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Anne-Marie Neagle

Partner

King & Wood Mallesons

Australia's competition laws

- ASF members and other attendees are reminded of the importance of having regard to their obligations under Australia's competition laws.
- As attendees will know, under the Competition and Consumer Act, competitors are prohibited from engaging in cartel conduct or engaging in conduct that amounts to a concerted practice which has the purpose, effect or likely effect of substantially lessening competition.
- If you have any concerns in relation to what is discussed today, please immediately flag it so that the conversation can cease and you have the opportunity to seek such legal advice as you think is appropriate.

Drivers for change

Global
developments

Risk of
contractual
frustration

Prudent risk
management

RBA repo
eligibility
criteria

RBA repo eligibility criteria

- Applies to new issues from 1 December 2022
- Must include both temporary and permanent fallbacks for BBSW
- Must include at least one 'robust' and 'reasonable and fair' fallback for BBSW:
 - A **robust** fallback must specify the interest calculation method, and must specify a clear and unambiguous trigger event after which the fallback would apply
 - A **reasonable and fair** fallback must reasonably mitigate the impact on the economic value of the security if the fallback is triggered

ASF work to date

- Formation of working group
- Discussions with regulators, industry bodies, market infrastructure providers and other participants, including the RBA, ASIC, ASX, ISDA and Bloomberg
- Stakeholder consultation
- Cross industry discussions

Status of BBSW fallback language

- Preparation
- Refinement
- Where to from here?

Structure of BBSW fallback language

- Extracts to slot into existing interest rate provisions
- Based on one-month BBSW provisions
- Provides for a primary fallback to compounded daily AONIA together with an adjustment spread
- Modular application of fallbacks to the BBSW Rate and each benchmark rate used in a fallback

Definition of BBSW

1 Definition of BBSW

“**BBSW Rate**”¹ means, for an Interest Determination Date, subject to clause [#] (*Temporary Disruption Fallback*) and clause [#] (*Permanent Discontinuation Fallback*), the per annum rate expressed as a decimal which is the level of BBSW for a period of one month provided by the Administrator and published as of the Publication Time on that Interest Determination Date.

“**BBSW**” means the Australian dollar mid-rate benchmark for prime bank eligible securities (known as the Australian Bank Bill Swap Rate or BBSW).

Temporary and permanent triggers

2 Temporary Disruption Fallback

Subject to clause [#] (*Permanent Discontinuation Fallback*), if a Temporary Disruption Trigger occurs in respect of an Applicable Benchmark Rate, the rate for any day for which that Temporary Disruption Trigger is continuing and that Applicable Benchmark Rate is required will be the rate determined in accordance with the Temporary Disruption Fallback for that Applicable Benchmark Rate.



3 Permanent Discontinuation Fallback

If a Permanent Discontinuation Trigger occurs in respect of an Applicable Benchmark Rate, the rate for any Interest Determination Date which occurs on or following the applicable Permanent Fallback Effective Date will be the Fallback Rate determined in accordance with the Permanent Discontinuation Fallback for that Applicable Benchmark Rate.

Temporary disruption – triggers

“Temporary Disruption Trigger” means, in respect of any Applicable Benchmark Rate which is required for any determination:

- (a) the Applicable Benchmark Rate in respect of the day for which it is required has not been published by the Administrator or an authorised distributor and is not otherwise provided by the Administrator by the date on which that Applicable Benchmark Rate is required;⁵ or
- (b) the Applicable Benchmark Rate is published or provided but the [Calculation Agent] determines that there is an obvious or proven error in that rate.

Temporary disruption – consequences

“Temporary Disruption Fallback” means, in respect of:

- (a) the BBSW Rate, that the rate for any day for which the BBSW Rate is required will be the first rate available in the following order of precedence:
 - (i) firstly, the Administrator Recommended Rate;
 - (ii) next, the Supervisor Recommended Rate; and
 - (iii) lastly, the Final Fallback Rate;
- (b) AONIA, that the rate for any day for which AONIA is required will be the last provided or published level of AONIA; or
- (c) the RBA Recommended Rate, that the rate for any day for which the RBA Recommended Rate is required will be the last provided or published level of that RBA Recommended Rate (or if no such rate has been provided or published, the last provided or published level of AONIA).

Permanent discontinuation – triggers

“Permanent Discontinuation Trigger” means, in respect of an Applicable Benchmark Rate:

- (a) a public statement or publication of information by or on behalf of the Administrator of the Applicable Benchmark Rate announcing that it has ceased or will cease to provide the Applicable Benchmark Rate permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator or provider, as applicable, that will continue to provide the Applicable Benchmark Rate and, in the case of the BBSW Rate, a public statement or publication of information by or on behalf of the Supervisor of the BBSW Rate has confirmed that cessation;
- (b) a public statement or publication of information by the Supervisor of the Applicable Benchmark Rate, the Reserve Bank of Australia (or any successor central bank for Australian dollars), an insolvency official with jurisdiction over the Administrator for the Applicable Benchmark Rate, a resolution authority with jurisdiction over the Administrator for the Applicable Benchmark Rate or a court or an entity with similar insolvency or resolution authority over the Administrator for the Applicable Benchmark Rate, which states that the Administrator of the Applicable Benchmark Rate has ceased or will cease to provide the Applicable Benchmark Rate permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator or provider that will continue to provide the Applicable Benchmark Rate and, in the case of the BBSW Rate and a public statement or publication of information other than by the Supervisor, a public statement or publication of information by or on behalf of the Supervisor of the BBSW Rate has confirmed that cessation;

Permanent discontinuation – triggers (cont)

- (c) a public statement by the Supervisor of the Applicable Benchmark Rate if the Applicable Benchmark Rate is the BBSW Rate, or the Administrator of the Applicable Benchmark Rate if the Applicable Benchmark Rate is AONIA or the RBA Recommended Rate, as a consequence of which the Applicable Benchmark Rate will be prohibited from being used either generally, or in respect of the [Notes] or that its use will be subject to restrictions or adverse consequences;
- (d) it has become unlawful for the [Calculation Agent] or any other party responsible for calculations of interest under the [Conditions] to calculate any payments due to be made to any [Noteholder] using the Applicable Benchmark Rate;
- (e) a public statement or publication of information by the Supervisor of the Applicable Benchmark Rate if the Applicable Benchmark Rate is the BBSW Rate, or the Administrator of the Applicable Benchmark Rate if the Applicable Benchmark Rate is AONIA or the RBA Recommended Rate, stating that the Applicable Benchmark Rate is Non-Representative; or
- (f) the Applicable Benchmark Rate has otherwise ceased to exist or be administered on a permanent or indefinite basis.

Permanent discontinuation – consequences

“Permanent Discontinuation Fallback”⁴ means, in respect of:

- (a) the BBSW Rate, that the rate for any day for which the BBSW Rate is required on or after the BBSW Rate Permanent Fallback Effective Date will be:
 - (i) if at the time the BBSW Rate Permanent Fallback Effective Date occurs, no AONIA Permanent Fallback Effective Date has occurred, the AONIA Fallback Rate;
 - (ii) if at the time the BBSW Rate Permanent Fallback Effective Date occurs, an AONIA Permanent Fallback Effective Date has occurred, an RBA Recommended Rate has been created but no RBA Recommended Rate Permanent Fallback Effective Date has occurred, the RBA Recommended Fallback Rate; and
 - (iii) if neither paragraph (i) nor paragraph (ii) above apply, the Final Fallback Rate;
- (b) AONIA, that the rate for any day for which AONIA is required on or after the AONIA Permanent Fallback Effective Date will be:
 - (i) if at the time the AONIA Permanent Fallback Effective Date occurs, an RBA Recommended Rate has been created but no RBA Recommended Rate Permanent Fallback Effective Date has occurred, the RBA Recommended Fallback Rate; and
 - (ii) if paragraph (i) above does not apply, the Final Fallback Rate; and
- (c) the RBA Recommended Rate, that the rate for any day for which the RBA Recommended Rate is required on or after the RBA Recommended Rate Permanent Fallback Effective Date will be the Final Fallback Rate.

Permanent discontinuation – primary fallback

“**AONIA Fallback Rate**” means, in respect of an Interest Determination Date, the rate determined by the [Calculation Agent] to be Compounded Daily AONIA for that Interest Determination Date plus the Adjustment Spread.

↓

**Compounded
Daily AONIA**

+

↓

**Adjustment
Spread**

Compounded Daily AONIA

“**Compounded Daily AONIA**” means, in respect of an Interest Determination Date, the rate which is the rate of return of a daily compound interest investment, calculated in accordance with the formula below:²

$$\left[\prod_{i=1}^{d_0} \left(1 + \frac{AONIA_{i-5BD} \times n_i}{365} \right) - 1 \right] \times \frac{365}{d}$$

where:

- d*** means the number of calendar days in the relevant Interest Period;
- d₀*** means the number of [Business Days] in the Interest Period;
- AONIA_{i-5BD}*** means the per annum rate expressed as a decimal which is the level of AONIA provided by the Administrator [and published as of the Publication Time] for the [Business Day] falling [five] [Business Days] prior to such [Business Day] “*r*”;
- i*** is a series of whole numbers from 1 to *d₀*, each representing the relevant [Business Day] in chronological order from (and including) the first [Business Day] in the relevant Interest Period to (and including) the last [Business Day] in such Interest Period; and
- n_i*** for any [Business Day] “*r*”, means the number of calendar days from (and including) such Business Day “*r*” up to (but excluding) the following [Business Day].

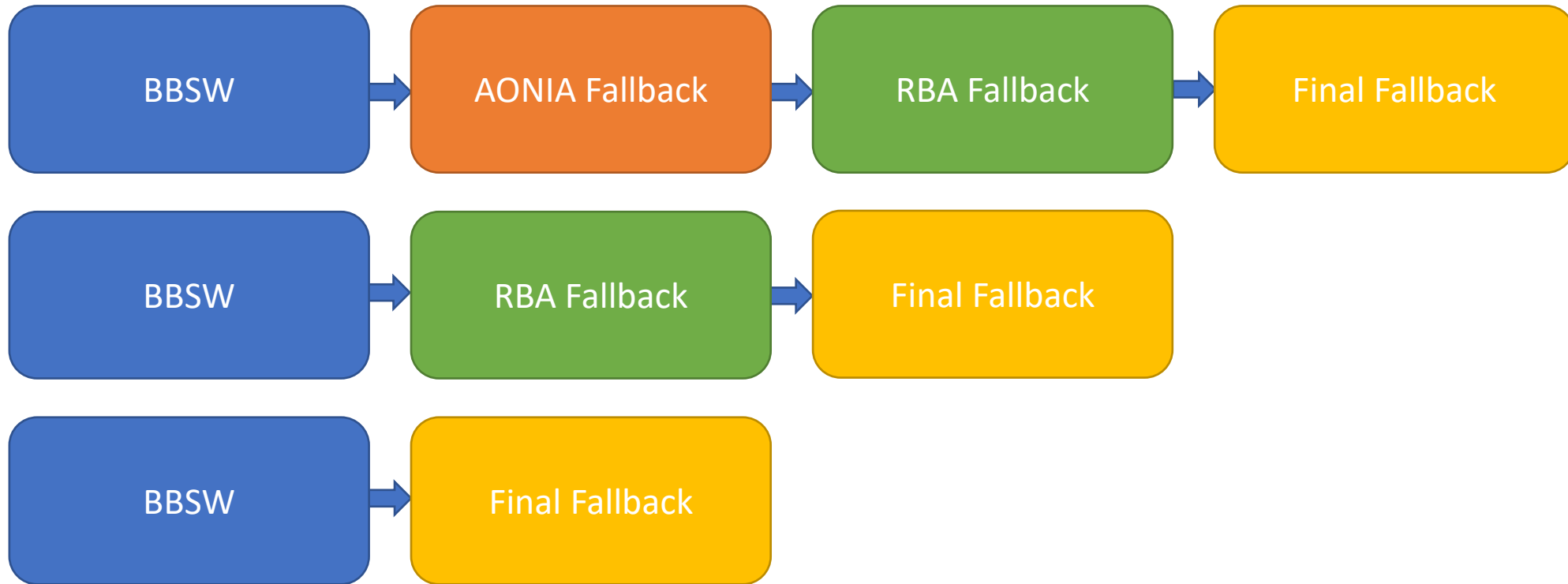
If for any reason Compounded Daily AONIA needs to be determined for a period other than an Interest Period, Compounded Daily AONIA is to be determined as if that period were an Interest Period starting on [(and including)] the first day of that period and ending on [(but excluding)] the last day of that period.

Adjustment spread

“**Adjustment Spread**” means the adjustment spread as at the Adjustment Spread Fixing Date (which may be a positive or negative value or zero and determined pursuant to a formula or methodology) that is:

- (a) determined as the median of the historical differences between the BBSW Rate and AONIA over a five calendar year period prior to the Adjustment Spread Fixing Date using industry-accepted practices, provided that for so long as the Bloomberg Adjustment Spread is published and determined based on the five year median of the historical differences between the BBSW Rate and AONIA, that adjustment spread will be deemed to be acceptable for the purposes of this paragraph (a); or
- (b) if no such median can be determined in accordance with para (a), set using the method for calculating or determining such adjustment spread determined by the [Calculation Agent] to be appropriate or, if the [Calculation Agent] is unable to determine the quantum of, or a formula or methodology for determining, such adjustment spread, then as determined by an alternative financial institution (appointed by the [Manager] in its sole discretion) acting in good faith and in a commercially reasonable manner.

Possible permanent fallback outcomes





Australian
Securitisation
Forum

