

**MARCH 30, 2021**

For more information,  
contact:

Shane Dornburg  
+1 404 572 2718  
[sdornburg@kslaw.com](mailto:sdornburg@kslaw.com)

Frank X. Schoen  
+1 212 556 2113  
[fschoen@kslaw.com](mailto:fschoen@kslaw.com)

Michelle Tang  
+1 212 556 2355  
[mltang@kslaw.com](mailto:mltang@kslaw.com)

---

**King & Spalding**

New York  
1185 Avenue of the Americas  
New York, New York 10036-4003  
Tel: +1 212 556 2100

## What is Happening to My LIBOR Now? Simplification of the ARRC's Hardwired Approach

---

On March 25, 2021, the Alternative Reference Rates Committee (the "ARRC") issued supplemental guidance to its recommended hardwired fallback language for U.S. dollar LIBOR denominated syndicated and bilateral business loans. The ARRC's supplemental guidance provides a more streamlined version of the fallback language for syndicated business loans (which the ARRC issued in June 2020) and bilateral business loans (which the ARRC issued in August 2020). The ARRC's supplemental guidance comes on the heels of the March 5, 2021 announcements made by the ICE Benchmark Administration<sup>1</sup> (the "IBA") and the UK's Financial Conduct Authority (the "FCA") formally announcing LIBOR's cessation. The ultimate goal of the ARRC's supplemental guidance—made possible given the certainty on fallback timing and the applicable spread adjustments in the wake of the March 5, 2021 announcements—is the simplification of the 2020 hardwired fallback language to further support an orderly transition from USD LIBOR to the Secured Overnight Financing Rate ("SOFR").

### SIMPLIFICATIONS TO THE HARDWIRED APPROACH

The ARRC's supplemental guidance does not replace or supersede the ARRC's prior hardwired fallback language issued in 2020. Instead, the ARRC's supplemental guidance offers a simplified approach to arrive at the same substantive result as the 2020 hardwired fallback language. This section describes in some detail the primary simplifications that the ARRC incorporated into its recommended hardwired fallback language, but the general takeaway for market participants is that the ARRC's supplemental guidance is more accessible and transparent.

First, given the clarity on fallback timing as a result of the March 2021 announcements by the IBA and the FCA (which announcements constituted the occurrence of a "Benchmark Transition Event" under the 2020 hardwired fallback language), the replacement of USD LIBOR is now addressed in an operative provision that is separate from the provisions addressing the replacement of future benchmarks. Previously,



the definitions for “Benchmark Transition Event” and “Benchmark Replacement Date” described the trigger event and the effective date of the transition from USD LIBOR to the fallback reference rate. The supplemental guidance now addresses USD LIBOR through an operative provision referencing the March 2021 announcements by the IBA and the FCA and provides for a transition effective date on the earlier of (1) the date that the IBA ceases to support all tenors of LIBOR or the FCA announces in a public statement that LIBOR is no longer representative and (2) the Early Opt-In Effective Date. The supplemental guidance continues to include provisions addressing the potential occurrence of future “Benchmark Transition Events” for reference rates other than USD LIBOR. For those market participants who nevertheless plan to use the 2020 hardwired fallback language, the ARRC’s supplemental guidance is a reminder that, as a result of the announcements from the IBA and FCA, a “Benchmark Transition Event” has occurred as of March 5, 2021, and those market participants should revise the 2020 hardwired fallback language to acknowledge the occurrence of the “Benchmark Transition Event”.

Second, the spread adjustments for LIBOR fallback have been hardcoded into the definition of “Benchmark Replacement” because, following the March 2021 announcements by the IBA and FCA, these spread adjustments have been published by Bloomberg and are fixed as of March 5, 2021 for all US Dollar, Euro, Sterling, Swiss Franc and Japanese Yen LIBOR settings.<sup>2</sup> As a result, the ARRC was able to remove the “Benchmark Replacement Adjustment” mechanics which previously addressed the then-unknown spread adjustments.

Finally, the supplemental guidance sets forth a two-step waterfall to determine the successor rate to be used: (1) Term SOFR plus a hardcoded adjustment (as described above) or (2) Daily Simple SOFR plus the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of USD LIBOR with a SOFR-based rate having the same length as the applicable interest payment period. The second step of the waterfall reflects a refinement by the ARRC in light of recognition that Daily Simple SOFR is a daily rate (rather than Term SOFR or USD LIBOR, which feature tenors) and therefore an interest payment is required frequency (i.e., monthly or quarterly) and the applicable spread adjustment is a function of such interest payment frequency.

We further note that the two-step waterfall is designed to address an as-of-yet unknown variable affecting LIBOR transition: while the ARRC reiterated its intention to recommend a forward-looking term SOFR for use as a fallback rate, it is uncertain whether an IOSCO-compliant benchmark<sup>3</sup> that is also acceptable to the ARRC will be available prior to June 30, 2023 (the scheduled cessation date for the remaining USD LIBOR tenors). If the ARRC is unable to conclude that an IOSCO-compliant forward-looking SOFR term rate is available, then the second step in the fallback waterfall continues to be Daily Simple SOFR. Despite the ARRC’s intention to recommend a forward-looking term SOFR for use as a fallback rate, the ARRC has acknowledged that it will not be in a position to make such a recommendation by mid-2021 because, among other reasons, liquidity in SOFR derivatives markets may not have developed sufficiently. The ARRC has encouraged market participants to continue to transition from LIBOR, without waiting for a forward-looking term SOFR, by using a non-forward-looking rate such as Daily Simple SOFR (i.e., the second level in the fallback waterfall). In fact, borrowers who intend to enter into interest rate swaps may find it advantageous to consider removing the option for Term SOFR and thereby falling back to Daily Simple SOFR (or, as an alternative to the ARRC’s recommendation, Daily Compound Simple SOFR) in order to align the replacement reference rate more closely with the International Swap and Derivatives Association’s selected fallback rate and the floating rate option for “SOFR”.

## CONCLUSION

In light of the increased certainty on the timing of LIBOR cessation and the applicable spread adjustments, the ARRC’s supplemental guidance offers greater transparency and more user-friendly provisions to market participants. The ARRC previously recommended that all market participants adopt hardwired fallback language by December 31, 2020, and the supplemental guidance provides a simplified and streamlined approach that is designed to facilitate the discussion and



adoption of hardwired fallback language by those market participants who have not yet adopted the hardwired fallback language in preparation for LIBOR's cessation.

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](#), [What Happened to My Interest Rate? Fed Intensifies Scrutiny of Lenders' SOFR Transition Efforts](#) and [And So it Begins: What Recent Announcements Mean for the Future of LIBOR](#)

---

## ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,200 lawyers in 22 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising." View our [Privacy Notice](#).

ABU DHABI	CHARLOTTE	GENEVA	MOSCOW	RIYADH	TOKYO
ATLANTA	CHICAGO	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.
AUSTIN	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY	
BRUSSELS	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE	

---

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

<sup>2</sup> 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](https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation_Announcement_20210305.pdf).

<sup>3</sup> The International Organization of Securities Commissions, the international body comprising the world's securities regulators.

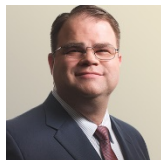



---

**K&S LIBOR TRANSITION TEAM:**


**Brandon Dalling**  
*Partner*  
+1 212 556 2329  
bdalling@kslaw.com

Financial Services, Project Finance, Leveraged Finance, Swaps & Derivatives and Commercial Contracts



**Shane Dornburg**  
*Partner*  
+1 404 572 2718  
sdornburg@kslaw.com

Financial Services, Leveraged Finance, Asset Based Finance, Acquisition Finance and Commercial Contracts



**Ayesha Chatterjee**  
*Partner*  
+1 212 556 2184  
achatterjee@kslaw.com

Financial Services, Leveraged Finance, Acquisition Financings and Asset Based Finance



**Robert Dedman**  
*Partner*  
+44 20 7551 7552  
rdedman@kslaw.com

Financial Services, Financial Services Regulatory



**Sandra Lazorcheck**  
*Partner*  
+1 704 503 2604  
slazorcheck@kslaw.com

Financial Services, Leveraged Finance, Acquisition Finance, Investment Grade Finance, Capital Markets and Commercial Contracts



**Leigh Nathanson**  
*Partner*  
+1 212 790 5359  
lnathanson@kslaw.com

Financial Services, Litigation



**Michael Rainey**  
*Partner*  
+971 4 377 9986  
mrainey@kslaw.com

Financial Services, Leveraged Finance, Project Finance



**Asal Saghari**  
*Counsel*  
+971 4 377 9962  
asaghari@kslaw.com

Financial Services, Leveraged Finance



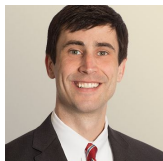
**Frank X. Schoen**  
*Counsel*  
+1 212 556 2113  
fschoen@kslaw.com

Financial Services, Project Finance, Acquisition Finance and Commercial Contracts



**William Westbrook**  
*Counsel*  
+1 404 572 2778  
wwestbrook@kslaw.com

Financial Services, Leveraged Finance, Swaps & Derivatives



**James Gallagher**  
*Associate*  
+1 212 556 2304  
james.gallagher@kslaw.com

Financial Services, Floating-Rate Debt and Commercial Contracts



**Andrew James**  
*Associate*  
+1 404 572 4680  
ajames@kslaw.com

Financial Services, Capital Markets and Commercial Contracts