

COMMITTEE ROLE, PROCEDURES AND TERMS OF REFERENCE PRECIOUS METALS OVERSIGHT COMMITTEE

1. Introduction

The role of the Precious Metals Oversight Committee (PMOC) of ICE Benchmark Administration Limited (IBA) is to:

- Review the definition and methodology of the LBMA Precious Metals Prices;
- Oversee any changes to the methodology for the LBMA Precious Metals Prices; and
- Oversee IBA's control framework insofar as it affects the LBMA Precious Metals Prices and IBA's adherence to its Published Methodologies.

2. Background

The LBMA Gold Price and LBMA Silver Price are the global benchmark prices for unallocated gold and silver delivered in London. Producers, the investment community, banks and central banks, fabricators, jewellers, other consumers and market participants from around the globe use the benchmarks as reference prices.

The LBMA Gold Price and LBMA Silver Price benchmarks facilitate spot, monthly averaging, cash-settlement, location swaps, fixed for floating swaps, options and other derivative transactions important to price risk management.

IBA took responsibility for administering the LBMA Gold Price and the LBMA Silver Price in March 2015 and October 2017 respectively.

IBA hosts electronic auctions on the WebICE platform. The auctions are held on London business days, at 10.30 and 15.00 for the LBMA Gold Price and at 12.00 for the LBMA Silver Price.

IBA has introduced a central clearing model for both LBMA Precious Metals Prices in order to minimise the work required for new Direct Participants in the auction and their associated risk, whilst allowing firms to settle bilaterally where both parties to the trade would prefer to do so.

3. Regulatory requirements

3.1 *Prior to Brexit*

IBA is authorised and regulated by the UK's Financial Conduct Authority (FCA).

EU legislation came into effect on 1 January 2018 through the 'Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds'¹ (the EU Benchmarks Regulation or BMR).

IBA became subject to the BMR provisions on being BMR authorised with effect from 27 April 2018. Compliance with the BMR is monitored by the FCA which has sole supervisory, disciplinary and investigatory powers in relation to benchmark administrators and others in the UK.

Recital (6) of the BMR sets out its overarching purpose in regulating the provision of, contribution to and use of benchmarks:

"[...] in order to ensure the proper functioning of the internal market and improve the conditions of its functioning, in particular with regard to financial markets, and to ensure a high level of consumer and investor protection, it is appropriate to lay down a regulatory framework for benchmarks at Union level."

The BMR groups benchmarks into six different types (Critical; Significant; Commodity; Regulated-data; Interest rate; and Non-significant benchmarks). The applicable BMR requirements depend on a benchmark's type.

The FCA has advised IBA that both the LBMA Gold Price and the LBMA Silver Price are Commodity benchmarks and therefore the provisions of Annex II (Commodity Benchmarks) apply.

(Note: Title II would have applied if the benchmarks had been designated as Critical)

3.2 *Brexit*

IBA will become a third-country benchmark administrator under the EU BMR when the UK exits from the European Union.

The BMR has three third-country mechanisms which could be used in the absence of wider Brexit equivalence declarations: Equivalence; Recognition; and Endorsement. The mechanism chosen by IBA is Recognition from the Dutch Authority for the Financial Markets (AFM) to provide certainty that IBA could continue to provide its benchmarks to supervised entities in the EU after Brexit.

Under the Recognition provisions in the BMR, IBA is required to appoint a legal representative in the Netherlands to act on IBA's behalf vis-à-vis the AFM and any other person in the EU with regard to the IBA's obligations under the BMR. IBA has appointed ICE Endex, which is the ICE group's continental European energy exchange based in Amsterdam. ICE Endex operates the international TTF Gas Futures contract, which is the premier Continental European natural gas trading hub.

¹ The Regulation can be found at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1011&from=EN>

As the legal representative, ICE Endex must perform the oversight function relating to IBA's provision of benchmarks together with IBA and be, in that respect, accountable to the AFM. A representative of ICE Endex will be a member of each of IBA's Oversight Committees.

A UK Statutory Instrument will effectively 'onshore' the EU BMR into a new UK BMR. Therefore, IBA will be authorised by the FCA under the UK BMR and Recognised by the AFM under the EU BMR.

4. Membership and attendance

4.1 Committee composition

The composition of the PMOC is set by IBA's Board on the recommendation of IBA's Nominating and Corporate Governance Committee (N&CGC) and includes a balanced representation of stakeholders including representation from the following stakeholder groups:

- supervised entities that use the benchmark
- market infrastructure operators;
- auction participants; and
- independent members.

The N&CGC uses the criteria published on IBA's website² to select committee members, including evaluation of potential committee members' expertise and skills. The N&CGC also considers whether candidates can meet the time commitments required, taking into account any role they have in other oversight function(s).

On the recommendation of the N&CGC, the IBA Board appoints a chair of the PMOC and may from time to time appoint an alternate or deputy chair of the committee.

Any director of IBA may attend meetings of the PMOC, whether or not s/he is an appointed member of the committee.

There are currently no Observers on the PMOC but there is no reason in principle why one or more appropriate Observers may be appointed to the committee in the future.

The right is reserved to the N&CGC to remove a committee member at its discretion where that committee deems such action to be in the overall interests of the determinations process.

IBA's website shows the names of committee members at <https://www.theice.com/iba/lbma-gold-silver-price>.

² See https://www.theice.com/publicdocs/IBA_Selection_of_Committee_Members.pdf

4.2 *Terms of office of committee members*

The N&CGC decides the terms of office of PMOC committee members, taking into account the need to ensure appropriate continuity in membership over time. Generally, a committee member can serve for a maximum of six consecutive years unless the IBA Board specifically approves an extended period of service for a committee member.

A committee member who does not attend three consecutive scheduled full meetings of the committee may be asked by IBA to resign from the committee. Any such decision shall be taken by the N&CGC.

4.3 *Alternates*

An alternate may attend occasional meetings on behalf a committee member, subject to prior agreement of the chair before each such meeting. Committee members should not delegate routine attendance to an alternate.

4.4 *Sub-committees*

The PMOC may appoint sub-committees with such powers as the committee may from time to time confer within the scope of the committee's Terms of Reference.

The chair or committee shall determine the terms of reference of any sub-committee.

5. Confidentiality

The letters of appointment for members of the PMOC require adherence to strict confidentiality provisions.

Committee members are required to keep all materials provided to, discussions of and decisions of the committee confidential and shall not share them with any third party, including their employer or client, unless agreed in writing by the chair or IBA.

6. Conflicts of interest

In signing their Letters of Appointment to the PMOC, committee members confirm that they will:

- promptly declare to the committee chair or an IBA director any other appointments or arrangements that conflict or may conflict with being a committee member; and
- comply with IBA's policy on conflicts of interest.

Committee members must declare any private or professional interests that may result in a potential or actual conflict as soon as the conflict or potential conflict arises.

At the start of each committee meeting, the chair will ask those present (in person or by call) to declare any conflict arising from the agenda. In the event of a conflict of interest during a committee meeting, the committee member must declare the conflict immediately and excuse themselves from participating in the discussion of or decision making relating to such item(s). The committee member should confirm the conflict in writing to the chair as soon as possible after the meeting.

Where the chair believes that a committee member has a conflict that cannot be managed or adequately mitigated, the chair may ask a committee member to recuse him/herself from the meeting and, if the conflict is likely to persist, the chair will refer this to the N&CGC to consider whether the committee member should resign.

7. Meeting protocols

7.1 Terms of Reference

The authority of the committee is set out in the Terms of Reference herein.

7.2 Meeting frequency

The PMOC usually meets four times each year. Further meetings occur, or actions are taken in writing, when deemed necessary or desirable by the committee or its chair.

Meetings are scheduled by IBA in the autumn for the forthcoming year. No less than two weeks' notice will generally be given of a proposed change in the date or time of the meeting.

Exceptionally, a meeting may be required as a matter of urgency without the requisite notice being given. Members of the committee may participate in PMOC meetings in person or by telephone/ conference call.

7.3 Meeting preparation

In conjunction with the chair, IBA establishes the agenda for each committee meeting.

Papers are generally circulated to committee members at least a week before the meeting unless a genuinely urgent matter arises; the determination as to whether a matter is genuinely urgent shall rest with the chair, after consultation with IBA if appropriate.

IBA provides the PMOC with documentation and data relevant to the committee's terms of reference.

IBA will respond positively to additional information requests from the committee provided that these are consistent with the committee's responsibilities and would not breach confidentiality obligations that IBA owes to auction participants.

In providing documentation and data to the committee, IBA gives due consideration to expected timings for each item. IBA seeks, in conjunction with the chair of the committee, to allocate sufficient time for discussion of topics.

7.4 Meeting quorum

The quorum is three committee members which shall include representation from at least:

- one representative of mining, refining or bullion interests;
- one financial intermediary; and
- one independent member of the committee.

If a quorum is not present at the scheduled commencement time of a meeting of the PMOC, the meeting shall be adjourned for 15 minutes or such other time as the chair may deem appropriate in the circumstances.

If the quorum is not present following the adjournment, the committee members present may discuss matters but shall not move forward to any binding vote at the meeting. IBA may subsequently email all PMOC members with a request to vote electronically.

7.5 *Conduct of meetings and decision-making*

For the sake of efficiency of meetings, committee members are expected to have read the meeting materials and to be prepared for the committee discussion with, at most, the key points or questions requiring to be highlighted by the chair or IBA at the meeting.

Should there be a PMOC vote on any matter, each committee member shall have one vote and decisions of the committee shall be made by a simple majority. Should the numbers of votes cast for and against be equal, the chair of the committee may exercise a deciding vote.

Where the chair determines that a committee member has an actual or potential material conflict of interest on a particular matter, that committee member shall not be allowed to vote on that matter.

If the chair of the meeting has agreed that an alternate may attend, the alternate may vote in place of the appointed member.

7.6 *Minutes*

Within one week of a meeting of the PMOC, IBA draws up a list of actions from the meeting and shares this with the committee chair.

IBA aims to send draft minutes to committee members within 8 working days after the meeting, requesting comments within one week. IBA addresses any comments received, in consultation with the meeting chair as appropriate. Minutes of committee meetings are then shared with the FCA.

The minutes are submitted to the committee for formal approval at its next meeting.

IBA circulates minutes of committee meetings to the Board of IBA.

Public (redacted or summary) minutes are published by IBA. The approval process is the same as for the full minutes.

7.7 *Resources*

The PMOC has no budgetary authority.

However, if the committee sees a need for additional resources (for example, for special counsel or other experts or consultants) to discharge its duties and responsibilities, the chair shall refer the request to the President of IBA or to the IBA Board as appropriate.

8. Disputes

The chair of the committee is expected to seek to achieve a consensus of views amongst Committee members.

Where this is not possible and a dispute cannot be resolved through discussion, the chair should take a formal vote on the matter in question. The chair may exercise a deciding vote.

The chair will seek to discuss a dispute with the management and chair of IBA. The chair will also inform the FCA of the matter as appropriate.

9. Review of the workings of the committee

The chair of the committee undertakes an annual review of the workings of the committee, unless IBA arranges a review in a different manner, for example using external consultants.

The findings of the review are reported to the committee.

The findings are subsequently reported to the N&CGC together with an assessment as to whether there is appropriate representation, expertise and experience among the committee membership.

TERMS OF REFERENCE - PRECIOUS METALS OVERSIGHT COMMITTEE

The following are the responsibilities of the Precious Metals Oversight Committee:

1. Reviewing the definition, methodology and setting of the LBMA Gold Price and the LBMA Silver Price (together the LBMA Precious Metals Prices) at least annually;
2. In conducting reviews in accordance with Term 1, assessing the underlying market and the usage of the LBMA Precious Metals Prices;
3. Overseeing any changes to the benchmark methodology and requesting IBA to consult on proposed changes;
4. Reviewing updates of:
 - The Code of Conduct for the IBA Precious Metals Auctions; and
 - The LBMA Gold And Silver Price Benchmarks and the IBA Precious Metals Auction Rule Book;
5. Overseeing IBA's control framework insofar as it affects the LBMA Precious Metals Prices and the management and operation of those benchmarks;
6. Overseeing IBA's adherence to its Published Methodologies, including calculation and business continuity policies;
5. Assessing internal and external audits or reviews insofar as they affect the LBMA Precious Metals Prices and monitoring the implementation of identified remedial actions;
6. Reviewing and approving procedures for cessation of the benchmarks, including any consultation about a cessation;
7. Reporting to the FCA any misconduct of which the oversight function becomes aware, including any anomalous or suspicious input data;
8. Considering existing or potential conflicts of interest and establishing whether they are material; and
9. Keeping these Terms of Reference of the Committee under regular review.

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