

MARCH 10, 2021

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And So it Begins: What Recent Announcements Mean for the Future of LIBOR

On March 5, 2021, the ICE Benchmark Administration¹ (the “IBA”) issued feedback that it had completed the consultation with LIBOR panel banks that it began in December 2020, and stated that it will be unable to publish certain LIBOR settings on a representative basis after: (1) December 31, 2021 for one week and two month US Dollar LIBOR settings, (2) June 30, 2023 for overnight, one month, two month, three month, six month and twelve month US Dollar LIBOR settings and (3) December 31, 2021 for all GBP, EUR, CHF and JPY LIBOR settings. UK’s Financial Conduct Authority (the “FCA”) followed with an announcement that those LIBOR settings will either cease to be provided by any administrator or no longer be representative after the dates set forth above and the FCA does not expect any of the LIBOR settings to become unrepresentative before the dates set forth above. The cessation dates match those included in IBA and FCA announcements in November and December 2020.

The announcements do not rule out the possibility that the FCA will require the IBA to continue to publish additional “synthetic” LIBOR settings after the aforementioned dates of cessation. The FCA has advised that in the second quarter it will consult on using proposed new powers that the UK government is legislating to require continued publication on a synthetic basis of one month, three month and six month Sterling LIBOR settings and Japanese Yen LIBOR settings, and it is considering whether to use these powers to require continued publication of one month, three month and six month US Dollar LIBOR settings, solely for use in certain legacy contracts after the cessation dates noted above.

On March 5, 2021, International Swaps and Derivatives Association (“ISDA”) released a statement that the announcements that day constituted an index cessation under ISDA’s IBOR Fallback Supplement and the ISDA 2020 IBOR Fallbacks Protocol for all 35 LIBOR settings. The impact of this statement is that the ISDA spread adjustments for



LIBOR fallback that are published by Bloomberg were fixed as of March 5, 2021 for all US Dollar, Euro, Sterling, Swiss Franc and Japanese Yen LIBOR settings.²

IMPLICATIONS

In most formulations of LIBOR replacement language, whether hardwiring in a replacement benchmark or requiring an amendment to implement a replacement benchmark, the IBA and FCA announcements regarding the future cessation and non-representativeness of certain LIBOR settings will constitute a “Benchmark Transition Event”, as a public statement of an administrator of LIBOR stating that it will cease to provide all tenors of LIBOR. On March 9, 2021, the Alternative Reference Rates Committee (ARRC) confirmed that in its opinion the IBA and FCA announcements on March 5, 2021 constitute a Benchmark Transition Event with respect to all USD LIBOR settings under the ARRC fallback language for new issuances or originations of LIBOR floating rate notes, securitizations, syndicated business loans, and bilateral business loans. The occurrence of a Benchmark Transition Event typically requires the delivery of a notice by an agent or lender regarding the occurrence of a Benchmark Transition Event and referencing the relevant cessation and/or non-representativeness dates. On March 10, 2021, the Loan Syndications and Trading Association (the “LSTA”) published a generic form of notice for agents and lenders to be able to reference when drafting notices to comply with the requirements of the LIBOR replacement language in specific agreements.³ The delivery of the notice should not trigger any other immediate actions, and senders may wish to include language in the notice that states that the notice is solely a notice and does not trigger the transition to a replacement benchmark. As a practice note, it is not necessary or advisable to distinguish between the IBA and FCA announcements and distinguish which announcement triggered a Benchmark Transition Event; instead, agents and lenders should feel comfortable providing a notice that references both announcements.

LIBOR replacement language in agreements typically sets a “Benchmark Replacement Date” as the date on which all tenors of US Dollar LIBOR settings will cease to be provided, meaning that such date will be set as June 30, 2023. Agreements using an amendment approach for LIBOR replacement, rather than a hardwired approach, typically have a “Benchmark Transition Start Date” set some number of days before the Benchmark Replacement Date for the negotiation of the replacement benchmark and related amendment. ARRC’s recommended amendment formulation suggested 90 days, so agreements that follow that approach will have a Benchmark Transition Start Date of April 1, 2023. Since the Benchmark Replacement Date is generally tied to the cessation of all tenors of US Dollar LIBOR settings, the earlier cessation of one week and two month US Dollar LIBOR settings should not generally trigger an earlier replacement date. However, practically speaking, agents and lenders should consider removing such tenor options from new contracts and ensuring that adequate language is included in existing contracts to address LIBOR unavailability before the end of 2021.

There is an expectation in the market that recommended LIBOR replacement language will be updated in due course to reflect the occurrence of a Benchmark Transition Event prior to the entry into new contracts. Until such time as the recommended language is available, it may be prudent for agents and lenders to include a statement in the definition of Benchmark Transition Event stating that such an event occurred on March 5, 2021 and/or deliver a notice of the occurrence of such an event concurrently with the entry into the new contract.

Note that the occurrence of one Benchmark Transition Event and the setting of one Benchmark Replacement Date does not preempt the occurrence of another Benchmark Transition Event and/or another Benchmark Replacement Date in the future. If there are multiple dates that are set as Benchmark Replacement Dates, the earliest of such events will be the relevant one for the benchmark transition.

Even though the LIBOR cessation dates for most USD LIBOR settings have been extended through June 30, 2023, on March 9, 2021, the Board of Governors of the Federal Reserve System reiterated its previous guidance encouraging



banks to cease entering into new contracts using US Dollar LIBOR as a reference as soon as practicable, and in any event by December 31, 2021. Federal Reserve Bank examiners have been advised to review banks' progress in achieving this goal, in order to facilitate an orderly LIBOR transition.

For more information regarding the transition away from LIBOR, please see:

[What Happened To My Interest Rate? Planning Now To Avoid Value Transfer And Other Risks Upon The Demise Of U.S. Libor](#), [What Happened to My Interest Rate? A Deep Dive into Hardwiring Predictability and Fairness for LIBOR Transition in Loans, Derivatives and other Contracts](#), [Is My Libor Back?](#), [Can't We All Just Get Along? Four Key Areas of Dispute in the Evolving Landscape of LIBOR Cessation Litigation](#) and [What Happened to My Interest Rate? Fed Intensifies Scrutiny of Lenders' SOFR Transition Efforts](#).

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¹ The IBA is the Financial Conduct Authority-regulated and authorized administrator of LIBOR.

² The spread adjustment values for each currency and tenor are available at: <https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation-Announcement-20210305.pdf>

³ The LSTA generic form of notice is available at: <https://www.lsta.org/content/notice-of-iba-and-fca-announcements/>

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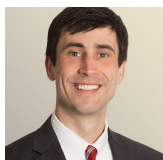
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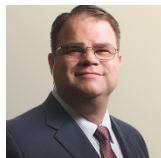
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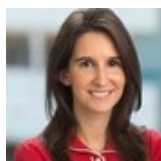
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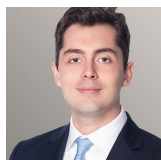
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