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THE END IS NEAR: LIBOR CESSATION DATES FORMALLY ANNOUNCED

To Our Clients and Friends:

On March 5, 2021, regulators and industry groups provided market participants with much anticipated clarity by announcing the dates for the cessation of publication of, and non-representativeness of, various settings of the London Interbank Offered Rate ("**LIBOR**")[1] which will allow market participants to identify the date that their financial instruments and commercial agreements that reference LIBOR will transition to an alternative reference rate (*e.g.*, a risk free rate).

The March 5th announcement is not only critical in providing certainty for the financial markets regarding timing for the replacement of LIBOR, but the announcement will also fix the spread adjustment contemplated under certain industry-standard documents as of March 5, 2021—thereby providing greater clarity around the economic impact of the transition from LIBOR to a risk free rate, like the Standard Overnight Financing Rate ("**SOFR**") or the Sterling Overnight Index Average ("**SONIA**").

LIBOR Announcement

The ICE Benchmark Administration Limited ("**IBA**"), the authorized administrator of LIBOR, published on March 5, 2021 a feedback statement on its consultation regarding its intention to cease the publication of LIBOR (the "**IBA Feedback Statement**").[2] The IBA Feedback Statement comes in response to the consultation published by IBA on December 4, 2020 (the "**Consultation**")[3] and confirmed IBA's intention to cease the publication of:

- EUR, CHF, JPY and GBP LIBOR for all tenors after December 31, 2021;
- one week and two month USD LIBOR after December 31, 2021; and
- all other USD LIBOR tenors (*e.g.*, overnight, one month, three month, six month and twelve month) after June 30, 2023.

Concurrent with the publication of the IBA Feedback Statement, the UK Financial Conduct Authority (the "**FCA**") announced the future cessation or loss of representativeness of the 35 LIBOR settings published in five currencies (the "**FCA Announcement**") from the above mentioned dates.[4]

Summary of FCA Announcement and IBA Feedback Statement:

Last Date of Publication or Representativeness is December 31, 2021:			
Currency	**Tenors**	**Spread Adjustment Fixing Date**	**Result**
EUR LIBOR	All Tenors (Overnight, 1 Week, 1, 2, 3, 6 and 12 Months)	March 5, 2021	Permanent Cessation.
CHF LIBOR	All Tenors (Spot Next, 1 Week, 1, 2, 3, 6 and 12 Months)	March 5, 2021	Permanent Cessation.
JPY LIBOR	Spot Next, 1 Week, 2 Month and 12 Month	March 5, 2021	Permanent Cessation.
JPY LIBOR	1 Month, 3 Month and 6 Month	March 5, 2021	Non-Representative. "Synthetic" rate possible for one additional year.
GBP LIBOR	Overnight, 1 Week, 2 Month and 12 Month	March 5, 2021	Permanent Cessation.
GBP LIBOR	1 Month, 3 Month and 6 Month	March 5, 2021	Non-Representative. "Synthetic" rate possible for a "further period" after end-2021.
USD LIBOR	1 Week and 2 Month	March 5, 2021	Permanent Cessation

Last Date of Publication or Representativeness is June 30, 2023:			
Currency	**Tenors**	**Spread Adjustment Fixing Date**	**Result**
USD LIBOR	Overnight and 12 Month	March 5, 2021	Permanent Cessation.
USD LIBOR	1 Month, 3 Month and 6 Month	March 5, 2021	Non-Representative. "Synthetic" rate possible for a "further period" after end-June 2023.

The FCA Announcement and the IBA Feedback Statement are critical as they make clear the dates on which certain LIBOR settings will cease to exist or become non-representative (as described in more detail above), and they will serve as a "trigger event" for the fallback provisions in industry standard or recommended documentation, including those fallback provisions recommended by the Alternative Reference Rates Committee ("**ARRC**") with respect to USD LIBOR and the fallback provisions in the International Swaps and Derivatives Association ("**ISDA**") documentation.[5]

The FCA Announcement drew attention in markets around the globe. For example, the Asia Pacific Loan Market Association ("**APLMA**") issued a statement on March 8, 2021 in which it clarified the APLMA's understanding of the FCA Announcement: The APLMA stated that the FCA Announcement indicates that the most widely used USD LIBOR settings in Asia, such as 1, 3 and 6 Month USD LIBOR, will continue to be published until June 30, 2023 and will continue to be representative until that date. The APLMA also confirmed that based on undertakings received from the panel banks, the FCA does not expect that any LIBOR settings will become unrepresentative before the relevant dates set out above.

ISDA Index Cessation Event Announcement

Relatedly, shortly after the publication of the IBA Feedback Statement and the FCA Announcement, ISDA announced that these statements constitute an "Index Cessation Event" under the IBOR Fallbacks Supplement (Supplement Number 70 to the 2006 ISDA Definitions) and the ISDA 2020 IBOR Fallbacks Protocol, which in turn triggers a "Spread Adjustment Fixing Date" under the Bloomberg IBOR Fallback Rate Adjustments Rule Book for all LIBOR settings on March 5, 2021.[6] The ARRC has stated[7] that its recommended spread adjustments for fallback language in non-consumer cash products referencing USD LIBOR (*e.g.*, business loans, floating rate notes, securitizations) will be the same as the spread adjustments applicable to fallbacks in ISDA's documentation for USD LIBOR.[8] For further information on why a spread adjustment is necessary, see our previous alert from May 2020.[9]

This ISDA announcement provides market participants holding legacy contracts with greater clarity regarding the economic impact of the transition from LIBOR to risk free rates; however, even though the spread adjustment is now fixed, a value transfer is nonetheless expected to occur as a result of transition. This is because the spread adjustment looks backwards to the median difference between the risk free rate and LIBOR over the previous five years, which is unlikely to be equivalent to what the net present value of the relevant instrument would have been at the time of transition, had LIBOR not been discontinued / ceased to be representative. For example, in the case of USD LIBOR, when all tenors cease to be published or are deemed non-representative (at the end of December 2021 or June 2023, as the case may be) fallbacks for swaps will shift to SOFR, plus the spread adjustment that has now been fixed as of March 5, 2021. The fallback replacement rate of SOFR plus the spread adjustment that was fixed over two years prior is unlikely to match what would, absent transition, have been the net present value of such swap on the applicable LIBOR end date, thereby ultimately resulting in a value transfer to one party. However, the extent to which such value transfer will impact a particular financial instrument on the relevant LIBOR end date is unclear, as markets have been pricing in, and will continue to price in, the expected transition when valuing legacy instruments referencing LIBOR.

Potential "Synthetic" LIBOR for Limited Use

The IBA Feedback Statement explains that in the absence of sufficient bank panel support and without the intervention of the FCA to compel continued panel bank contributions to LIBOR, IBA is required to cease publication of the various LIBORs after the dates described above.[10] Importantly, the IBA Feedback Statement and the FCA Announcement note that the UK government has published draft legislation (in proposed amendments to the UK Benchmarks Regulation set out in the Financial Services Bill 2019-21)[11] proposing to grant the FCA the power to require IBA to continue publishing certain LIBOR settings for certain limited (yet to be finalized) purposes, using a changed methodology known as a "synthetic" basis.

Specifically, the FCA has advised IBA that "it has no intention of using its proposed new powers to require IBA to continue publication of any EUR or CHF LIBOR settings, or the Overnight/Spot Next, 1 Week, 2 Month and 12 Month LIBOR settings in any other currency beyond the intended cessation dates for such settings." However, for the nine remaining LIBOR benchmark settings, the FCA has advised IBA that it will consult on using its proposed new powers to require IBA to continue publishing, on a synthetic basis, 1 Month, 3 Month and 6 Month GBP and JPY LIBOR (for certain limited periods of time) and will continue to consider the case for the "synthetic" publication of 1 Month, 3 Month and 6 Month USD LIBOR. On March 5, 2021, the FCA also published statements of policy regarding some of the proposed new powers that the UK government is considering granting to the FCA. These statements of policy include more detail on why the FCA is making these distinctions (*e.g.*, to reduce disruption and resolve recognized issues around certain "tough legacy" contracts) and explain the intended methodology for the publication of the identified LIBORs on a synthetic basis (*i.e.*, a forward looking term rate version of the relevant risk free rate, plus a fixed spread adjustment calculated over the same period, and in the same way as the spread adjustment implemented in the IBOR Fallbacks Supplement and the 2020 IBOR Fallbacks Protocol published by ISDA).[12]

If the FCA is granted the power to, and decides to require IBA to continue the publication of any LIBOR setting on a "synthetic" basis, the FCA Announcement makes clear that the synthetic LIBOR settings will no longer be deemed "representative of the underlying market and economic reality the setting is intended to measure"[13] (notwithstanding that the FCA may be able to compel the publication of a "synthetic" LIBOR rate for one or more of the 1 Month, 3 Month or 6 Month tenors for JPY LIBOR, GBP LIBOR and/or USD LIBOR beyond the set cessation date).

Notably, if the UK government decides to grant the FCA the power to, and the FCA decides to compel IBA to publish "synthetic" LIBOR for certain settings, the intent would be to assist only holders of certain categories of legacy contracts that have no or inappropriate alternatives and cannot practically be renegotiated or amended (so called "tough legacy" contracts, such as notes which may require up to 90% or 100% noteholder consent to amend the relevant terms of the note).[14] As such, the powers are intended to be of limited use, and regulators have consistently stressed the need for market participants to actively transaction their legacy contracts. For example, under the proposals in the UK Financial Services Bill, UK regulated firms would be prohibited from using such "synthetic" LIBOR settings in regulated financial instruments. The FCA plans to consult on the "tough legacy" contracts that will be permitted to use "synthetic" LIBOR in the second quarter of this year.

Conclusion

The announcements on March 5th bring us one step closer to the cessation of LIBOR. The announcements are likely to offer market participants much needed clarity regarding the timing, and economics, of the transition of LIBOR to alternative reference rates. They also provide a reminder to, and increase pressure on, market participants to actively transition their financial instruments and commercial agreements that reference LIBOR to risk free rates.

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[1] LIBOR is the index interest rate for tens of millions of contracts worth hundreds of trillions of dollars, ranging from complex derivatives to residential mortgages to bilateral and syndicated business loans to commercial agreements.

[2] ICE LIBOR® Feedback Statement on Consultation on Potential Cessation (March 5, 2021), *available here.*

[3] ICE LIBOR® Consultation on Potential Cessation (December 2020), *available here.*

[4] "FCA announcement on future cessation and loss of representativeness of the LIBOR benchmarks," Financial Conduct Authority (March 5, 2021), *available here.*

[5] We note that although the FCA Announcement and IBA Feedback Statement would constitute "trigger events" under ARRC standard fallback language (*e.g.*, a "Benchmark Transition Event") and under ISDA standard fallback language (*e.g.*, an "Index Cessation Event"), such financial instruments would continue to reference LIBOR until the date that LIBOR ceases to be published or is deemed non-representative (*i.e.*, after December 31, 2021 or after June 30, 2023). In other words, the date on which

LIBOR changes to a risk free rate and the "trigger event" will likely be two distinct events as a result of the announcement.

[6] *See* Future Cessation and Non-Representativeness Guidance on FCA announcement on future cessation and loss of representativeness of the LIBOR benchmarks, ISDA (March 5, 2021), *available here*; *see also* IBOR Fallbacks, Technical Notice – Spread Fixing Event for LIBOR, Bloomberg, *available here.*

[7] *See* "ARRC Commends Decisions Outlining the Definitive Endgame for LIBOR," Alternative Reference Rates Committee (March 5, 2021), *available here*; "ARRC Announces Further Details Regarding Its Recommendation of Spread Adjustments for Cash Products," Alternative Reference Rates Committee (June 30, 2020), *available here*.

[8] The ARRC followed ISDA's announcement stating that the IBA Feedback Statement and the FCA Announcement constitute a "Benchmark Transition Event" with respect to all USD LIBOR settings pursuant to the ARRC's recommended fallbacks for new issuances of LIBOR floating rate notes, securitizations, syndicated business loans and bilateral business loans. See "ARRC Confirms a "Benchmark Transition Event" has occurred under ARRC Fallback Language," ARRC (March 8, 2021), *available here.*

[9] *See* Tax implications of benchmark reform: UK tax authority weighs in, Gibson Dunn (May 2020) *available here.*

[10] IBA received 55 responses to the Consultation which are summarized in the IBA Feedback Statement. IBA notes that it shared and discussed the feedback received on the Consultation with the FCA.

[11] The text and status of the Financial Services Bill 2019-21 are *available here.*

[12] *See* "Proposed amendments to the Benchmarks Regulation," Policy Statement, FCA (March 5, 2021) *available here.*

[13] FCA Announcement at footnote 3.

[14] *See* "Paper on the identification of Tough Legacy issues," The Working Group on Sterling Risk-Free Reference Rates (May 2020), *available here.*

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