



Regulatory update: practical tips for bond issuers, arrangers and lawyers

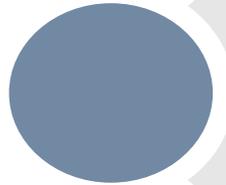
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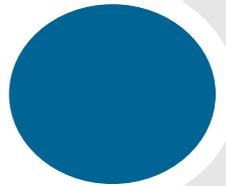
What we will be covering today?



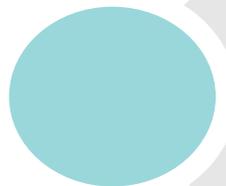
Prospectus Regulation: keys changes



PRIPs – update on scope



IBOR discontinuation and evolution of RFRs



Impact of Brexit on DCM Transactions

Prospectus Regulation

Prospectus Regulation - *“The PR is unequivocal in terms of seeking to influence a change of course”* on risk factors (ESMA)

PR and ESMA
Guidelines

Extent of changes
required will depend
on competent
authority approach

Competent authority
may take into account
type of investor

As previously – risks
must be specific and
material

Risks must be
corroborated

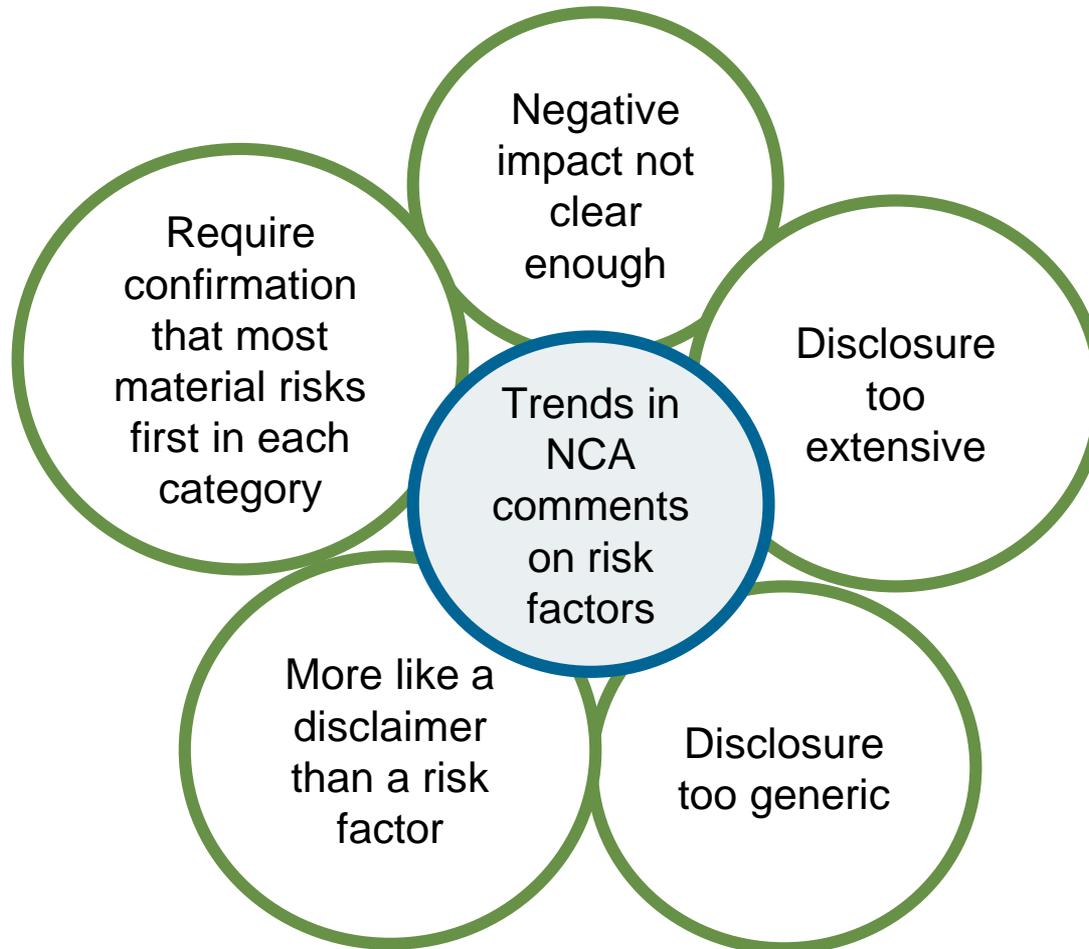
Quantitative
information where
available and
appropriate

Limited number of
categories – 10
“categories and sub-
categories”

Most material risk
factors first in each
category (previous UK
FCA approach)

Challenge to overall
length if obscures
comprehensibility

NCAs are raising multiple comments on risk factors which can take time to clear



Prospectus Regulation – compliance with new prescriptive requirements on summaries means changes in approach for retail issues/programmes

- Exemption for debt securities with EUR 100,000 minimum denomination and for debt securities traded on a Qualified Investor only segment of a Regulated Market
- Article 7 is prescriptive about what a summary must contain; strip away table format; sub-sections with mandated headings
- Maximum 7 sides of A4 with an extension by:
 - 2 sides of A4 where summary covers several securities
 - 1 side of A4 per guarantor
- 4 part summary – Risks covered within Issuer and Securities sections
- No more than 15 risk factors in total
- Key financial information tables mandated by RTS
- Substitution of KID for part summary – optional/mandated?



Removal of requirement for a base prospectus summary is welcome
Provisions unclear on whether base prospectus should include a form of issue specific summary -
December 2019 ESMA PR Q&A says not possible

PRIIPs

PRIIPs - Pronouncements from ESAs on scope are not the end of the story

- Sovereign bonds
- Vanilla FXNs/FRNs **with pre-defined coupon changes**
- Notes with puts, calls **at any fixed level**, guarantees
- **Subordinated notes**
- **Zero coupon notes**
- **Perpetuals**
- Listed ordinary shares

Which "non-structured products" are in-scope?

Which "non structured products" are out of scope

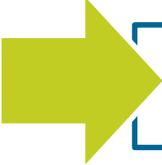
Which "non-structured products" might be in scope?

- Convertibles, including convertible AT1s
- **Bonds with caps/floors**
- Bonds with a make whole?
- Inflation linked
- ABS?

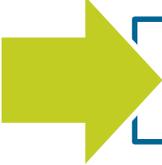
ESA consultation paper concerning amendments to the PRIIPs KID – closed in January

IBOR discontinuation and evolution of RFRs

Focus of this section



evolution of additional benchmark discontinuation fallback provisions in vanilla bond markets



development of risk-free rates (RFRs) in vanilla bond market terms and conditions



briefly touch upon mooted approaches to “tough” legacy LIBOR instruments

Brief background



LIBOR

- LIBOR not expected to continue on the current basis after 2021
- Transition away from towards RFRs across global financial markets
- Discontinuation will impact any FRNs linked to LIBOR and any other notes with an interest reset feature linked to LIBOR (such as a £/\$ mid-swap rate)



EURIBOR

- Increasing focus on EURIBOR
- No current plans to discontinue EURIBOR - the current focus is on robustness of the fallbacks for the purpose of the Benchmarks Regulation
- Alternative RFR also being developed



And other IBORs are also in focus, such as NIBOR

- No current plans to discontinue NIBOR
- Benchmarks Regulation implemented December 2019
- Pending application from NoRe to become Benchmarks Regulation-approved NIBOR administrator
- Work on alternative RFR still in progress
- Reformed NOWA

To avoid FRNs defaulting to a fixed rate as a result of a benchmark being discontinued, the market started including additional benchmark discontinuation fallback language in 2017

An outline of the typical approach for a non-structured products benchmark discontinuation provision

Most European international EMTN programmes already contain benchmark discontinuation fallback provisions which would apply in the case of an IBOR ceasing to be available

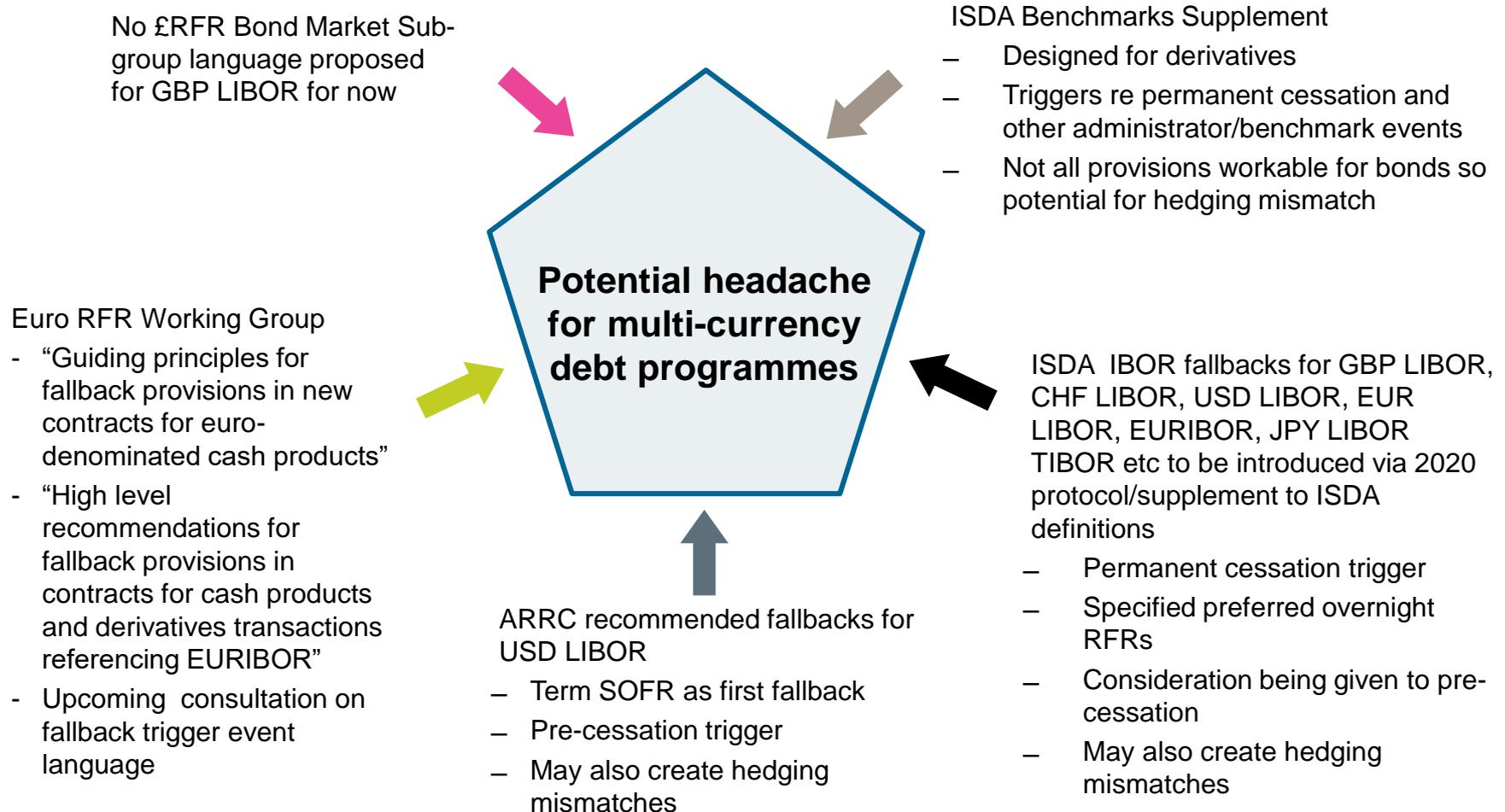
Such provisions typically provide discretion to the issuer and/or an independent adviser to choose an alternative rate and effect conforming changes

- core structure relatively standardised but a lot of “*devil in the detail*”
- expanded trigger events (for example, to cater for pre-cessation events)

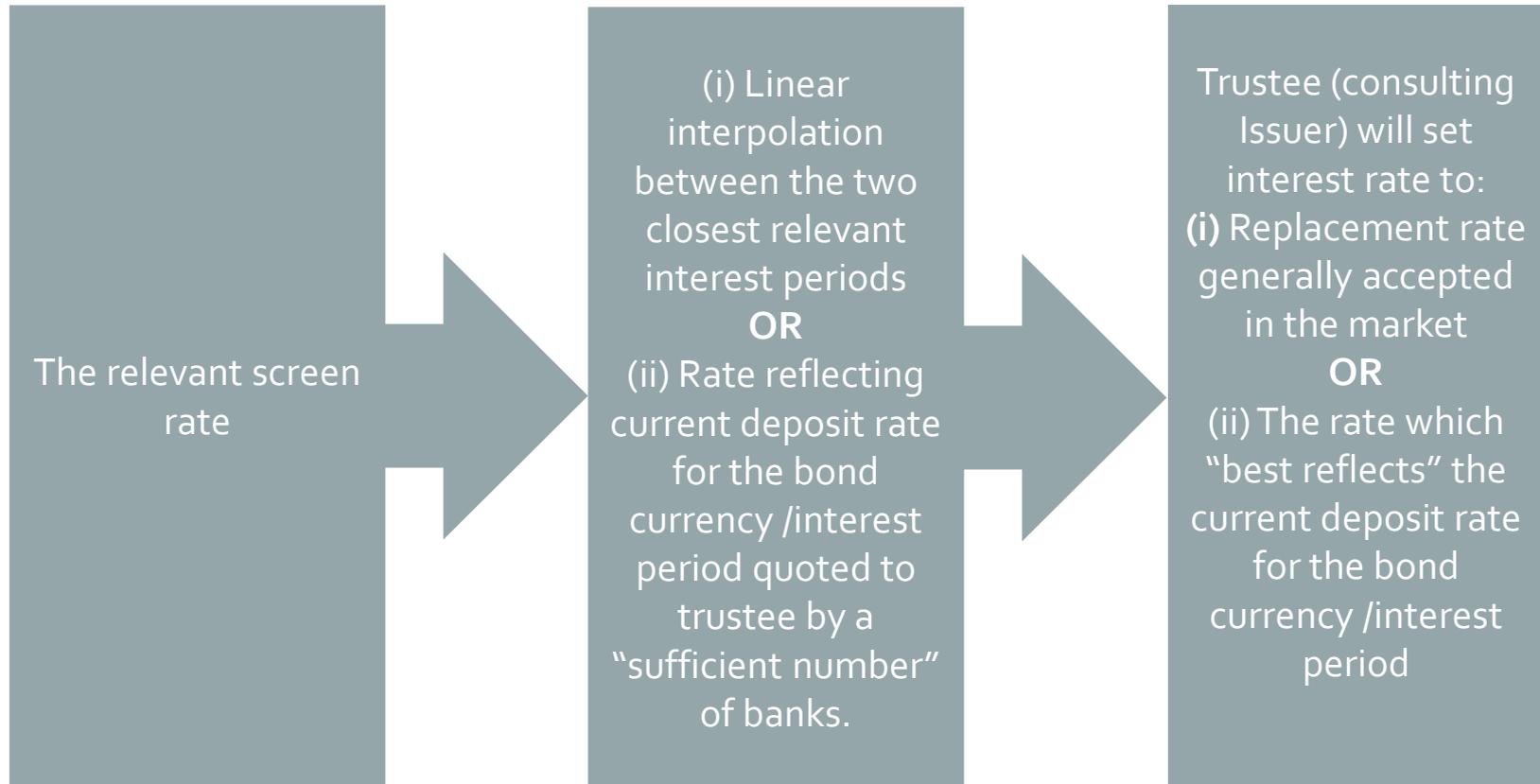
Issuers should continue to review these provisions carefully to ensure they reflect any relevant regulatory guidance, industry guidance and/or market standards

For example, for FRNs aimed at US markets which reference USD LIBOR, we are increasingly seeing a strong desire to include the ARRC’s model waterfall of fallbacks

Numerous industry level fallbacks for certain currencies and products which are inconsistent



Replacement rate: Nordic Trustee's model (Norwegian bonds)



Alternative Risk Free Rates (RFRs) have been selected for LIBOR and EURIBOR and there have been an increasing number of RFR FRN issues and amendments to programmes

RFRs for LIBOR currencies and markets: SONIA (GBP); SOFR (USD); TONA (JPY); SARON (CHF);

RFR for the euro area: €STR

Since beginning of 2018 there have been approximately 100 SONIA FRNs issued by a number of issuers, e.g. EIB, Lloyds, Commonwealth Bank of Australia, RBC, BMW

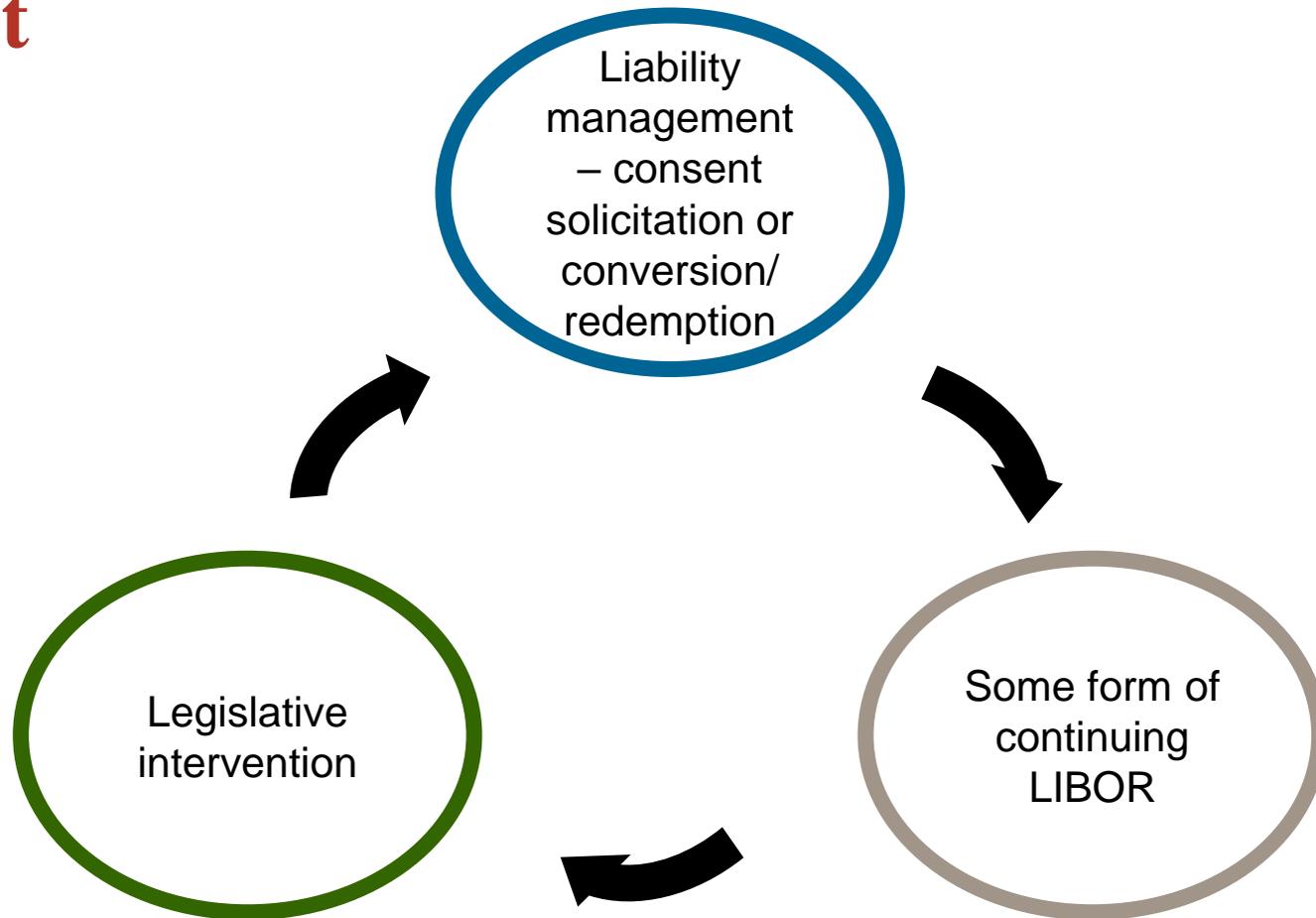
Also starting to see SOFR and €STR FRNs

£RFR Working Group continuing to consider Term SONIA, Euro RFR Working Group consultation on €STR based term structure methodology and ARRC plans for eventual Term SOFR

Practical experience to date indicates that approaches to permanent discontinuation fallbacks and RFR provisions are varied and confusion is common



Various options for transition of “tough” legacy bonds referencing LIBOR being discussed in the market



Impact of Brexit on DCM Transactions in 2020 and beyond

Brexit - What impact will the implementation of the transition period in the EU-UK Withdrawal Agreement have on mainstream debt capital market issuance?

Uncertain what will happen at end of transition period and therefore what the on-shoring of financial services-related EU laws will look like

We are in the transition period which will end on 31 December 2020 unless extended by July 2020

European Union (Withdrawal Agreement) Act 2020 and EU ratification of EU-UK Withdrawal Agreement resulted in Brexit on 31 January

Minimal changes to documents during transition period, eg clarify that references to the EU include the UK

Effect of transition period is that UK is no longer an EU Member State, but is still treated as one

Questions?

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