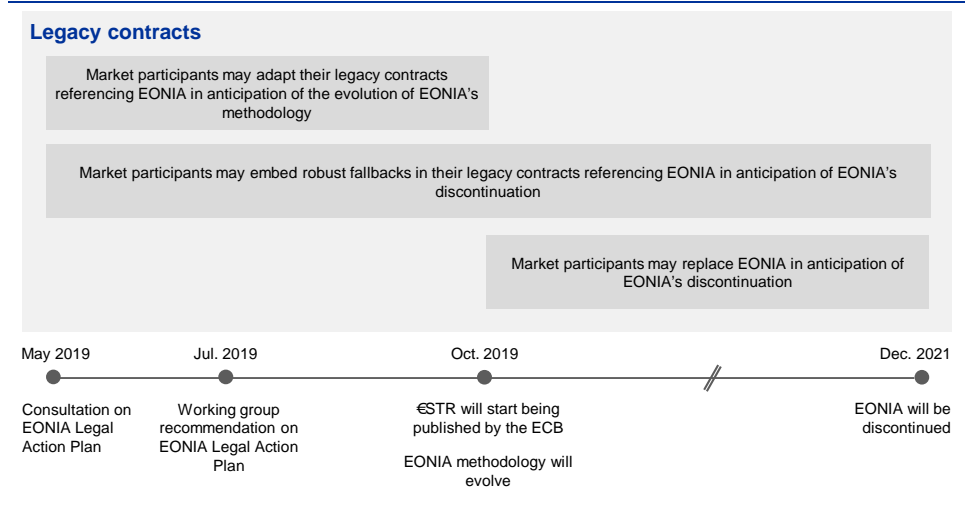
The working group acknowledges that there **some parties might agree to enter into a bilateral negotiation to cancel and/or refinance existing contracts** before the date of their termination, where feasible and appropriate, so that the same parties may enter into a new contract using €STR, for example.

In those cases where parties agree to amend legacy contracts and transactions, **the working group intends to recommend that the parties** consider:

- 1. if amended before 2 October 2019, including an acknowledgment that (a) the benchmark methodology is expected to change during the period of the contract and (b) references in the contract to EONIA will be understood to be references to EONIA as changed; and**
- 2. replacing EONIA as a primary rate as soon as practicable; or**
- 3. embedding robust written fallback clauses which will apply upon EONIA's cessation and which will result in the working group's recommended fallback rate being used. These fallback provisions may be generic or specific in nature.**

As shown in the diagram below, the above-mentioned actions with regard to legacy contracts referencing EONIA seek to deal with two separate challenges in different

periods of time: first, the evolution of the EONIA methodology on 2 October 2019, and second, the EONIA discontinuation in December 2021.



As highlighted for new contracts and transactions referencing EONIA, each market participant will need to make its own independent decision about whether and, if so, to what extent any of the above-mentioned recommendations are adopted and used in their contracts. Market participants should discuss the introduction of these provisions with all parties involved as part of the sales process/pre-contractual process in a fair and transparent manner.

Additionally, when dealing with legacy transactions and contracts, market participants may wish to consider consistency with the conventions and/or solutions adopted by parties, market associations and authorities in non-EU jurisdictions.

In view of the different characteristics of the in-scope asset classes, the legal action plan for legacy contracts maturing after 2021 is structured into three categories:

1. Derivative transactions;
2. Collateral agreements; and
3. Cash products

Box 1

Multilateral agreement protocols

Multilateral agreement protocols are a quick, efficient and feasible tool for amending existing derivative transactions. Multilateral protocols have the following characteristics:

1. protocols can be an efficient way of implementing standardised amendments to large volumes of bilateral contracts,
2. protocols are appropriate if market participants want to make the same amendments to all their covered transactions with all other adhering parties,
3. protocols can reduce market fragmentation,
4. most major market participants in the OTC derivatives markets (particularly in the United States and Europe) are familiar with the concept of protocols,⁴⁴
5. adherence to protocols is voluntary and therefore success is contingent on take-up, and
6. protocols are incapable of implementing terms that require bespoke bilateral negotiations.

However, it is also worth noting that the use of multilateral protocols is not mandatory, is not free of charge, may not be legally valid in certain jurisdictions, or may be highly complicated to implement under certain EU Member States' laws and, in particular, may be complex for non-sophisticated parties.

Thus, there could be some market participants that might not adhere to a multilateral protocol and their legacy contracts which mature after 2021 may have to be renegotiated between the parties.

4.4.1 Derivative transactions maturing after 2021

4.4.1.1 Derivatives using ISDA Master Agreements

The working group finds that there are two complementary options in order to replace EONIA as a primary rate or embed robust fallback clauses in legacy derivative transactions documented using ISDA Master Agreements:

1. Use the ISDA Benchmark Supplement Protocol

As described in Section 4.2.1 for new derivative transactions, the working group notes that the ISDA Benchmarks Supplement (i) contains an acknowledgement⁴⁵ which would result in EONIA as changed being used for the remaining periods of

⁴⁴ The ISDA 2013 Discontinued Rates Maturities Protocol is a pertinent example of a protocol used to amend the terms of transactions in relation to contingent events. This protocol enabled parties to amend the terms of certain interest rate derivative transactions to include a fallback arrangement if the tenor of an interest rate benchmark was discontinued after the date of adherence.

⁴⁵ Article 5 of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement

such transactions and (ii) also provides generic fallbacks⁴⁶ which would apply upon the cessation of EONIA. The ISDA 2018 Benchmarks Supplement Protocol provides adherents with the ability to elect (on a counterparty-by-counterparty basis) for the ISDA Benchmarks Supplement to apply to their legacy transactions.

Many of the same considerations apply for legacy transactions as for new transactions. In the event that the working group recommends €STR plus the Spread as the fallback rate for EONIA, under the terms of the ISDA Benchmarks Supplement this would result in transactions falling back to €STR plus the Spread upon cessation of EONIA unless the parties had agreed otherwise bilaterally.

The working group recognises that the ISDA Benchmarks Supplement covers a wide variety of benchmarks – not just EONIA but all benchmarks referenced in ISDA's standard definition booklets relating to interest rate derivatives, equity derivatives, commodity derivatives and foreign exchange derivatives. It is therefore important that market participants ensure for themselves that it is appropriate for their particular needs before agreeing to incorporate it. It may not be appropriate, for example, to use the ISDA Benchmarks Supplement in a transaction which hedges a cash product unless the terms of that cash product are sufficiently aligned. If they are not sufficiently aligned, the parties could bilaterally agree not to apply the ISDA Benchmarks Supplement with respect to that particular trade.

However, **the working group acknowledges that the ISDA 2018 Benchmarks Supplement Protocol may provide a convenient way for market participants to implement the steps recommended above**, given that:

- (a) EU supervised entities (which include regulated buy- and sell-side entities) are required to comply with Article 28(2) of the BMR in relation to their use of all in-scope benchmarks;
- (b) entities not subject to the BMR may consider that the use of the ISDA Benchmarks Supplement helps them demonstrate compliance with regulations in force or coming into force in their own jurisdiction or is an appropriate response to the IOSCO's Statement on Matters to Consider in the Use of Financial Benchmarks;
- (c) other entities may consider that its use enhances the contractual robustness of their derivative transactions;
- (d) many transactions are used to hedge general or portfolio interest rate risk rather than being mapped to a specific cash product; and
- (e) any basis risk between cash products and derivatives used to hedge them which arises as a result of incorporating the Benchmarks Supplement may be the same or less than the basis risk that already exists between such

⁴⁶ Article 1 of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement

cash products and derivative hedges where the Benchmarks Supplement is not incorporated.

2. Develop documentation and/or protocols to facilitate the incorporation of a specific EONIA index cessation event

Adherence to the ISDA 2018 Benchmarks Supplement Protocol would be a potential solution to cope with legacy derivative transactions. However, it should be considered that the ISDA 2018 Benchmarks Supplement Protocol is generic in nature (although nomination of €STR plus the Spread by the working group would make the fallback for EONIA index cessation specifically €STR plus the Spread in the absence of any agreement by the parties to the contrary) and its use is voluntary. Some market participants may prefer a specific EONIA fallback.

In the light of this, ISDA could be asked to consider developing a specific EONIA fallback protocol to include a specific “index cessation event” fallback trigger (identical to that discussed with respect to new transactions), which would result in a fallback to €STR plus the Spread upon the cessation of EONIA in legacy derivative transactions documented using ISDA Master Agreements, or amending such legacy trades so that instead of referencing EONIA they switch to instead referencing €STR plus the Spread. This fallback would be a Priority Fallback for the purposes of the ISDA Benchmarks Supplement.

For these reasons, **the working group may consider asking ISDA to develop a template document and/or, where possible and useful, a protocol to facilitate the incorporation into legacy trades of an EONIA index cessation event fallback, or to amend such legacy trades so that, instead of referencing EONIA, they switch to referencing €STR plus the Spread.**

These amendments to legacy trades (i.e., to incorporate the EONIA index cessation event and/or to transition to €STR plus the Spread) could be implemented by using a template bilateral agreement and/or under one or more protocols. The adherence to multilateral protocols is voluntary and the working group only puts forward recommendations that market participants may wish to apply on a voluntary basis. In fact, each market participant will need to make its own independent decision about whether and, if so, to what extent any suggested recommendation is adopted and used in its contracts.

3. Develop documentation and/or protocols to facilitate the transition to €STR plus the Spread.

Under the ISDA Benchmarks Supplement Protocol and any specific EONIA index cessation event provision contained in an amended definition of EONIA in the 2006 ISDA Definitions, the switch from EONIA to €STR will only be effective once the EONIA discontinuation takes place. In order to speed up the transition to €STR and to help, among other things, to develop a deep and liquid €STR derivative market as soon as possible, it would be possible for market participants to bring forward the date on which the EONIA fallback rate, i.e., the recommended €STR plus the Spread, replaces EONIA.

On the other hand, market participants may wish to consider consistency, particularly in those cases where derivative transactions hedge cash products. There may also be limited appetite given the scale of the repapering exercise that this would require since the contract would be changing from referencing EONIA to instead referencing EONIA's methodology and, under the BMR would still require fallback provisions to be included.

The date on which legacy derivative transactions were so amended would need to be agreed by the parties.

There might be some market participants that will not adhere to any multilateral protocol. For these parties and for entities which have legacy derivative transactions with such parties, legacy contracts referencing EONIA which mature after 2021 will need to be amended by bilateral renegotiation between the parties to the relevant transaction. These parties may benefit from the existence of a standardised bilateral amendment template. A similar template has already been developed by ISDA (for example, in respect of the termination of the TOIS fixing in 2017).⁴⁷

QUESTION 9:

For legacy derivative transactions, would it be useful to have documents and/or protocols which facilitate (i) the incorporation of the EONIA index cessation event trigger and related fallbacks, and/or (ii) the amendment of legacy trades to switch from EONIA to €STR plus the Spread (as defined)? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “no” and propose any alternative course of action.

As stated in Section 4.2.1.1, the terms of **cleared OTC derivatives and exchange-traded derivatives** are highly standardised and the rules and regulations of the relevant CCP or Exchange will determine the applicable fallbacks and how cleared OTC derivative contracts might be amended.

Contractual specifications established in the rules of derivative Exchanges and CCPs may already include fallback arrangements; however, these fallbacks may not be intended for, and therefore would not be effective in the event of, permanent discontinuation of the relevant benchmark.

Therefore, it would be helpful if the relevant CCPs and Exchanges clarify their plans in respect to the transition to €STR and consider, among other potential options, the recommendations made by the working group.

The working group believes that following ISDA's approach to fallbacks for transactions referencing EONIA would help to achieve a smooth transition. In this

⁴⁷ <https://www.isda.org/2017/12/21/tois-saron-transition/>

sense, although the clarification provided by LCH Group (LCH) on 20 December 2018 refers to new fallbacks for derivative contracts that reference certain interbank offered rates (IBORs) (which does not include EONIA), the working group notes the clarification, which states, among other things, that, subject to certain observations, (i) LCH aims to provide clearing eligibility for new contracts incorporating a new definition (New Definition), from the date on which the New Definition is published by ISDA (New Definition Eligibility Date); (ii) prior to each New Definition Eligibility Date, only contracts incorporating a Current Definition will be eligible for clearing; (iii) from and including each New Definition Eligibility Date, only contracts incorporating a New Definition will be eligible for clearing; (iv) on each New Definition Eligibility Date, all outstanding contracts incorporating a Current Definition will be amended so as to incorporate the corresponding New Definition; and (v) it will introduce rulebook amendments to give effect to this. The changes may also extend to providing additional clarification beyond that given in a New Definition, for example with respect to the events that could trigger a move to an alternative rate.

The working group would welcome clarifications with respect to EONIA similar to that made by LCH with respect to IBOR fallbacks. Additionally, CCPs and Exchanges should clarify in advance the date on which they intend to amend their rulebooks. Coordination on this matter would help in the implementation of a legal solution.

The working group encourages relevant CCPs and Exchanges clearing or trading, as applicable, derivatives linked to EONIA to consider making similar statements in order to provide clarity to market participants. The timing for implementation of €STR plus the Spread as a fallback to EONIA or €STR as the reference rate depends on the initiative and action of the relevant CCPs and Exchanges.

As a consequence, **the working group aims to encourage CCPs and Exchanges to clarify their position with respect to the transition to €STR and to follow ISDA's approach with respect to fallbacks for EONIA.**

QUESTION 10:

Do you agree that the working group should encourage CCPs and Exchanges to clarify their position with respect to the transition to €STR and to follow the ISDA approach with respect to fallbacks for EONIA?

(yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “no” and propose any alternative course of action.

4.4.1.2 European local master agreements

As stated in Section 4.2.1.2, apart from the ISDA master agreements, there are also other master agreements widely used in Europe (EMA, the French Master Agreement, the Spanish Master Agreement and the German Master Agreement). At present, none

of the sponsors of the local master agreements used in Europe have implemented a protocol mechanism to amend legacy contracts.

In the light of this, the use of standardised template documentation to amend legacy trades under European local master agreements, in order to replace EONIA and/or embed robust fallback clauses in bilateral renegotiations, would help to implement a standardised amendment option, to facilitate a solution for all market participants, including middle market and less sophisticated participants, and to reduce market fragmentation.

Therefore, **the working group might ask the sponsors of local master agreements to consider producing amendment agreement templates to amend such legacy trades in order to embed an EONIA fallback provision or so that instead of referencing EONIA they switch to instead referencing €STR plus the Spread.**

The working group could also ask the sponsors of local master agreements alongside ISDA to consider whether any protocol developed for derivative transactions under ISDA master agreements could also be used for transactions under local master agreements in accordance with the relevant local procedure or with the approval of local sponsors, as the case may be. An alternative would be to recommend that such sponsors consider developing a new protocol, where feasible, to be used for transactions under local master agreements.

QUESTION 11:

For legacy derivative transactions that are already documented using European local master agreements, which is the most feasible option for amending them? (develop common templates / develop a protocol / both / another option / no opinion)

If applicable, please elaborate on the reason for choosing “another option”. Sponsors of local master agreements are particularly invited to comment on this.

4.4.1.3 Additional considerations for derivative transactions

Market participants may wish to amend legacy contracts to include or improve fallbacks, but may be held back from doing so because they are uncertain whether this would trigger mandatory clearing and margining under EMIR, equivalent foreign rules, or any other existing legal obligations such as the requirement to prepare new Key Information Documents (KIDs) for the amended contracts or any obligation which would incur costs (e.g. notary costs).

In this context, the working group welcomes the clarification provided by the Basel Committee on Banking Supervision (BCBS) and the IOSCO on 5 March 2019 stating

that “amendments to legacy derivative contracts pursued solely for the purpose of addressing interest rate benchmark reforms do not require the application of the margin requirements for the purposes of the BCBS/IOSCO framework.”⁴⁸

The BCBS and the IOSCO are both supranational authorities that do not have legal powers in European Member States. This being so, the above-mentioned clarification should be provided by any competent authority, whether European or local. The **working group recommends that European and Member States’ competent authorities, where applicable:**

- 1. clarify (through a statement or other mean) that amendments to legacy contracts to include new triggers and fallbacks, to replace a benchmark or to otherwise improve contractual robustness in relation to interest rate reform do not require the application of the margin and clearing requirements and do not trigger other additional regulatory/legal obligations; and**
- 2. liaise with third country competent authorities in order to obtain similar clarifications or waivers that might facilitate cross-border activity.**

QUESTION 12:

Do you foresee any additional regulatory or legal requirements or costs that may hamper the amendment of legacy derivative contracts and which need to be clarified / waived? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “yes”.

4.4.2 Collateral agreements

Collateral agreements (such as ISDA’s Credit Support Annex or “CSA” and those included in local derivative master agreements, the GMRA and the GMSLA) do not, generally, have a termination date. As a consequence, it may be desirable for all existing collateral agreements referencing EONIA as the interest rate paid on collateral to be amended or cancelled by December 2021.

As noted in Section 4.2.2. above, EONIA is often used to specify the interest rate payable on euro cash collateral under collateral agreements and consequently (although not typically part of the contractual terms of such agreements) used as the discount rate for determining the value of euro-denominated positions in the case of derivatives. Historically, such agreements have tended not to include fallback provisions contemplating a change in the methodology, or the cessation, of an applicable interest rate.

⁴⁸ See “BCBS/IOSCO statement on the final implementation phases of the Margin requirements for non-centrally cleared derivatives”, <https://www.iosco.org/news/pdf/IOSCONEWS526.pdf>

Collateral agreements are not subject to the BMR and are not covered by the ISDA Benchmarks Supplement.

The working group recommends that market participants consider amending legacy collateral agreements to embed an EONIA fallback provision or so that instead of referencing EONIA they switch to instead referencing €STR (with such other adjustments as may be required). If market participants have to amend legacy collateral agreements, **it may be more efficient to amend them to switch from EONIA to €STR (plus an appropriate adjustment) instead of embedding a fallback provision.** In doing so, there are three complementary options:

- 1. Develop specific standardised templates to amend legacy collateral agreements;**
- 2. Consider whether it is possible to include the relevant provisions in the specific EONIA template document and/or, where possible and useful, the protocol contemplated in Section 4.4.1.1. (b) for derivative transactions under ISDA master agreements; and**
- 3. Analyse similar solutions in collateral agreements subject to local master agreements, where possible and useful.**

In all the above cases, there are a number of operational and valuation issues that would need to be resolved in order to properly analyse the most efficient documentation solution for amending collateral agreements. They include the following:

1. From which date should any amendment to a collateral agreement be effective? Options include (a) the date on which €STR is first published; (b) the date that EONIA is discontinued; (c) a date bilaterally agreed between the parties; and (d) the date on which one or more designated clearing houses change their price alignment interest and discounting rate to €STR.
2. What adjustment (if any) might be required in relation to the amendment? Clearing houses may elect to switch from using EONIA (the methodology of which would, by that stage, be €STR plus the Spread) to instead using €STR flat for price alignment interest and discounting. This might necessitate a compensation payment to be made in order to avoid a transfer in value. It is possible that parties to non-cleared OTC derivatives may wish to adopt a similar methodology which is likely to require bilateral negotiations, if the compensation payment (or lack thereof) is not stipulated by a central authority.

In this regard, the working group draws to the attention of all market participants the fact that the working group has launched a new cash products and derivatives subgroup, tasked, among other things, with analysing from an operational and valuation standpoint for each product type how to transition from EONIA to €STR (including detailing the new discounting regime, designing a possible methodology for closing out or transitioning legacy EONIA exposures, setting up a possible compensation mechanism, etc.). The outcomes of this subgroup, which are expected

in the fourth quarter of 2019, will be critical for identifying the optimal recommended transition path from EONIA to €STR in legacy collateral agreements.⁴⁹

Owing to the short-term nature of repurchase transactions and securities lending transactions, the working group finds that market participants may agree to replace EONIA with €STR (once it is published) as the remuneration rate (or include robust fallbacks) bilaterally when entering into new transactions, through the trade confirmation and/or an amendment agreement.

As in the derivative transactions specified above, the amendment of legacy contracts may be hampered by existing regulatory and legal obligations, for example the clearing and margining obligations in derivative transactions. In this context, some clarifications and/or waivers by any relevant competent authority, whether European or local, may be needed stating that these amendments to legacy contracts do not trigger any such regulatory or legal obligations.

QUESTION 13:

Which are the critical elements to consider when transitioning from EONIA to €STR in collateral agreements from a legal, operational and valuation standpoint?

4.4.3 Cash contracts maturing after 2021

As described in Section 3.2, EONIA is used as the underlying or reference rate for a number of cash products such as repurchase transactions, securities lending transactions and syndicated loans. Most cash products referencing EONIA are short dated and will therefore mature before December 2021.

Although the majority are short dated, some cash contracts would mature after December 2021. In contrast to derivative transactions and collateral agreements, the use of ISDA-style protocols to amend legacy cash contracts is neither feasible nor market standard. Therefore, cash contracts maturing after December 2021 may need to be amended to minimise the uncertainty in relation to the parties' respective contractual obligations that may otherwise arise as a result of the discontinuation of EONIA.

The working group recommends that market participants consider replacing EONIA with €STR as a reference rate for all products and contracts as soon as possible and feasible.

Given the different characteristics of cash products using EONIA, the working group classifies the Legal Action Plan into four categories with regard to legacy cash products:

⁴⁹ [Working group on euro risk-free rates - Next steps](#)

1. Debt securities which include, among others, commercial paper and certificates of deposit.
2. Repurchase transactions and securities lending transactions.
3. Loans which include, among others, swingline loans, business loans and syndicated loans.
4. Other cash products such as current accounts, overdraft facilities and savings accounts and guarantees.

4.4.3.1 Debt securities

The working group acknowledges that, given the short-term nature of some of the debt securities using EONIA, such as European commercial paper or certificates of deposit, this type of **legacy debt security referencing EONIA will likely roll over before the permanent cessation of EONIA.**

For those few legacy debt securities referencing EONIA that mature after December 2021, any amendment will need to be agreed either among all the parties to the contract or in accordance with the terms of the contract, for example, with the consent of the obligors and a certain proportion of holders or lenders, as the case may be, or other liability management exercises. Such consent thresholds may vary and, in some cases, may be set at 100%. Obtaining such consent may be very challenging, would be a very costly exercise and would represent a major operational burden.

Thus, **for those few legacy debt securities that mature after December 2021, market participants may consider whether to:**

1. **amend them using the bilateral amendment agreement template developed by the working group, as described in Annex 2, or**
2. **apply the existing fallback rate in the contract, if such a fallback exists.**⁵⁰

4.4.3.2 Repurchase transactions and securities lending transactions

EONIA is also used as the reference rate in some repurchase transactions and securities lending transactions. The working group acknowledges that given the short-term nature of repurchase transactions and securities lending transactions, it is likely that a significant amount of contracts will roll over before the permanent cessation of EONIA.

However, **for those few repurchase agreements and securities lending transactions referencing EONIA that mature after December 2021, market participants may consider whether to amend them through a bilateral**

⁵⁰ Typical fallback provisions for debt securities, if they exist, may result in the interest rate becoming fixed at the most recently determined rate

renegotiation of the contracts. To assist in the commencement of those discussions, a bilateral amendment agreement template has been developed by the working group (see Annex 2).

4.4.3.3 Loans

For syndicated loans (including swingline loans where they are part of a syndicated loan), based on the LMA recommended forms, the proposed bilateral amendment agreement template set out in Annex 2 may not be appropriate. Thus **the working group is likely to recommend the amendment agreement template to be produced by the LMA**. LMA documentation is widely accepted in the syndicated loan market and the LMA is working on a form of agreement to help transition to new risk-free rates.

Swingline loans are for very short drawing periods (typically one to seven days). Where swingline loans are documented separately to a syndicated loan, given the short-term nature of swingline loans, they will likely roll over before the permanent cessation of EONIA.

For other types of loan, the working group intends to recommend that market participants use the amendment agreement template produced by the working group to facilitate bilateral renegotiations (see Annex 2).

4.4.3.4 Other cash products

For other cash products, such as current accounts, overdraft facilities and savings accounts and guarantees, the working group acknowledges that, given their short-term nature, it should not be necessary to amend them.

For those few that mature after December 2021, market participants may consider whether to amend them using a bilateral amendment agreement (such as the template developed by the working group and set out in Annex 2), cancel them, or apply the existing fallback rate in the contract, if any exists.

QUESTION 14:

Do you agree with the bilateral amendment agreement template for cash products (see Annex 2)? (yes / no / no opinion). Do you have any suggestions regarding it?

If applicable, please elaborate on the reason for choosing “no”

4.4.3.5 Additional considerations for legacy cash products

The amendment of contracts for legacy cash products may be hampered by existing regulatory and legal obligations (see the considerations specified in Section 4.4.1.3 for derivative transactions). In this regard, some clarifications and waivers by competent authorities, either European or local, may be needed stating that the amendments to be made in contracts (that references to EONIA shall be understood to be references to €STR plus the Spread and to include fallbacks in order to comply with the BMR, where applicable, and deal with EONIA's discontinuation) do not conflict with or trigger regulatory or legal obligations.

QUESTION 15:

Do you foresee any regulatory or legal requirements that may hamper the amendment of legacy cash contracts and which need to be clarified / waived? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “yes”

5 List of Questions

QUESTION 1: The working group intends to recommend €STR plus the Spread (as defined) as the primary fallback rate to be included in new and legacy contracts referencing EONIA. Do you agree with that fallback rate for EONIA? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “no” and propose any alternative fallback rate for EONIA.

QUESTION 2: Do you agree in principle that the working group should recommend that ISDA consider amending the definition of EONIA in the 2006 ISDA Definitions so as to include a fallback to €STR plus the Spread (as defined) triggered by the cessation of EONIA? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “no” and propose any alternative course of action.

QUESTION 3: Do you agree that the working group should encourage CCPs and Exchanges to clarify their position with respect to the transition to €STR and modify their rulebooks as detailed in this consultation paper? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “no” and propose any alternative course of action.

QUESTION 4: Do you agree that the working group should recommend that the sponsors of European local master agreements consider amending these agreements to include (i) fallback provisions dealing with the permanent cessation of a benchmark and (ii) an acknowledgment that the EONIA methodology is expected to change and that references in contracts to EONIA shall be understood to be references to EONIA as changed? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “no” and propose any alternative course of action.

Sponsors of local master agreements are particularly invited to comment on this.

QUESTION 5: Would market participants value robust fallback provisions in new collateral contracts?

Please elaborate on your preference.

QUESTION 6: Do you agree that new cash contracts and instruments that mature after December 2021 should include fallback provisions? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “no”.

QUESTION 7: Regarding the EONIA discontinuation fallback language templates described in Annex 1 for new cash products referencing EONIA, which alternative do you prefer? (alternative 1 / alternative 2 / other options)

If applicable, please elaborate on the reason for choosing “other options”.

Do you have any further comments or suggestions regarding the suggested templates? (yes / no)

If applicable, please elaborate on the reason for choosing “yes”.

QUESTION 8: Do you agree with the proposed recommendation that priority should be given to legacy contracts maturing after December 2021? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “no”.

QUESTION 9: For legacy derivative transactions, would it be useful to have documents and/or protocols which facilitate (i) the incorporation of the EONIA index cessation event trigger and related fallbacks, and/or (ii) the amendment of legacy trades to switch from EONIA to €STR plus the Spread (as defined)? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “no” and propose any alternative course of action.

QUESTION 10: Do you agree that the working group should encourage CCPs and Exchanges to clarify their position with respect to the transition to €STR and to follow the ISDA approach with respect to fallbacks for EONIA? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “no” and propose any alternative course of action.

QUESTION 11: For legacy derivative transactions that are already documented using European local master agreements, which is the most feasible option for amending them? (develop common templates / develop a protocol / both / another option / no opinion)

If applicable, please elaborate on the reason for choosing “another option”. Sponsors of local master agreements are particularly invited to comment on this.

QUESTION 12: Do you foresee any additional regulatory or legal requirement or costs that may hamper the amendment of legacy contracts and which need to be clarified / waived? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “yes”.

QUESTION 13: Which are the critical elements to consider when transitioning from EONIA to €STR in collateral agreements from a legal, operational and valuation standpoint?

QUESTION 14: Do you agree with the bilateral amendment agreement template for cash products (see Annex 2)? (yes / no / no opinion). Do you have any suggestions regarding it?

If applicable, please elaborate on the reason for choosing “no”.

QUESTION 15: Do you foresee any regulatory or legal requirements that may hamper the amendment of legacy cash contracts and which need to be clarified / waived? (yes / no / no opinion)

If applicable, please elaborate on the reason for choosing “yes”.

Annex 1

EONIA discontinuation fallback language templates for new EONIA cash products

This annex sets out template fallback wording which can be used as a basis for an initial discussion in connection with potential fallback language to be included in (non-derivative) cash product agreements to address the discontinuation or unavailability of EONIA. There are various types of cash product with different features, and the specific trigger and fallback language to be considered / recommended in each case will depend on those features. Furthermore, consistency across fallback language used in cash and derivative contracts should also be considered.

For the sake of completeness, the proposed fallback provisions consider both the discontinuation (either temporary or permanent) of EONIA and an administrator/benchmark event (e.g. if EONIA or its administrator is not approved or included in an official register, or such approval or inclusion is suspended or withdrawn) in accordance with applicable law (e.g. the BMR).

The proposed fallback provisions are not necessarily appropriate for use with syndicated loans based on LMA recommended documentation. The LMA will be producing language for use with its standard form documentation which contains references to EONIA.

The proposed fallback provisions each set out a cascade of benchmarks applicable if any of the specified events occur. In general, the order should be first €STR plus an Adjustment Spread; if €STR is not available, then the EONIA fallback rate will be that defined by the Relevant Nominating Body (the ECB, FSMA, ESMA, FSB or the working group on euro risk-free rates), inclusive of any spreads or adjustments, and finally, if there is no such recommended rate, the EONIA successor rate will be the Eurosystem deposit facility rate plus any adjustment spread. Nevertheless, the parties would in all cases be free to agree an alternative fallback rate upon the occurrence of a trigger event.

The proposed fallback language templates are not intended to provide, and should not be construed or relied on in any manner as, legal, regulatory or other advice on or about the matters and facts covered herein. The working group does not assume any responsibility for any use to which this document may be put, including any use of this document in connection with any privately negotiated transaction.

The proposed language templates could be used in relation to contracts governed by a variety of different laws and, as a consequence, parties aiming to use any of the templates should take advice from experts in the appropriate governing laws.

ALTERNATIVE I: Different fallback provisions relating to the temporary or permanent cessation of EONIA

(1) Effect of an EONIA trigger event

As from the EONIA Trigger Event Date, the Alternative EONIA Index shall be used for the purposes of determining the [rate of interest] applicable to [the specific payment in respect of which EONIA is applied], unless otherwise agreed in writing by the parties.

[The parties acknowledge that the EONIA calculation methodology is expected to change during the term of the contract and agree that references to EONIA will be understood to be references to EONIA as changed, irrespective of the calculation methodology used at that moment to determine the current underlying interest.]⁵¹

(2) Definitions

“Adjustment Spread”: means [[●] %][the spread provided by [insert name] [on screen/information source, and published by, authorised distributors] as at [●], [central European] time, on [insert relevant day]].⁵²

“Alternative EONIA Index”: means [for the relevant determination period] [for the relevant date]:

1. Where the EONIA Trigger Event is caused by an error or omission of an administrative or operational nature:

[EONIA in respect of the first preceding day on which EONIA was available], provided that, (i) if EONIA is still unavailable at the end of the [●] [business/calendar] day following the EONIA Trigger Event Date, the fallbacks set out in 2 below shall apply from and including the first day following the expiry of such [●] [business/calendar] day period and (ii) if during that [●]-day period, EONIA is available again, the Alternative EONIA Index shall, from the date on which EONIA is again available, be EONIA in respect of [the relevant date][the relevant dates in the determination period].

2. Where the EONIA Trigger Event is not caused by an error or omission of an administrative or operational nature:

(a) €STR plus, if any, the Adjustment Spread;

(b) If €STR is not available by the end of the first business day following the EONIA Trigger Event Date, then the Alternative EONIA Index will be any rate (inclusive of any spreads or adjustments) which is formally designated, nominated or recommended as a replacement for EONIA by a Relevant Nominating Body; or

⁵¹ Alternatively, the parties may agree to include this acknowledgement as part of the definition of EONIA.

⁵² This should be defined by reference to the spread recommended by the ECB, which is referred to as the “Spread” in the consultation paper.

(c) If no such rate is designated, nominated or recommended by a Relevant Nominating Body by the end of the first business day following the EONIA Trigger Event Date, then the Alternative EONIA Index will be the Eurosystem Deposit Facility Rate (EDFR) plus the EDFR Spread.

“EDFR Spread”: means [the arithmetic mean of the daily difference between EONIA and the Eurosystem Deposit Facility Rate over [a calculation][an observation] period of 30 [TARGET2 Business Days][business days] starting 30 [TARGET2 Business Days][business days] prior to the EONIA Trigger Event Date and ending on the business day preceding the EONIA Trigger Event Date.

“EONIA Trigger Event Date”: means, unless otherwise agreed between the parties, whichever is the earlier of:

(i) the first date on which EONIA is no longer available [or, if earlier, the date which is [●] [business/calendar] days prior to the first day on which EONIA will no longer be available based on a public announcement made by the administrator of EONIA, the regulatory supervisor for the administrator of EONIA, an insolvency official with jurisdiction over the administrator for the EONIA, a resolution authority with jurisdiction over the administrator for the EONIA, or a court or an entity with similar insolvency or resolution authority over the administrator for the EONIA)]; or

(ii) the date from which EONIA may, for any other reason, no longer be used for the purposes of this [Agreement], including, but not limited to, as a result of (A) any withdrawal of the administrator’s right to provide EONIA or (B) any prohibition under applicable law or regulations on the use of EONIA by the Parties [or the Calculation Agent];

(iii) the date of publication of a public statement or information by the regulatory supervisor for the administrator of EONIA specifying that the benchmark is no longer representative; or

(iv) the date on which EONIA is not available owing to an error or omission of an administrative or operational nature. If EONIA is not available for a cause other than those set out in (i) to (iii) above, this shall be considered to be due to an error or omission of an administrative or operational nature.

“€STR”: means the rate that reflects the wholesale euro unsecured overnight borrowing costs of euro area banks, available by 09:00 CET on each TARGET2 Business Day, and published on the ECB’s website.

“Eurosystem Deposit Facility Rate”: means the rate on the deposit facility, which banks may use to make overnight deposits with the Eurosystem and which is published on the European Central Bank’s website.⁵³

“Relevant Nominating Body”: means, in respect of the Alternative EONIA Index, the European Central Bank, the Working Group on Euro Risk-Free Rates, the Belgian

⁵³ [Key ECB interest rates](#)

Financial Services and Markets Authority, the European Securities and Markets Authority, the Financial Stability Board and/or any part of such entities.

“TARGET2”: means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

“TARGET2 Business Day”: means any day on which TARGET2 is open for settlement of payments in euro.

ALTERNATIVE II: Unified fallback provision relating to both temporary and permanent unavailability of EONIA

(1) Effect of EONIA being Unavailable

If EONIA is Unavailable, the Alternative EONIA Index shall be used for the purposes of determining the [rate of interest] applicable to [the specific payment in respect of which EONIA is applied], unless otherwise agreed in writing by the parties.

(2) Definitions

“Adjustment Spread”: means [[●]%] [the spread provided by [insert name] [on screen/information source, and published by, authorised distributors] as of [●], [central European] time, on [insert relevant day].

“Alternative EONIA Index”: means [for the relevant determination period] [for the relevant date]:

- a) €STR plus, if any, the Adjustment Spread;⁵⁴
- b) If a) is not Available, the Alternative EONIA Index will be any rate (inclusive of any spreads or adjustments) which is formally designated, nominated or recommended as a replacement for EONIA by a Relevant Nominating Body; or
- c) If no such rate has been designated, nominated or recommended by a Relevant Nominating Body or b) is not Available, the Alternative EONIA Index will be the Eurosystem Deposit Facility Rate (EDFR) plus the EDFR Spread.

“Availability” / “Unavailability” of EONIA [or another benchmark]: EONIA [or any other benchmark] is “Unavailable” on a certain date if in respect of such date (i) the administrator of EONIA [or such other benchmark] does not provide, whether directly or through authorised distributors, EONIA [or such other benchmark] or (ii) EONIA [or such other benchmark] may not [in the reasonable opinion of [the relevant rate fixing entity]], for any other factual or legal reasons, be used for the purposes of this

⁵⁴ This should be defined by reference to the spread recommended by the ECB, which is referred to as the “Spread” in the above consultation paper.

[Agreement], including but not limited to, as a result of (A) any withdrawal of the administrator's right to provide EONIA [or such other benchmark] or (B) any prohibition on the use of EONIA [or such other benchmark] by one or more Parties [or the Calculation Agent]; and, correspondingly, EONIA [or such other benchmark] is "Available" if it is not "Unavailable".

"EDFR Spread": means [the arithmetic mean of the daily difference between EONIA and the Eurosystem Deposit Facility Rate over [a calculation][an observation] period of 30 [TARGET2 Business Days][business days] starting 30 [TARGET2 Business Days][business days] prior to (and including) the first preceding date in respect of which EONIA was Available.

"€STR": means the rate that reflects the wholesale euro unsecured overnight borrowing costs of euro area banks, available by 09:00 CET on each TARGET2 Business Day, and published on the European Central Bank's website.

"Eurosystem Deposit Facility Rate": means the rate on the deposit facility, which banks may use to make overnight deposits with the Eurosystem and which is published on the European Central Bank's website.

"Relevant Nominating Body": means, in respect of the Alternative EONIA Index, the European Central Bank, the Working Group on Euro Risk-Free Rates, the Belgian Financial Services and Markets Authority, the European Securities and Markets Authority, the Financial Stability Board and/or any part of such entities.

"TARGET2": means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"TARGET2 Business Day": means any day on which TARGET2 is open for settlement of payments in euro.

Annex 2

Bilateral amendment agreement template for legacy cash products

This annex provides a template for a bilateral amendment agreement that may facilitate the commencement of discussions between parties in amending legacy (non-derivative) cash contracts such that references to EONIA are replaced with references to €STR plus the Spread in the event that EONIA is discontinued.

There are various types of cash product with different features, and the specific trigger and fallback language to be considered / recommended in each case will depend on those features. Furthermore, consistency across fallback language used in cash and derivative contracts should also be considered.

The proposed bilateral amendment agreement is not necessarily appropriate for use with syndicated loans based on the LMA recommended forms. The LMA is working on an amendment agreement form to help transition syndicated loans to new risk-free rates.

This annex is not intended to provide, and should not be construed or relied on in any manner as, legal, regulatory or other advice on or about the matters and facts covered herein. The working group does not assume any responsibility for any use to which this document may be put, including any use of this document in connection with any privately negotiated transaction.

Parties should be aware that, in certain jurisdictions, the amendment of a contract may need other actions (e.g. a confirmation of the guarantee/security or re-registration of the security) in order to avoid any adverse effect on the enforceability of a guarantee of (or security for) obligations under that contract. The proposed template could be used in relation to contracts governed by a variety of different laws and, as a consequence, parties aiming to use it should take advice from experts in the appropriate governing laws.

This amendment agreement (the “Amendment”) dated [date] is entered into by and between the parties signatory hereto (each a “Party” and together, the “Parties”).

WHEREAS, the Parties now wish to amend each Affected Covered Transaction Document and Affected Covered Credit Support Document so as to replace references to EONIA (howsoever defined or described) in each case with references to €STR plus the Adjustment Spread.

Accordingly, in consideration of the mutual agreements contained in this Amendment, the Parties agree as follows:

1. Amendment of the Agreement

[Upon execution of this Amendment][From and including the Amendment Effective Date], each Affected Covered Transaction Document and Affected Covered Credit Support Document, as applicable, shall be amended as follows:

(a) Replacement of EONIA (howsoever defined or described) with €STR plus the Adjustment Spread in any Affected Covered Transaction Document and Affected Covered Credit Support Document. Subject to sub-paragraph (b) below, with respect to any calculation period commencing after the [first/second][local business date] following the [Discontinuation Date][Amendment Effective Date], any reference in an Affected Covered Transaction Document or an Affected Covered Credit Support Document (including, for the avoidance of doubt, the interest rate or interest amount, as applicable, payable with respect to any interest period under the terms thereof) to EONIA (howsoever defined or described) shall be replaced by a reference to €STR plus the Adjustment Spread.

(b) Broken calculation periods in any Affected Covered Transaction Document and Affected Covered Credit Support Document. If the [first/second][local business day] following the [Discontinuation Date][Amendment Effective Date] falls after the commencement of a calculation period but before the end of that calculation period in respect of an Affected Covered Transaction or an Affected Covered Credit Support Document, any reference to EONIA (howsoever defined or described) shall, with respect to each relevant day in such calculation period that falls [after the first/second local business day] following the [Discontinuation Date][Amendment Effective Date][on or after the first day in such calculation period], be deemed to be a reference to €STR plus the Adjustment Spread⁵⁵.

2. Representations

Each Party represents to the other Party that all representations made by such Party in any Affected Covered Transaction Document or Affected Covered Credit Support Document (as amended by this Amendment) are true and accurate in every material respect as of the date of this Amendment [and the Amendment Effective Date].

3. Definitions

Adjustment Spread means [[●]%%][the spread relating to EONIA provided by [insert name] [on screen/information source, and published by, authorised distributors] as of [●], [central European] time, on [insert relevant day]].⁵⁶

Affected Covered Credit Support Document means any of the following documents between the Parties hereto and in relation to which, on or after the [date of this Amendment][Amendment Effective Date], any amount would, but for this Amendment, be determined by reference to EONIA:

⁵⁵ An alternative is to agree that the Amendment Effective Date shall coincide with the commencing of a calculation period, so that there is no broken period.

⁵⁶ This should be defined by reference to the spread recommended by the ECB, which is referred to as the "Spread" in the consultation paper.

[To be completed]

Affected Covered Transaction means any Transaction between the Parties in relation to which, on or after the [date of this Amendment][Amendment Effective Date], any amount would, but for this Amendment, be determined by reference to EONIA (howsoever defined or described).

Affected Covered Transaction Document means, in relation to an Affected Covered Transaction, each document or other confirming evidence exchanged between the Parties, [executed through an electronic matching or affirmation mechanism], or otherwise effective, which, taken together, confirm all the terms of that Affected Covered Transaction.

Amendment Effective Date means [●].

Applicable [Master] Agreement has the meaning given to it in Section 4(e) herein.

Discontinuation Date means the first day on which EONIA is no longer available.

EONIA means the euro overnight index average.

€STR means the euro short-term rate that reflects the wholesale euro unsecured overnight borrowing costs of euro area banks, available by 09:00 CET on each TARGET2 Business Day, and published on the European Central Bank's website.

TARGET2 means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

TARGET2 Business Day means any day on which TARGET2 is open for settlement of payments in euro.

Transaction means [to be discussed][as defined in the Applicable [Master] Agreement].

4. Miscellaneous

(a) Entire Agreement; Restatement.

(i) This Amendment constitutes the entire agreement and understanding of the parties with respect to its subject-matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto.

(ii) Except for any amendment to an Affected Covered Transaction Document or Affected Covered Credit Support Document made pursuant to this Amendment, all terms and conditions of an Affected Covered Transaction Document or Affected Covered Credit Support Document will continue in full force and effect in accordance with their provisions. References to an Affected Covered Transaction Document or Affected Covered Credit Support Document will be understood to be references to the relevant Affected Covered Transaction Document or Affected Covered Credit Support Document as amended by this Amendment.

(b) *Amendments.* No amendment, modification or waiver in respect of the matters contemplated by this Amendment will be effective unless it is in writing executed by the parties.

(c) *Non-reliance.* Each party represents to the other party on the date on which it enters into this Amendment that it is acting for its own account and has made its own independent decisions to enter into this Amendment and as to whether this Amendment is appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary.⁵⁷

(d) *Counterparts.* This Amendment may be executed and delivered in counterparts (including by facsimile transmission, electronic messaging system or e-mail), each of which will be deemed an original.

(e) *Headings.* The headings used in this Amendment are for convenience of reference only and are not to affect the construction of, or to be taken into consideration in interpreting, this Amendment.

(f) *Governing Law.* This Amendment (and, to the extent possible, any non-contractual obligations arising out of or in connection with it) shall be governed by the law governing the applicable [master] agreement (or equivalent thereof) previously signed between the Parties (including any deemed master agreement) (or equivalent thereof)) to which any Affected Covered Transaction or Affected Covered Credit Support Document relates (“Applicable [Master] Agreement”) or, in the absence of any such agreement or single governing law, the laws of [...].

⁵⁷ The parties' representations should be agreed on a case-by-case basis.

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