LIBOR *NEWSFLASH*: ANNOUNCEMENT ON OFFICIAL CESSATION OF LIBOR IS EXPECTED SOON

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With only ten months left until the phase-out of the London Interbank Offered Rate ("**LIBOR**"), transition efforts should be well underway. In this bulletin, we discuss the ICE Benchmark Administration (the "**IBA**") and/or the Financial Conduct Authority's (the "**FCA**") expected announcement about the official cessation of LIBOR, and highlight the modified timelines for transitioning from LIBOR to an alternate risk-free rate ("**RFR**") recommended by the relevant working groups.

1. Expected Announcement on LIBOR Cessation

On January 25, 2021, the administrator of LIBOR, the IBA, concluded its consultation on the potential cessation of LIBOR settings (the "**IBA Consultation**").[1] The IBA intends to cease publication of (i) all tenors of EUR, CHF, JPY and GBP LIBOR and tenors of 1-week and 2-month USD LIBOR on December 31, 2021, and (ii) tenors of overnight, 1, 3, 6, and 12 month USD LIBOR on June 30, 2023.[2] The extension for the USD LIBOR tenors is meant for legacy (i.e. existing) agreements, and not for new loan agreements.[3] The IBA's actions are subject to the FCA's legislative ability to compel the IBA to continue to publish any LIBOR setting.[4]

Now that the consultation period has passed, an announcement from the IBA (and/or the FCA) about the cessation of LIBOR appears imminent.[5] The announcement may confirm that the LIBOR settings set out in the IBA Consultation *will* cease on the dates referenced therein, thereby constituting a permanent cessation trigger under the Alternative Reference Rates Committee's (the "**ARRC**") hardwired (and amendment) fallback language.[6] Alternatively, the FCA may announce that it will consult on the continued publication of any LIBOR setting based on a changed methodology, commonly referred to as a "synthetic" LIBOR, thus indicating that LIBOR will no longer be representative past a given date.[7] This would not constitute a pre-cessation trigger, since the pre-cessation trigger under the ARRC's fallback language requires a statement of non-representativeness and not a statement that LIBOR will be non-representative in the future.[8] A third possibility is that the IBA's announcement will be less firm, such as that the IBA *expects* the cessation of the LIBOR settings on the dates set out in the IBA Consultation, which also would not constitute a trigger event.

If the announcement does constitute a cessation or pre-cessation trigger, spread adjustments for the applicable RFR would be calculated and fixed on that day.[9] However, the actual fallback to an RFR would occur only on the day the applicable LIBOR setting is no longer quoted, and not on the day of the announcement. The FCA has foreshadowed it is likely that one announcement covering all LIBOR settings will be made on the same day, rather than multiple announcements.[10]

Depending on the wording of fallback language in a particular loan agreement, if the announcement constitutes a trigger event, the administrative agent in a syndicated facility may need to notify the applicable parties about the announcement. The parties to a loan agreement may also be obligated to begin efforts to amend the loan agreement to include the applicable fallback rate.

2. New Issuances of LIBOR Loans Recommended to Cease in First Half of 2021

The relevant working groups in both the United Kingdom and the United States have recommended that new issuances of loans linked to LIBOR cease in the first half of 2021.

In the United Kingdom, the Working Group on Sterling Risk-Free Reference Rates (the "**UK Working Group**") set out the following timelines: (i) by the end of Q1 2021, lenders should stop issuing new GBP LIBOR-linked loans with maturity dates beyond 2021; (ii) by the end of Q1 2021, lenders need to identify legacy GBP LIBOR contracts that expire after the end of 2021 that can be converted and convert such loans by the end of Q3 2021; and (iii) by the end of 2021, parties need to be fully prepared for the end of GBP LIBOR.[11]

Similar timelines have been recommended in the United States. The ARRC's milestones for syndicated and bilateral loans include ceasing the issuance of new USD LIBOR loans by June 30, 2021.[12] The milestone for the incorporation of hardwired fallbacks for such loans passed in the fall of 2020.[13]

3. Takeaways for Lenders

Lenders need to focus their efforts on (i) incorporating hardwired fallback language or RFRs into new loan agreements and (ii) reviewing fallback language in existing loan agreements. For existing loan agreements which utilize overnight, 1, 3, 6, and 12 month USD LIBOR, lenders should be mindful of maturity dates beyond June 30, 2023 and work to incorporate hardwired fallback language or RFRs into such loan agreements.

With respect to syndicated loans, the administrative agent should be familiar with notice requirements in existing loan agreements concerning LIBOR discontinuation announcements. The administrative agent and lenders should also keep in mind that such announcements may trigger amendment requirements in loan agreements. Note that the ARRC has recommended that if a loan agreement specifies that one or more parties have the discretion to select a replacement rate for USD LIBOR, such parties should disclose the anticipated RFR and any related spread methodology at least 6 months prior to the effectiveness of the replacement rate.[14]

LIBOR's end is approaching at ever greater speed, and all market participants who rely on LIBOR should be proactively taking steps to prepare for the transition to an RFR. We will continue to monitor the phase-out of LIBOR and will provide further updates as developments occur.

[1] ICE Benchmark Administration, "ICE LIBOR Consultation on Potential Cessation" (December 2020).
[2] *Ibid* at 3.
[3] Financial Conduct Authority, "LIBOR – Are You Ready for Life Without LIBOR from end-2021?" (26 January 2021).
[4] *Supra* note 1 at 3.
[5] The Loan Syndications and Trading Association, "The Time Draws Nigh" (1 February 2021) and supra note 3.
[6] *Ibid*. [Time Draws Nigh].
[7] *Supra* note 3.
[8] *Ibid*. and Alternative Reference Rates Committee, "ARRC Recommendations Regarding More Robust Fallback Language for New Originations of LIBOR Syndicated Loans" (30 June 2020) [ARRC Recommendations].
[9] *Ibid*.
[10] *Supra* note 3.
[11] The Bank of England, "Working Group on Sterling Risk-Free Rates (RFRWG) Top Level Priorities – 2021" (January 2021).
[12] Alternative Reference Rates Committee, "ARRC Recommended Best Practices for Completing the Transition from LIBOR" (3 September 2020).
[13] *Ibid*. In June 2020, the ARRC released an updated set of recommended contractual fallback language for USD LIBOR syndicated loans, amending the hardwired approach recommendations and completely eliminating the amendment approach, which had been the preferred approach among market participants. Among the reasons given to support the switch to a hardwired fallback, the ARRC emphasized the practical reality that it would not be achievable to use amendment fallbacks if countless loan agreements will have to be amended at around the same time, and the market certainty that will be facilitated by having a specified successor RFR and adjustment spread in place upon the unavailability of LIBOR. For a detailed discussion, refer to ARRC Recommendations, *supra* note 8.
[14] *Supra* note 12.

by Kathy A. Martin and Maria Sagan

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.