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Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexis.com

MATTHEW BENDER

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Recent Announcements Concerning the Cessation of LIBOR

Arturo Caraballo, Edmond Gabbay, Sheryl Gittlitz, Alan Glantz, Gregory Harrington, Rashmi Seth, and David J. Valeck*

In this article, the authors discuss recent developments relating to the end of LIBOR.

On March 5, 2021, ICE Benchmark Administration Limited ("IBA"), the administrator for LIBOR, announced[1] that it will permanently cease to publish LIBOR beginning on the following dates (the "Cessation Effective Dates"):

- January 1, 2022 for:
  - All seven EUR LIBOR settings;
  - All seven CHF LIBOR settings;
  - All seven JPY LIBOR settings;
  - All seven GBP LIBOR settings; and
  - One-week and two-month USD LIBOR settings.
- July 1, 2023 for the overnight, one-month, three-month, six-month and 12-month USD LIBOR settings.

No successor administrator was identified in the IBA announcement.

The IBA's regulator, the UK's Financial Conduct Authority ("FCA"), promptly confirmed the IBA's announced timetable in its own separate announcement[2] on the same date.

The FCA also indicated that it will consult with the IBA regarding the continued publication, beginning on the respective Cessation Effective Dates, of the following nine LIBOR settings on a non-representative, synthetic basis:[3]

- One-month, three-month, and six-month GBP LIBOR settings for an

* The authors, attorneys with Arnold & Porter Kaye Scholer LLP, may be contacted at arturo.caraballo@arnoldporter.com, edmond.gabbay@arnoldporter.com, sheryl.gittlitz@arnoldporter.com, alan.glantz@arnoldporter.com, gregory.harrington@arnoldporter.com, rashmi.seth@arnoldporter.com, and david.valeck@arnoldporter.com, respectively.

[1] The IBA announcement can be found at https://ir.theice.com/press/news-details/2021/ICE-Benchmark-Administration-Publishes-Feedback-Statement-for-the-Consultation-on-Its-Intention-to-Cease-the-Publication-of-LIBOR-Settings/default.aspx.

[2] The FCA announcement can be found at https://www.fca.org.uk/news/press-releases/announcements-end-libor.

[3] The continued publication of these nine LIBOR settings would be an exercise of certain new powers that would be granted to the FCA under a proposed Financial Services Bill that is being

undefined period;

- One-month, three-month, and six-month JPY LIBOR settings for one additional year; and
- One-month, three-month, and six-month USD LIBOR settings for an undefined period.

Notwithstanding the potential continuation of publication of these nine LIBOR settings, the FCA announcement made clear that these LIBOR settings will "no longer be representative of the underlying market and economic reality" after the respective Cessation Effective Dates and included an express acknowledgement that fallback provisions contained in contracts that reference the affected LIBOR settings would be triggered, as further detailed below.

EFFECT OF ANNOUNCEMENTS

The announcements by the IBA and FCA affect (1) derivatives documentation between parties that have adhered to the ISDA 2020 IBOR Fallbacks Protocol (or that have bilaterally agreed to the IBOR Fallbacks Supplement) (collectively, the "ISDA Fallback Language") and that reference one or more of the 35 affected LIBOR settings, and (2) floating rate notes, securitization documentation, bilateral business loan agreements and syndicated loan agreements (collectively, "loan agreements")[4] that incorporate the contractual USD LIBOR fallback provisions recommended by the Alternative Reference Rates Committee ("ARRC") in the United States (the "ARRC Fallback Language").[5]

Derivatives Incorporating ISDA Fallbacks

The FCA announcement constitutes an Index Cessation Event (as defined in the ISDA Fallback Language) with respect to all 35 affected LIBOR settings effective as of March 5, 2021.

Such an Index Cessation Event does not, however, mean that the new fallback rates (i.e., Fallback Rates as defined in the ISDA Fallback Language) will apply immediately to those derivatives transactions that utilize the ISDA Fallback Language (unless otherwise provided in the relevant derivatives documentation).

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considered by the UK Parliament. It is, therefore, subject to enactment of the Financial Services Bill.

[4] For the avoidance of doubt, the term "loan agreements" does not include any agreements relating to loans made to consumer borrowers.

[5] This article is based on the "hardwired" ARRC Fallback Language. The precise effect of the IBA's and FCA's announcements will be different for loan agreements that incorporate material modifications to the ARRC Fallback Language or fallback language based on the ARRC's "amendment" approach.

Rather, the Fallback Rates will begin to apply on the applicable Index Cessation Effective Dates, which are as follows:

- January 1, 2022 for:
  - All seven EUR LIBOR settings;
  - All seven CHF LIBOR settings;
  - All seven JPY LIBOR settings; and
  - All seven GBP LIBOR settings.
- July 1, 2023 for all seven USD LIBOR settings.

Note that the Index Cessation Effective Date for the one-week and two-month settings of USD LIBOR (i.e., July 1, 2023) is different than the date on which such settings will permanently cease to be published (i.e., January 1, 2022). For these two settings only, linear interpolation based on the longer and shorter tenors (which will continue to be published before July 1, 2023) will be used to determine those settings from January 1, 2022 through June 30, 2023. Once linear interpolation is no longer possible for those settings (i.e., commencing on July 1, 2023), an Index Cessation Effective Date will be deemed to have occurred with respect to those settings.

On the other hand, loan agreements that incorporate the ARRC Fallback Language do not provide for such linear interpolation for the one-week and two-month USD LIBOR settings for the period beginning January 1, 2022 through June 30, 2023; instead, as described below, loan agreements that provide one-week or two-month USD LIBOR options only will transition to the new fallback rates (i.e., the "Benchmark Replacement" as defined in the ARRC Fallback Language) on January 1, 2022.

As a result, this is an area of potential divergence between these loans and the associated derivatives, as a loan agreement that references one-week or two-month USD LIBOR settings that has transitioned to a Benchmark Replacement may have a rate that is different from the interpolated rate referenced in its associated derivatives until the new Fallback Rates apply on July 1, 2023.[6]

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[6] We note that the ISDA Fallback Language contemplates the use of compounded Fallback Rates set in arrears. In the case of derivatives that reference USD LIBOR, the Fallback Rate would be compounded SOFR in arrears. In our experience, many loan market participants have adopted the ARRC Fallback Language which contemplates the use of Term SOFR or, if that is not available, Daily Simple SOFR, rather than compounded SOFR in arrears. This is another potential area of divergence between loan agreements that incorporate the ARRC Fallback Language and derivatives that incorporate the ISDA Fallback Language.

Loan Agreements Incorporating ARRC Fallbacks

For loan agreements that incorporate the ARRC Fallback Language, the ARRC has confirmed that the IBA's and FCA's announcements constitute a Benchmark Transition Event (as defined in the ARRC Fallback Language) for all USD LIBOR settings. This does not, however, mean that the applicable Benchmark Replacement will begin to apply immediately to such loan agreements (unless otherwise provided in such agreements). Rather, the transition to a Benchmark Replacement will occur on the date on which all Available Tenors (as defined in the ARRC Fallback Language) under the loan agreement permanently and indefinitely cease to be published.

Accordingly, the applicable Benchmark Replacement Dates (as defined in the ARRC Fallback Language) will be:

- January 1, 2022 for loan agreements that provide one-week and two-month USD LIBOR options only; and
- July 1, 2023 for loan agreements that provide any of following USD LIBOR options: overnight, one-month, three-month, six-month, and 12-month USD LIBOR.

Lenders (for bilateral loans) and administrative agents (for syndicated loans) under loan agreements that incorporate the ARRC Fallback Language will need to promptly notify the borrower that the a Benchmark Transition Event has occurred and the applicable Benchmark Replacement Date.

Fixing of Spread Adjustment

Bloomberg Index Services Limited ("BISL") currently publishes "indicative" spreads for each LIBOR setting for informational purposes. Under the ISDA Fallback Language, the spread for a specific LIBOR setting becomes "fixed" upon the earlier to occur of (i) an Index Cessation Event, or (ii) a public statement or publication of information constituting, in effect, an Index Cessation Event under circumstances where linear interpolation is no longer possible. As noted above, the FCA announcement constitutes an Index Cessation Event for all 35 LIBOR settings addressed by the announcement with an effective date of March 5, 2021. BISL has confirmed this conclusion and, accordingly, March 5, 2021 has been designated as the Spread Adjustment Fixing Date (as defined in the ISDA Fallback Language) for each LIBOR setting.[7]

[7] BISL issued a technical notice regarding the fixing of the spread adjustment for the 35 LIBOR settings addressed in the FCA announcement. The technical notice can be found at https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation_Announcement_20210305.pdf.

For loan agreements that incorporate the ARRC Fallback Language, the spread adjustment (i.e., Benchmark Replacement Adjustment as defined in the ARRC Fallback Language) is determined according to the following hierarchy:

- The spread adjustment selected or recommended by the ARRC, then
- The spread adjustment selected or recommended by ISDA.

The ARRC has stated that its recommended spread adjustments for non-consumer cash products that reference USD LIBOR will be the same as the spread adjustments applicable to USD LIBOR under the ISDA Fallback Language. Accordingly, the spread adjustments for USD LIBOR settings that were set (or fixed) by BISL on March 5, 2021 will apply to loan agreements that incorporate the ARRC Fallback Language.

Below is a table of fixed spread adjustments set by BISL.

LIBOR	**Tenor**	**Ticker**	**Spread Adjustment (%)**
CHF	Spot/Next	SSF00SN Index	-0.0551
CHF	1 Week	SSF001W Index	-0.0705
CHF	1 Month	SSF001M Index	-0.0571
CHF	2 Months	SSF002M Index	-0.0231
CHF	3 Months	SSF003M Index	0.0031
CHF	6 Months	SSF006M Index	0.0741
CHF	12 Months	SSF0012M Index	0.2048
EUR	Overnight	SEE00ON Index	0.0017
EUR	1 Week	SEE0001W Index	0.0243
EUR	1 Month	SEE0001M Index	0.0456
EUR	2 Month	SEE0002M Index	0.0753
EUR	3 Month	SEE0003M Index	0.0962
EUR	6 Month	SEE0006M Index	0.1537
EUR	12 Month	SEE0012M Index	0.2993
GBP	Overnight	SBP00ON Index	-0.0024
GBP	1 Week	SBP0001W Index	0.0168
GBP	1 Month	SBP0001M Index	0.0326
GBP	2 Month	SBP0002M Index	0.0633
GBP	3 Month	SBP0003M Index	0.1193
GBP	6 Month	SBP0006M Index	0.2766
GBP	12 Month	SBP0012M Index	0.4644
JPY	Spot/Next	SJY00SN Index	-0.01839
JPY	1 Week	SJY0001W Index	-0.01981
JPY	1 Month	SJY0001M Index	-0.02923
JPY	2 Month	SJY0002M Index	-0.00449
JPY	3 Month	SJY0003M Index	0.00835
JPY	6 Month	SJY0006M Index	0.05809
JPY	12 Month	SJY0012M Index	0.16600
USD	Overnight	SUS00ON Index	0.00644

USD	1 Week	SUS0001W Index	0.03839
USD	1 Month	SUS0001M Index	0.11448
USD	2 Month	SUS0002M Index	0.18456
USD	3 Month	SUS0003M Index	0.26161
USD	6 Month	SUS0006M Index	0.42826
USD	12 Month	SUS0012M Index	0.71513