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Bank BPH Comments on Targeted consultation on the designation of a statutory replacement rate for CHF LIBOR

1. ON THE EFFECTIVE NEED FOR A REPLACEMENT FOR CHF LIBOR

Pursuant to article 23a of the EU BMR, the Commission may only designate replacement rates for third-country benchmarks "if their cessation or wind-down would significantly disrupt the functioning of financial markets in the Union or pose a systemic risk to the financial system in the Union.".

Question 1. Do market participants agree that the situation as described above, requires that the Commission exercises the statutory replacement powers for the CHF LIBOR? Please explain and provide data if available.

a) Yes

b) No

c) No opinion

There are still approximately 430,000 outstanding CHF mortgage loans in Poland with a value of approximately PLN 98 billion. Bank BPH is a key participant in the Polish banking sector in terms of size of the CHF mortgage loan portfolio. At the end of March 2021 Bank BPH, with approximately. 48,000 outstanding loans worth PLN 8,5 billion, represented approximately 9% of the entire market portfolio. All BPH CHF mortgage loans were granted before 2011 and the majority before 2008. As per the repayment schedules in agreements entered into by BPH, there will still be more than 46,000 outstanding CHF loans after 31 December 2021. Moreover, none of those contracts contains any "fallback clauses" regulating the rate of interest if there is a significant change or cessation of the benchmark.

In the context of BPH's CHF mortgage loans portfolio and its significant share in the entire Polish banking sector balance sheet, BPH together with Polish Banks Association is convinced that the discontinuation of CHF LIBOR without a statutorily mandated replacement rate, would pose systemic risk to the Polish and, consequently, to the European financial market. The absence of a clearly defined substitute would also pose a significant risk to borrowers who would be faced with uncertainty as to how their contracts should be performed after 1 January 2022.

Bank BPH therefore gladly welcomes the European Commission's efforts to identify possibilities for designating SARON COMPOUND rates as the substitute for LIBOR CHF. We would like to take this opportunity and confirm that in our opinion the future regulation should designate substitutes for all

LIBOR CHF terms, i.e. 1, 3, 6 and 12 months and not only for LIBOR 3M, as this would cause legal inequality of borrowers, based on their contract provisions only.

Even though it is not the subject of this consultation, we would also like to signal a need to introduce, by way of a delegated act, EURIBOR as the replacement benchmark for LIBOR EUR. Although the size of the portfolio using this rate is far lower than for CHF, the rationale is similar – the mere difference of the loan currency (chosen by the borrower) would determine whether such borrower can benefit from the protections offered by European law. EURO is the official currency of the European Union. In our opinion European law should not create different conditions for borrowers and we would support the inclusion of LIBOR EUR in delegated act on replacement benchmarks.

2. ON THE FAIRNESS AND ACCEPTABILITY OF THE SOLUTION RECOMMENDED BY THE SWISS NATIONAL WORKING GROUP

Question 2. Do consumers, small and medium enterprises and relevant consumer bodies agree that the proposed replacement rate (3M SARON calculated as a compounded SARON under a last reset methodology) plus the ISDA adjustment spread (calculated as a historical median approach over a five-year lookback period) is a fair and equitable solution for a replacement of CHF LIBOR in mortgages and small business loans and consumer credit agreements? Please explain and, if necessary, provide alternative solutions.

a) Yes

b) No

c) No opinion

Bank BPH believes that the proposed solution is fair to borrowers.

We believe that the overriding goal of the new law should be to maintain the performance of loan agreements without or with minimum disruption for borrowers. There are very limited alternatives for the replacement of CHF LIBOR and SARON COMPOUND rates appear to be the best solution as they are BMR-compliant benchmarks. We strongly support the idea to use SARON COMPOUND rates to determine loan interest rates in the same way as it is done for LIBOR CHF and without changing terms and conditions of loan agreements. This means that the Bank, and not the borrowers, will be the party which would have to deal with the consequences of applying to loans contracts SARON COMPOUND plus adjustment spread on the same terms as applicable currently to CHF LIBOR. One of those consequences will be the risk of mismatch between bank's cost of financing and interest income generated on modified loans exposures. Bank, as a professional market participant is going to manage this risk.

Moreover, to assure the seamless transition from the current benchmark to the successor benchmark, we suggest that the European Commission introduce the statutory adjustment spread with the aim to cover, as much as possible, the difference between the value of CHF LIBOR and the proper SARON *compound rate. We would propose to use the already developed ISDA rules for setting the adjustment rate, as it has all hallmarks of a neutral and objective index.*

It is also worth mentioning that BPH's CHF mortgage loans contracts contain detailed rules describing the Bank's obligations in terms of monitoring market benchmarks, adjusting loans' interest rates in accordance with new rates and informing the borrowers of the changes in APR for the following interest periods.

To avoid any turbulences on the borrower's side and to be still in line with the terms and conditions of mortgage loans, Bank BPH supports the idea of using the methodology of the last reset as the most suitable to implement SARON COMPOUND rates as the replacement for CHF LIBOR. If the reference rate and the methodology for the adjustment rate are determined by the European Commission, banks will be able to meet all their existing contractual obligations to determine loans' interest rates after 31 December 2021. Any other solution, even if introduced by law, could potentially cause some level of confusion for borrowers or strong resistance of borrowers in the worst-case scenario. Such solutions include, among others, calculating the loan interest at the end of the period, instead of at the beginning (as it is done currently) which may cause delays in payments and further negative outcomes like deterioration of customers' credit score, penalty interests, etc.

Finally, introduction of SARON COMPOUND rates, by the power of law, would eliminated legal uncertainty on how to perform loans contracts in situation when there are no fallback clauses (regulating significant change or cessation of interest rate benchmark) or any other legally binding solution based on loans contracts itself or general rules of law, which is a case for Poland.

3. ON THE COMPATIBILITY OF THE CHOSEN METHODOLOGY WITH EU AND MEMBER STATES LAWS PROTECTING CONSUMERS

Question 3. Do market participants agree that the proposed calculation method (so called last reset) is compatible with the requirements of the MCD, the CCD, Directive 93/13/EEC and of other legislation protecting consumer credit and national implementation laws and with any other applicable legislation? Please explain.

a) Yes

b) No

c) No opinion

The above-mentioned solution, in our opinion, is in line in with both CCD and MCD Directives implemented into Polish law system respectively by the Act of 12 May 2011 on consumer credit and Act of 23 March 2017 on mortgage loans and supervision over mortgage brokers and agents. Especially under Article 32 of the Act on mortgage loans, which requires the bank to provide the customers with information on the interest rate no later when the new repayment schedule is provided. As stated previously, this is also an obligation of the Bank under BPH's loan contract provisions.

The proposed replacement rate would be based on the "last-reset" method which would allow determining the reference rate in advance. In this method, the rate for a subsequent interest period can be determined based on data from the previous period. Payments are already known at the start of the interest period, as in the case of LIBOR-based products.

In this way, the calculation of the applicable interest rate and its communication to borrowers could be done before the rate is applied to mortgage loans which is required under European Union consumer legislation, implemented in the statutes mentioned above.

Furthermore, whereas Polish law does not the use of specific benchmarks, but at the same time requires the lender to apply such parameters (including benchmark rates), which will be clear, accessible, objective, understandable and verifiable by an average borrower. We are certain that SARON COMPOUND rates meet those requirements as they are published on the SIX Administrator web page, including historical values.

Sincerely,

Signed by /
Podpisano przez:

Paweł Tomasz
Bandurski

Date / Data: 2021-05-17 15:26

Paweł Bandurski
President of the Board

Signed by /
Podpisano przez:

Marcin Szczepan
Berger

Date / Data: 2021-05-17 16:54

Marcin Berger
Vice President of the Board