

March 2021

Follow @Paul\_Hastings



## *FCA & IBA Announcements Signal Definitive Endgame for LIBOR*

By [Joyce Sophia Xu](#), [Diona Park](#) & [Matthew Smith](#)

On March 5, 2021, the UK's Financial Conduct Authority ("FCA") and the ICE Benchmark Administration ("IBA"), the authorized and regulated administrator of LIBOR, announced that all LIBOR settings will either cease to be provided by any administrator or will no longer be representative according to the following timeline:

- December 31, 2021 for
  - all GBP, EUR, CHF, and JPY LIBOR settings; and
  - one-week and two-month USD LIBOR settings;
- June 30, 2023 for
  - Overnight and one-, three-, six-, and 12-month USD LIBOR settings.<sup>1</sup>

These announcements mark a significant milestone for LIBOR transition and constitute a triggering event under most USD LIBOR fallback provisions for derivatives or loans that have been adopted by the market. While the trigger does not mean that these contracts referencing USD LIBOR will imminently shift to a fallback reference rate, the announcements do have immediate implications as discussed below.

For derivatives, the International Swaps and Derivatives Association, Inc. ("ISDA") stated that the FCA's announcement constitutes an "Index Cessation Event" under the IBOR Fallbacks Supplement and related protocol for all LIBOR settings.<sup>2</sup> As a result, the fallback spread adjustment published by Bloomberg was fixed as of the date of the announcement for all euro, sterling, Swiss franc, US dollar, and yen LIBOR settings.<sup>3</sup> The ISDA fallbacks (i.e., the risk-free rate ("RFR") plus spread adjustment) will automatically occur for outstanding derivatives contracts that incorporate the IBOR Fallbacks Supplement or are subject to adherence of the ISDA 2020 IBOR Fallbacks Protocol on (i) 12/31/2021 for outstanding derivatives referencing all euro, sterling, Swiss franc and yen LIBOR settings, and (ii) 6/30/2023 for outstanding derivatives referencing all US dollar LIBOR settings.

For loans, the Alternative Reference Rates Committee ("ARRC") confirmed on March 8, 2021 that the FCA's announcement constitutes a "Benchmark Transition Event" under the ARRC's recommended fallback language with respect to all USD LIBOR settings.<sup>4</sup> Consequently, when the fallback rates apply, fallbacks for derivatives under ISDA documentation and fallbacks for loans that incorporate the ARRC-recommended fallback language will apply the same (now fixed) spread adjustment values to the recommended fallback RFRs.<sup>5</sup> The implications for the two ARRC-recommended fallback approaches for syndicated loans include the following:

- Hardwired Approach: While there may be notice requirements by the agent/sole lender related to the occurrence of the Benchmark Transition Event under the relevant agreement, the occurrence of a Benchmark Transition Event does not require an immediate transition under ARRC-recommended fallback language. Instead, actual transition under ARRC-recommended hardwired fallback language is based upon the “Benchmark Replacement Date,” which is expected to be on or immediately after (i) 12/31/2021 for one-week and two-month USD LIBOR, and (ii) 6/30/2023 for Overnight, one-month, three-month, six-month, and 12-month USD LIBOR.
- Amendment Approach: The Benchmark Transition Event trigger may require notice of the event by the agent/sole lender and would allow for the amendment process to the Benchmark Replacement to begin. However, such an amendment could not take effect until the 90-day window (or whatever number of days to which parties agreed) commences starting on April 1, 2023 (i.e., the “Benchmark Transition Start Date”).

It is important to emphasize that the implications discussed above relate to contracts that have incorporated either ISDA’s fallbacks (via the amended 2006 ISDA Definitions or related protocol) or the ARRC’s recommended fallback provisions, and that each loan agreement will need to be analyzed to determine the relevant LIBOR fallback provisions and what actions, if any, will need to be taken by the parties thereto as a result of the recent announcements.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings New York lawyers:*

Joyce Sophia Xu  
1.212.318.6080  
[joycexu@paulhastings.com](mailto:joycexu@paulhastings.com)

Diona N. Park  
1.212.318.6089  
[dionapark@paulhastings.com](mailto:dionapark@paulhastings.com)

Matthew S. Smith  
1.212.318.6781  
[matthewsmith@paulhastings.com](mailto:matthewsmith@paulhastings.com)

---

<sup>1</sup> The IBA’s announcement can be found [here](#), and the FCA’s announcement can be found [here](#).

<sup>2</sup> ISDA’s announcement can be found [here](#).

<sup>3</sup> Bloomberg’s spread adjustments (based on the median difference between corresponding tenors of the applicable rates for the five-year period ending March 5, 2021) can be found [here](#).

<sup>4</sup> The ARRC’s announcement can be found [here](#). The ARRC also published related FAQs regarding the occurrence of a Benchmark Transition Event, which can be found [here](#).

<sup>5</sup> The ARRC has previously indicated that its recommended spread adjustments will use the same values as ISDA in its June 30, 2020 announcement, available [here](#).