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IBOR Aware

JANUARY 2021 – 3RD EDITION

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Welcome to the 3rd edition of IBOR Aware

With the start of 2021 now upon us, LIBOR's endgame is hoving into view. As Andrew Hauser, Executive Director for Markets at the Bank of England, remarked in a recent speech, "LIBOR's long career is drawing to an end. It's time to bow out gracefully."

In late 2020, announcements from ICE Benchmark Administration and the UK Financial Conduct Authority signalled the start of the end for LIBOR – please see IBA consults on future cessation of LIBOR and FCA announces future consultation on proposed UK BMR powers where a benchmark is to be discontinued. Subject to the outcome of the consultations currently being held (at the time of writing), it seems highly likely that Sterling, Japanese Yen, Swiss Franc, Euro and the less heavily traded 1-week and 2-month US Dollar LIBOR settings will cease to be published in their current form at the end of 2021. And although the remaining US Dollar LIBOR settings will seemingly be published until 30 June 2023, these may only be available to support legacy business and "new" use of these LIBOR settings will also cease from the end of 2021.

Furthermore, details have now emerged about the proposed legislative fixes that are intended to support transition for "tough legacy" LIBOR contracts. The proposals – published by the ARRC, the UK Government and the UK Financial Conduct Authority and the European Commission – take different approaches to what is fundamentally the same problem: how to deal with the inevitable stock of LIBOR-linked contracts that will be too difficult or complex to transition before the end of 2021? However, as has been a common theme on this journey, the fragmented approach taken by different regulatory bodies across different jurisdictions raises just as many questions and issues as the proposals themselves address, leading many market participants and commentators to conclude that none of the proposals will on its own provide much of a solution to the "tough legacy" issue.

So, looking forwards to 2021 and what we can expect to see in the market to meet the challenge of transition for LIBOR and other IBORs, one might say that necessity is the mother of invention: as we enter into the final 12 months before LIBOR in its current form is expected to be discontinued, the pace of transition will only accelerate. A significant landmark for the derivatives market – aside perhaps for hedging contracts and non-linear derivatives – will arrive imminently with the ISDA 2020 IBOR Fallbacks Protocol and Supplement 70 to the 2006 ISDA Definitions becoming effective for adhering parties and in-scope contracts on 25 January 2021. The loans market – frequently the subject of the regulators' ire due to the perceived slower rate of progress in comparison to other markets – is fast developing the infrastructure to support transition for new and existing financings, whether through the development of standardised conventions for the use of RFR in loan markets, recommended approaches to applying credit adjustment spread for legacy transactions or the publication by the LMA of exposure drafts of its "rate switch agreements".

With much expected to happen over the next 12 months, we would be delighted to help you on your IBOR transition journey. If you would like to discuss your IBOR transition plans further or would like to speak about what steps you can take now to help your institution deliver IBOR transition, please contact any of the Ashurst contacts listed at the back of this publication or your usual Ashurst contact.

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Asia Pacific IBOR Transition Readiness Report

We are pleased to have partnered with ASIFMA, the financial industry's leading regional trade association, to jointly release the "Asia Pacific IBOR Transition Readiness" report, which highlights key areas of action for the industry to focus on as it navigates LIBOR transition.

Following a regional survey among ASIFMA members to identify key issues requiring attention in 2021. Four main themes emerged:

- lack of standardisation, harmonisation and consensus between different jurisdictions and asset classes as an area of concern;
- transition issues for legacy contracts;
- litigation, regulatory and conduct risk in connection with (L)IBOR transition; and
- transition issues in connection with local benchmarks.

The full report examining these key themes and the survey results can accessed here.

Our approach to IBOR transition

IBOR transition is one of the most significant challenges, if not the most significant challenge, to affect financial markets in the last 20 years.

We recognise the scale of this market event is enormous and entails multiple issues, risks and challenges for our clients. Choosing the right adviser to navigate you through the challenges and potential pitfalls of a task of this scale is vital, particularly where the ultimate end-point may not be entirely certain and the path to get there may seem unclear.

We consider that our IBOR transition offering is unique for the following reasons:

1. **Market-leading IBOR experience**: we have advised on a number of cutting-edge, market-leading transactions that are paving the way for the adoption of near risk-free rates in international finance transactions, including the first SONIA-linked loans in the international lending markets, market first LIBOR-to-SONIA switches for legacy securities in the securitisation and covered bond markets.
2. **Large-scale project experience**: with the use of IBORs so deeply rooted in today's financial markets, remediation of affected contracts will involve some of the largest and most widespread re-papering exercises seen in recent years. We have extensive experience advising on large-scale "regulatory change" projects and know how to deliver these projects on time and on budget.
3. **Ashurst Advance**: through our "new law" division, we are able to provide the necessary expertise, flexible resources and legal technology to provide a high quality but cost-effective IBOR transition solution. The four pillars of Ashurst Advance – Legal Project Management, Legal Analysts, Legal Technology and Legal Process Improvement – are the foundations for delivering projects of this scale. By combining our Ashurst Advance services with our subject matter legal experts, we can offer you legal excellence with efficient delivery.

We look forward to accompanying you on your IBOR transition journey.

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IBOR Spotlight

Spotlight on Sterling

IBA LAUNCHES ICE TERM SONIA REFERENCE RATES

On 11 January 2021, IBA, the current administrator of LIBOR, announced the launch of a series of ICE Term SONIA Reference Rates as a benchmark for use in financial instruments by licensees.

The rates are designed to measure expected (i.e. forward-looking) SONIA rates over one-month, three-month, six-month and twelve-month tenor periods and are based on a waterfall methodology using eligible prices and volumes for specified SONIA-linked interest rate derivative products.

Publication will be daily at or around 11:55 a.m. London time on applicable London business days.

REFINITIV LAUNCHES TERM SONIA REFERENCE RATES

On 5 January 2021, Refinitiv announced the production of its series of TSRR from 11 January 2021.

The rates are available in one-month, three-month, six-month and twelve-month tenors, following the release of Refinitiv's "prototype" TSRR in July 2020 (for more information, please see Refinitiv launches Term SONIA Reference Rate prototype).

Publication will be daily at 11:50 a.m. London time.

WORKING GROUP ON STERLING RFRS PUBLISHES PAPER ON CREDIT ADJUSTMENT SPREAD METHODS FOR ACTIVE TRANSITION OF GBP LIBOR LOANS

On 18 December 2020, the Working Group on Sterling RFRs published a paper highlighting key methodologies emerging in the loan market on credit adjustment spreads for active transition from GBP LIBOR to SONIA, and how these compare to the approaches taken in the bond and derivatives markets.

The paper notes that fundamentally the transition to SONIA should be one which mitigates any transfer of value between the parties and that the concept of a credit adjustment spread is used in the market as a way to mitigate value transfers.

The paper encourages loan market participants to consider which methodology is appropriate to calculate the credit adjustment spread for active transition. On the basis of historic loan transactions and approaches taken in the bond and derivatives markets, the paper considers two key methodologies:

- the five-year historical median approach; and
- the forward approach (based on the forward-looking swap market).

However, the paper stops short of recommending any methodologies for active transition. The Working Group also published a set of slides outlining an indicative path towards its recommended milestone of the end of March 2021 of GBP LIBOR-based loans maturing after the end of 2021.

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IBA LAUNCHES GBP SONIA ICE SWAP RATE

On 15 December 2020, IBA announced the launch of the GBP SONIA ICE Swap Rate as a benchmark for use by licensees. The launch follows the successful publication of GBP SONIA ICE Swap Rate settings on an indicative 'Beta' basis since October 2020. The hope is that this will be a significant step forward for the transition of non-linear derivatives in particular away from LIBOR.

ISDA has published related documentation, discussed in ISDA publishes SONIA ICE Swap Rate documentation.

BANK OF ENGLAND SPEECH OUTLINES THREE KEY ACTIONS FOR FIRMS AHEAD OF LIBOR CESSATION

On 9 December 2020, the Bank of England published a speech by Andrew Hauser, Bank of England Executive Director for Markets, on firms' preparations for LIBOR cessation at the end of 2021. The speech identifies three key actions for market participants over the coming months:

- be ready to transact all new or re-financed lending on a non-LIBOR basis in 2021;
- adopt the ISDA fallbacks for existing derivatives, by adhering to the ISDA IBOR Fallbacks Protocol where appropriate; and
- reduce the legacy of post-2021 LIBOR-linked contracts.

IBA CONSULTS ON FUTURE CESSATION OF LIBOR

On 4 December 2020, IBA published a consultation paper requesting feedback on its intention to discontinue LIBOR from the end of 2021.

The paper asks for market participants' views on IBA's intention to:

- cease publication of GBP, EUR, CHF and JPY LIBOR, along with one-week and two-month USD LIBOR, after 31 December 2021; and
- cease publication of the remaining USD LIBOR rates after 30 June 2023.

The consultation will close on 25 January 2021 and a summary of the feedback received will be published thereafter.

Earlier announcements by the IBA relating to the forthcoming consultation are discussed in our briefings here and here.

IBA has stated that neither the announcements nor the consultation itself should be taken to mean that the publication of any LIBOR settings will continue or cease after 31 December 2021 or 30 June 2023. ISDA has also confirmed that these developments do not give rise to the occurrence of an "Index Cessation Event" under Supplement 70 to the 2006 ISDA Definitions or trigger any fallbacks under the 2018 ISDA Benchmarks Supplement.

Relatedly, the FCA has also launched two consultations seeking feedback on its proposed approach to the exercise of potential new powers under Article 23A and Article 23D of the UK BMR (for more information, please see our briefing and FCA launches consultations on approach to new UK BMR powers and LIBOR transition).

WORKING GROUP ON STERLING RFRS PUBLISHES NOVEMBER 2020 NEWSLETTER

On 1 December 2020, the Working Group on Sterling RFRs published its November newsletter, setting out key milestone dates, official sector updates, and market developments.

Among other things, the newsletter draws attention to:

- a paper prepared by the Working Group that considers how a non-linear derivatives market using SONIA compounded in arrears could be structured (for more information, see Working Group on Sterling RFRs publishes paper on non-linear derivatives); and
- the minutes of the Working Group's September meeting, which include updates on lender readiness, on beta TSRR and freely available RFR calculators, and which note that the Non-Linear Derivatives Task Force discussed above (and/or the Bond Sub-Group) intend to give additional specific consideration to structured notes.

WORKING GROUP ON STERLING RFRS PUBLISHES PAPER ON NON-LINEAR DERIVATIVES

On 26 November 2020, the Working Group on Sterling RFRs published a paper intended to assist the derivatives market in its transition from LIBOR and, in particular, in meeting the target milestone of ceasing to initiate new non-linear derivatives linked to LIBOR by the end of Q3 2021.

The paper describes how SONIA compounded in arrears could be used for a range of non-linear products, including swaptions, caps and floors, LIBOR in arrears swaps, and range accruals.

For each product type, the paper addresses several considerations, including whether the product could be made compatible with compounded in arrears SONIA and whether it could be economically equivalent to the corresponding LIBOR version.

HMRC PUBLISHES GUIDANCE ON UK TAX IMPACT OF BENCHMARK RATE REFORM

On 12 November 2020, HMRC published a response to its consultation on the tax impact of the discontinuation of LIBOR, along with draft legislation, updated guidance and a policy paper.

The consultation aimed to:

- identify statutory references to LIBOR that need to be amended and seek views on how this should be done; and
- ensure HMRC fully understands the tax impacts that could arise from the reform of LIBOR and other benchmark rates.

The draft legislation contains a power, which expires on 31 December 2022, for the UK Government to introduce secondary legislation to address retrospectively any unforeseen issues arising from the transition. Under the proposed legislation, taxpayers may opt out of the retrospective effect.

WORKING GROUP ON STERLING RFRS PUBLISHES OCTOBER 2020 NEWSLETTER

On 2 November 2020, the Working Group on Sterling RFRs published its October newsletter, setting out key milestone dates, official sector updates, and market developments.

The newsletter welcomes the launch of Supplement 70 to the 2006 ISDA Definitions and the ISDA 2020 IBOR Fallbacks Protocol, and highlights the effective date of 25 January 2021 (for more information, please see ISDA launches Supplement 70 and ISDA 2020 IBOR Fallbacks Protocol).

The newsletter also highlights the "SONIA-first" switch initiative, which encouraged liquidity providers to use SONIA as the default price convention for inter-dealer GBP swaps from 27 October 2020, in order to build liquidity in SONIA derivatives.

BANK OF ENGLAND ADHERES TO ISDA 2020 IBOR FALLBACKS PROTOCOL

On 23 October 2020, the Bank of England confirmed that it has adhered to the ISDA 2020 IBOR Fallbacks Protocol. The terms of the Protocol will apply when the Bank of England is acting on its own behalf and when it is acting as agent for the Treasury and other entities.

UK GOVERNMENT INTRODUCES FINANCIAL SERVICES BILL 2019-21 TO PARLIAMENT

On 21 October 2020, the UK Government introduced the Financial Services Bill 2019-21 to Parliament. The Bill includes proposed amendments to the UK BMR that would give the FCA new and enhanced powers to oversee the orderly wind-down of a critical benchmark such as LIBOR, as covered in our briefing.

In particular, the Bill sets out the legislative basis for the Government's proposed "synthetic LIBOR" solution to the problem of tough legacy contracts which reference LIBOR, although it does not specify the criteria required for a contract or instrument to constitute "tough legacy", leaving that to be specified a future FCA policy statement.

From the House of Commons, the Bill will need to pass through the House of Lords before receiving Royal Assent and entering into force.

For more information, please see FCA issues statement on proposed powers to produce "synthetic LIBOR" and FCA launches consultations on approach to new UK BMR powers and LIBOR transition.

WORKING GROUP ON STERLING RFRS WELCOMES SUPPLEMENT 70 TO 2006 ISDA DEFINITIONS AND ISDA 2020 IBOR FALLBACKS PROTOCOL

On 12 October 2020, the Working Group on Sterling RFRs published a statement welcoming the launch of Supplement 70 to the 2006 ISDA Definitions and the ISDA 2020 IBOR Fallbacks Protocol, and encouraging early adherence to the Protocol.

For more information on the launch process, please see ISDA launches Supplement 70 and ISDA 2020 IBOR Fallbacks Protocol.

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WORKING GROUP ON STERLING RFRS PUBLISHES SEPTEMBER 2020 NEWSLETTER

In October 2020, the Working Group on Sterling RFRs published its September newsletter, setting out milestone dates, official sector updates, and market developments.

Among other things, the newsletter draws attention to the Working Group's letter encouraging lenders to be ready by April 2021 to cease new issuance of all GBP LIBOR-linked loan products expiring after the end of 2021.

It also highlights a letter issued by the Working Group to IBA, with a view to better understanding IBA's plans for the GBP LIBOR ICE Swap Rate in the event that GBP LIBOR is discontinued or ceases to be representative of its underlying market. Feedback from IBA was used to support the Working Group's Non-Linear Derivatives Task Force in assessing the potential impact of LIBOR cessation on legacy non-linear derivatives (for more information, please see Working Group on Sterling RFRs publishes paper on non-linear derivatives and ISDA publishes IBOR Fallbacks and RFR Conventions Product Table).

WORKING GROUP ON STERLING RFRS RECOMMENDS HISTORICAL FIVE-YEAR MEDIAN SPREAD ADJUSTMENT FOR PRE-CESSATION AND CESSATION FALLBACKS IN CASH MARKET PRODUCTS

On 10 September 2020, the Working Group on Sterling RFRs recommended using the historical five-year median approach when calculating the credit adjustment spread of a SONIA-based fallback rate. This is in line with the approach adopted by ISDA.

The recommendation follows a December 2019 consultation seeking feedback from market participants as to the appropriate spread adjustment methodology for cash products maturing after the end of 2021. The consultation indicated a strong preference for the historical five-year median approach, primarily because of its simplicity, transparency and robustness, all of which mean that it cannot be easily manipulated.

The majority of respondents also highlighted the benefits of an internationally consistent spread methodology in fallbacks across different currencies and products, including derivatives.

WORKING GROUP ON STERLING RFRS PUBLISHES PAPERS ON ACTIVE TRANSITION OF LEGACY TRANSACTIONS

On 10 September 2020, the Working Group on Sterling RFRs published papers on the active transition of legacy bond and loan transactions from LIBOR to an RFR.

The first, "Active transition of GBP LIBOR-referencing bonds":

- discusses the UK Government's proposals with regard to "synthetic LIBOR" (for more information, please see FCA launches consultations on approach to new UK BMR powers and LIBOR transition);
- describes the forms of fallback language typically seen in bond terms and conditions:
  - dealer poll followed by last preceding rate;
  - fallbacks based on official recommendations or market practice, as advised by an independent adviser; and
  - fallbacks based on recent guidance, possibly including detailed calculation methodologies and/or additional pre-cessation triggers; and
- states that it is widely considered that amending interest rate provisions in legacy transactions to transition away from LIBOR should not be considered a material amendment, and should not give rise to a "new instrument".

The second, "Active transition of GBP LIBOR-referencing loans", sets out practical steps and considerations for lenders and borrowers, including:

- considerations when reviewing outstanding GBP LIBOR-referencing loans;
- steps for identifying the alternative reference rate to be used; and
- elements related to the calculation of the alternative reference rate.

It also includes a glossary and a worked example of the mechanics of active transition from GBP LIBOR to SONIA compounded in arrears.

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WORKING GROUP ON STERLING RFRS PUBLISHES AUGUST 2020 NEWSLETTER

On 7 September 2020, the Working Group on Sterling RFRs published its August newsletter, setting out milestone dates, official sector updates, and market developments.

The newsletter also refers to a webinar held on 18 September 2020 which provided firms with practical examples to support broad-based transition away from LIBOR before the end of 2021.

The Working Group's updates also include the publication of its recommendations on market conventions for Sterling loans based on SONIA compounded in arrears (for more on the recommendations, please see Working Group on Sterling RFRs publishes recommendations on loan market SONIA conventions).

WORKING GROUP ON STERLING RFRS PUBLISHES RECOMMENDATIONS ON LOAN MARKET SONIA CONVENTIONS

On 1 September 2020, the Working Group on Sterling RFRs published recommendations on standard market conventions for the use of SONIA in loan markets for Sterling bilateral and syndicated facilities.

The recommendations include:

- to move away from LIBOR to the SONIA compounded in arrears methodology;
- to employ an adjustment methodology comprising a five banking day lookback without observation shift, in line with the approach recommended by the ARRC for USD loan markets;
- where an interest rate floor is used, to consider whether it is necessary to apply the floor to each daily interest rate before compounding; and
- in the case of prepayment, to pay accrued interest at the time of principal prepayment.

Alongside these recommendations, the Working Group published supporting slides and worked examples detailing the various methodologies considered, and the results of a survey of member views on these issues.

BANK OF ENGLAND PUBLISHES SUMMARY OF FINANCIAL POLICY COMMITTEE MEETINGS

On 6 August 2020, the Bank of England published a summary of its Financial Policy Committee meeting. Key points on the topic of LIBOR transition include:

- reliance on LIBOR must end before 31 December 2021 as, thereafter, LIBOR rates could cease to be available at short notice;
- firms should seek to incorporate appropriate fallback language into legacy derivative contracts, using the ISDA 2020 IBOR Fallbacks Protocol where appropriate;
- where possible, market participants should transition away from LIBOR on terms agreed with their counterparties;
- market participants that do not transition away from LIBOR and choose to rely on future regulatory action will not have control over the long-term economics of their contracts; and
- future regulatory action may not address all relevant issues or be practicable in all circumstances.

BANK OF ENGLAND COMMENCES PUBLICATION OF SONIA COMPOUNDED INDEX

On 3 August 2020, the Bank of England commenced publication of its SONIA Compounded Index. Conceptually, the Index is equivalent to a series of daily data representing the returns from a rolling investment earning compound interest each day at the SONIA rate. The change in the Index between any two dates can therefore be used to calculate the interest rate payable over that period.

Each day's data are made freely available on the Bank of England's Interactive Statistical Database by 10:00 a.m. on the business day after they are first published. The full range of data from 23 April 2018 is also available.

WORKING GROUP ON STERLING RFRS PUBLISHES JULY 2020 NEWSLETTER

On 31 July 2020, the Working Group on Sterling RFRs published its July newsletter, setting out milestone dates, official sector updates, and market developments.

The newsletter links through to a new Q&A section addressing the requirement for lenders to be in a position to offer non-LIBOR linked products to their customers by Q3 2020 (for more on the Q&A, please see Working Group on Sterling RFRs publishes materials on LIBOR transition).

WORKING GROUP ON STERLING RFRS PUBLISHES MATERIALS ON LIBOR TRANSITION

On 28 July 2020, the Working Group on Sterling RFRs published a suite of materials to assist firms in the implementation of their LIBOR transition plans. The materials include:

- a revised list of 2020-21 priorities and roadmap;
- Q&As on the revised milestones for loan markets, including guidance on the requirement for lenders to include "clear contractual arrangements" in all new and refinanced LIBOR-referencing loan products; and
- the first in a series of educational videos providing background on the key elements of LIBOR transition.

BANK OF ENGLAND GOVERNOR DELIVERS SPEECH ON LIBOR ENDGAME

On 13 July 2020, Bank of England Governor, Andrew Bailey, delivered a speech on a Bloomberg webinar. Key points raised include:

- lenders should not offer new GBP LIBOR-linked loans after the end of March 2021;
- there is now a fully functioning SONIA-linked bond market with 40 FRNs issued so far this year, totalling over £16bn;
- the Bank of England encourages early adherence to the ISDA 2020 IBOR Fallbacks Protocol; and
- any legislative solution imposed by the FCA will only be designed for certain legacy contracts and will not be available for new business (for more on this, please see UK Government introduces Financial Services Bill 2019-21 to Parliament and FCA launches consultations on approach to new UK BMR powers and LIBOR transition).

PRA PUBLISHES STATEMENT ON RESOLUTION-RELATED RULES AND LIBOR TRANSITION

On 7 July 2020, the PRA confirmed that, where the sole purpose of an amendment to an agreement is to transition from LIBOR, this should not be considered a material amendment for the purposes of the rules on Contractual Recognition of Bail-In and Contractual Recognition of Stays in the PRA Rulebook, meaning that such an amendment would not trigger the incorporation of contractual recognition provisions.

The PRA also noted that firms should consider adding contractual recognition provisions to non-English law governed contracts that are being amended, to ensure that third-country courts recognise resolution action taken by the English courts after the end of the Brexit transition period on 31 December 2020.

Spotlight on US Dollar

ARRC PUBLISHES OCTOBER-NOVEMBER 2020 NEWSLETTER

On 7 December 2020, the ARRC published its latest newsletter, which includes updates on the ARRC's recent work, US and international developments, and SOFR market liquidity.

The ARRC lists the top three developments in October and November as:

- the announcements by IBA and the FCA regarding the proposed timeline for the cessation of USD LIBOR (for more information, please see our briefing and IBA consults on future cessation of LIBOR);
- the launch of Supplement 70 to the 2006 ISDA Definitions and the ISDA 2020 IBOR Fallbacks Protocol (for more information, please see ISDA launches Supplement 70 and ISDA 2020 IBOR Fallbacks Protocol); and
- the recent transition from the EFFR to SOFR discounting and Price Alignment Interest by LCH and CME Group on all outstanding cleared USD-denominated swap products, completing a step in the ARRC's Paced Transition Plan.

IBA CONSULTS ON FUTURE CESSATION OF LIBOR

On 4 December 2020, IBA published a consultation paper requesting feedback on its intention to discontinue LIBOR from the end of 2021.

The paper asks for market participants' views on IBA's intention to:

- cease publication of GBP, EUR, CHF and JPY LIBOR, along with one-week and two-month USD LIBOR, after publication on 31 December 2021; and
- cease publication of the remaining USD LIBOR rates after publication on 30 June 2023.

The consultation will close on 25 January 2021 and a summary of the feedback received will be published thereafter.

Earlier announcements by the IBA of the forthcoming consultation are discussed in our briefings here and here.

IBA has stated that neither the announcement nor the consultation itself should be taken to mean that the publication of any LIBOR settings will continue or cease after 31 December 2021 or 30 June 2023. It also notes that continued publication of USD LIBOR will need to comply with applicable regulations, including as to its continued representativeness after 31 December 2021.

Notwithstanding the extension to 30 June 2023 for certain USD LIBOR tenors, on 30 November 2020, the FRB, the OCC and the FDIC released a statement encouraging banks to transition away from USD LIBOR as soon as practicable. The statement says that banks should stop offering USD LIBOR contracts as soon as practicable and, in any event, no later than the end of 2021. Moreover, they say that new LIBOR-referencing contracts entered into before December 2021 should contain robust fallback language that includes a clearly defined alternative reference rate.

In response, ISDA has confirmed that these developments do not constitute an "Index Cessation Event" under Supplement 70 to the 2006 ISDA Definitions or trigger any fallback provisions under the 2018 ISDA Benchmarks Supplement.

For more information, please see IBA consults on future cessation of LIBOR.

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ARRC PUBLISHES GUIDE ON USD LIBOR DEVELOPMENTS

On 4 December 2020, the ARRC released a guide on the announcements made by IBA, the FCA and certain US bodies regarding the discontinuation of USD LIBOR, discussed in our briefing and in IBA consults on future cessation of LIBOR.

The guide discusses recent related developments, the setting of a spread adjustment, the ARRC's recommended Best Practices and the ARRC's legislative proposal (for more information, please see New York State Senate introduces Bill proposing statutory replacement rate for tough legacy contracts and our briefing).

ARRC PUBLISHES CONVENTIONS FOR THE USE OF SOFR IN BILATERAL BUSINESS LOANS

On 25 November 2020, the ARRC released conventions for the use of daily simple SOFR and daily compounded SOFR in bilateral business loans. The ARRC also released FAQs relating to its Business Loans Hardwired Fallback Language, which currently address pre-cessation triggers and spread adjustments and which will be updated as new questions arise.

The conventions are recommended for use in new loans originated using SOFR and legacy loans that fall back from USD LIBOR to SOFR, and are similar to the ARRC's recommended conventions for the use of SOFR in syndicated business loans (for more information, please see ARRC publishes conventions for the use of SOFR in syndicated loans).

NEW YORK STATE SENATE INTRODUCES BILL PROPOSING STATUTORY REPLACEMENT RATE FOR TOUGH LEGACY CONTRACTS

On 28 October 2020, the New York State Senate introduced Senate Bill S9070, which, if adopted, would amend the Uniform Commercial Code to introduce new rules that would apply on the cessation or loss of representativeness of USD LIBOR. The proposed rules are discussed in our briefing.

The draft Bill largely replicates the ARRC's draft legislative proposals published earlier this year, providing that, where USD LIBOR-referencing contracts do not contain operative fallback provisions, or contain fallback provisions that reference USD LIBOR, references to LIBOR would be replaced by the replacement rate formally recommended by the FRB, the Federal Reserve Bank of New York or the ARRC.

The Bill also incorporates various safe harbours from litigation and regulatory sanction and would allow parties to contract out of its provisions or agree on other non-LIBOR benchmark replacements which have not been formally recommended.

A floor vote on the Bill is not expected until after the New York State Legislature reconvenes in January 2021.

Efforts are also under way to introduce similar legislation at a federal level.

ARRC RELEASES FAQS TO REQUEST FOR PROPOSALS FOR THE ADMINISTRATION OF RECOMMENDED SPREAD ADJUSTMENTS AND SPREAD-ADJUSTED SOFR RATES

On 9 October 2020, the ARRC released FAQs to its September 2020 Request for Proposals seeking one or more firms to publish daily indicative spreads and, after a trigger event has occurred, static spreads and spread-adjusted fallback rates for cash products that transition away from USD LIBOR. These fallback rates are designed for use in legacy contracts with the ARRC's recommended hardwired fallback language.

The FAQs cover issues including the number of LIBOR tenors that would need to be produced and expected terms on which data would be made available to the public. The document will be updated as new questions are raised. For more information, please see ARRC issues Request for Proposals for administration of recommended spread adjustments and spread-adjusted SOFR rates.

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ARRC ENCOURAGES EARLY ADHERENCE TO ISDA 2020 IBOR FALLBACKS PROTOCOL

On 9 October 2020, the ARRC published a statement encouraging market participants to adhere to the ISDA 2020 IBOR Fallbacks Protocol before it becomes effective on 25 January 2021.

For more information on the Protocol, please see ISDA launches Supplement 70 and ISDA 2020 IBOR Fallbacks Protocol.

ARRC RELEASES FAQS TO REQUEST FOR PROPOSALS FOR VENDOR TO PUBLISH FORWARD-LOOKING SOFR TERM RATES

On 7 October 2020, the ARRC released FAQs to its Request for Proposals published in September 2020 seeking an administrator to publish forward-looking SOFR term rates. The FAQs address various issues and confirm that there is no requirement for the chosen term rate to be administered in the US.

The document was updated on 29 October 2020 and will continue to be updated as new questions are raised. For more information, please see ARRC issues Request for Proposals for publication of forward-looking SOFR term rates.

ARRC PUBLISHES AUGUST-SEPTEMBER 2020 NEWSLETTER

On 30 September 2020, the ARRC published its August-September 2020 newsletter, which includes updates on the ARRC's recent work, US and international developments, and SOFR market liquidity.

The ARRC lists the top three developments in August and September as:

- the release of two Requests for Proposals seeking administrators for (i) forward-looking SOFR term rates and (ii) spread adjustments and spread-adjusted SOFR rates. For more information, please see ARRC issues Request for Proposals for publication of forward-looking SOFR term rates and ARRC issues Request for Proposals for administration of recommended spread adjustments and spread-adjusted SOFR rates;
- its publications encouraging adherence to the ISDA 2020 IBOR Fallbacks Protocol, including the update to its Best Practices, discussed in ARRC updates Best Practices to encourage early adherence to ISDA 2020 IBOR Fallbacks Protocol; and
- the CFTC's modified no-action letters relating to market participants' transition from LIBOR. For more information, please see CFTC provides additional relief to market participants transitioning from LIBOR.

ARRC UPDATES RECOMMENDATIONS FOR VOLUNTARY COMPENSATION FOR SWAPTIONS IMPACTED BY THE CCP DISCOUNTING TRANSITION TO SOFR

On 11 September 2020, the ARRC released an addendum to its recommendations that counterparties to USD LIBOR-referencing legacy swaptions (i) voluntarily exchange cash compensation and (ii) specify an agreed discount rate using SOFR for new swaptions expiring after 16 October 2020.

The initial recommendations were aimed at resolving uncertainty associated with the transition from the use of the EFFR to SOFR for discounting cleared derivatives. In addition to recommending that market participants exchange compensation, the recommendations suggested that legacy swaptions expiring after 16 October 2020 should be brought in scope of ISDA's Supplement 64 and specify SOFR as the Agreed Discount Rate.

The new amendment was added to avoid an extended period of uncertainty and to pre-empt potential disputes. The amended recommendation states that, if counterparties cannot reach an agreement on the exchange of compensation before 16 October 2020, "the counterparties should amend their legacy swaptions to bring them into scope for ISDA's Supplement 64 and specify an Agreed Discount Rate consistent with the swaptions' existing contractual terms".

ARRC ISSUES REQUEST FOR PROPOSALS FOR PUBLICATION OF FORWARD-LOOKING SOFR TERM RATES

On 10 September 2020, the ARRC launched a Request for Proposals seeking an administrator to publish forward-looking SOFR term rates. The ARRC's recommendation will be based on the ability of any recommended rate to meet the ARRC's evaluation criteria. The selected administrator(s) will be required to:

- calculate forward-looking SOFR term rates on a daily basis, using the prescribed methodology (with maturities to include one month and three months, and possibly also six months and/or 12 months); and
- make the published data available to other vendors, including the ARRC's selected administrator of SOFR spread adjustments and spread-adjusted rates, on commercially reasonable terms.

If the ARRC recommends an administrator for a forward-looking SOFR term rate, the chosen administrator must be prepared to begin publication of the rate(s) by 30 June 2021.

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ARRC ISSUES REQUEST FOR PROPOSALS FOR ADMINISTRATION OF RECOMMENDED SPREAD ADJUSTMENTS AND SPREAD-ADJUSTED SOFR RATES

On 2 September 2020, the ARRC launched a Request for Proposals from administrators for the publication of daily indicative spreads and, following the occurrence of a trigger event, static spreads, and spread-adjusted fallback rates for cash products referencing SOFR. The selected administrator(s) will be required to:

- use the ARRC's recommended methodology to calculate daily spreads for corresponding LIBOR tenors;
- apply the calculated spreads to the corresponding rates;
- publish the calculated spreads and the resulting spread-adjusted rates on a readily accessible website without cost to the general public; and
- make the published data available to other vendors and publishers at reasonable cost.

CFTC PROVIDES ADDITIONAL RELIEF TO MARKET PARTICIPANTS TRANSITIONING FROM LIBOR

On 31 August 2020, the CFTC announced that revised no-action letters had been issued by three of its divisions, each providing additional relief to swap dealers and other market participants with regard to the transition away from IBORs. This relief was issued in response to the ARRC's issues list and swaptions letter requesting modifications to the existing IBOR no-action relief previously granted in CFTC Letters 19-26, 19-27 and 19-28.

Each revised letter outlines conditions under which counterparties will qualify for relief in connection with amendments to swaps to update provisions referencing LIBOR or other IBORs. The revised letters also provide relief for additional types of amendments and refine relief previously provided based on feedback from market participants. The letters revise previous no-action relief letters, issued in 2019, in their entirety and address the following:

- CFTC Staff Letter No. 20-23 was issued by the Division of Swap Dealer and Intermediary Oversight to provide relief to swap dealers from registration of de minimis requirements, uncleared swap margin rules, business conduct requirements, confirmation, documentation, reconciliation requirements and certain other eligibility requirements;
- CFTC Staff Letter No. 20-24 was issued by the Division of Market Oversight to provide time-limited relief from the trade execution requirement; and
- CFTC Staff Letter No. 20-25 was issued by the Division of Clearing and Risk to provide time-limited relief from the swap-clearing requirement and related exceptions and exemptions.

ARRC PUBLISHES UPDATED RECOMMENDED FALLBACK LANGUAGE FOR BILATERAL BUSINESS LOANS

On 27 August 2020, the ARRC released updated recommended contractual fallback language for new originations of USD LIBOR denominated bilateral business loans.

The updated language adjusts the "Hardwired Approach" of the recommended language published in May 2019 to recommend the use of daily simple SOFR in the second step of the waterfall, rather than compounded SOFR. The hedged loan approach has been updated to include a benchmark rate floor.

In order to provide more time for bilateral loans to incorporate these fallbacks, the ARRC changed its Best Practices to recommend that new bilateral loans should incorporate fallback language by 31 October 2020.

ARRC PUBLISHES TECHNICAL APPENDICES IN CONNECTION WITH RECOMMENDED FALLBACK LANGUAGE FOR SYNDICATED LOANS

On 27 August 2020, the ARRC published various technical appendices on its Fallback Contract Language webpage, which provide practical examples of how various "lookback" options and compounding methods work.

The appendices include examples of:

- the lookback without observation shift methodology;
- other lookback options;
- the compounding method; and
- floored rate calculations.

The appendices are intended for use in connection with the ARRC's recommended fallback language for syndicated loans.

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ARRC UPDATES BEST PRACTICES TO ENCOURAGE EARLY ADHERENCE TO ISDA 2020 IBOR FALLBACKS PROTOCOL

On 19 August 2020, the ARRC updated its Best Practices to recommend early adherence to the ISDA 2020 IBOR Fallbacks Protocol. Market participants are encouraged to adhere during the adherence period prior to the Protocol's effective date of 25 January 2021.

On 10 August 2020, ARRC Chair, Tom Wipf, also sent a letter to ARRC members urging them to adhere to the Protocol as early as possible.

ARRC PUBLISHES FACT SHEETS ON TRANSITION FROM USD LIBOR TO SOFR

On 7 August 2020, the ARRC published the "SOFR Starter Kit", a set of fact sheets intended to inform the public about the transition away from USD LIBOR to SOFR.

The SOFR Starter Kit includes:

- background on the impetus for the transition away from LIBOR, and the history of the ARRC and its work to select a preferred alternative rate;
- key facts and figures about SOFR, including how SOFR works and common misconceptions; and
- next steps covering SOFR best practices, the ARRC's user's guide to SOFR, fallback language and helpful tools from the ARRC.

ARRC PUBLISHES JUNE-JULY 2020 NEWSLETTER

On 30 July 2020, the ARRC published its June-July 2020 newsletter, which includes updates on the ARRC's recent work, US and international developments, and SOFR market liquidity.

The ARRC lists the top three developments in August and September as:

- statements from the FSB, the SEC, the FFIEC, and the OCC, demonstrating their increased focus on the transition away from LIBOR;
- its publication of conventions relating to the use of daily simple SOFR and daily SOFR compounded in arrears in syndicated loans. For more information, please see ARRC publishes conventions for the use of SOFR in syndicated loans; and
- the provision of further information from regulatory agencies on LIBOR transition relief, including the adoption of the final rule on swap margins legacy swaps allowing them to retain their legacy status without triggering margin exchange requirements if they are amended to replace LIBOR or another discontinued rate.

ARRC PUBLISHES CONVENTIONS FOR THE USE OF SOFR IN SYNDICATED LOANS

On 22 July 2020, the ARRC published conventions for use in syndicated loans referencing daily simple SOFR and daily compounded SOFR. The conventions follow the ARRC's 2020 objectives and the ARRC's revised Hardwired Fallbacks for Syndicated Loans published on 30 June 2020.

The conventions address new loans that are originated using SOFR and loans that fall back from USD LIBOR to SOFR upon the occurrence of a trigger event.

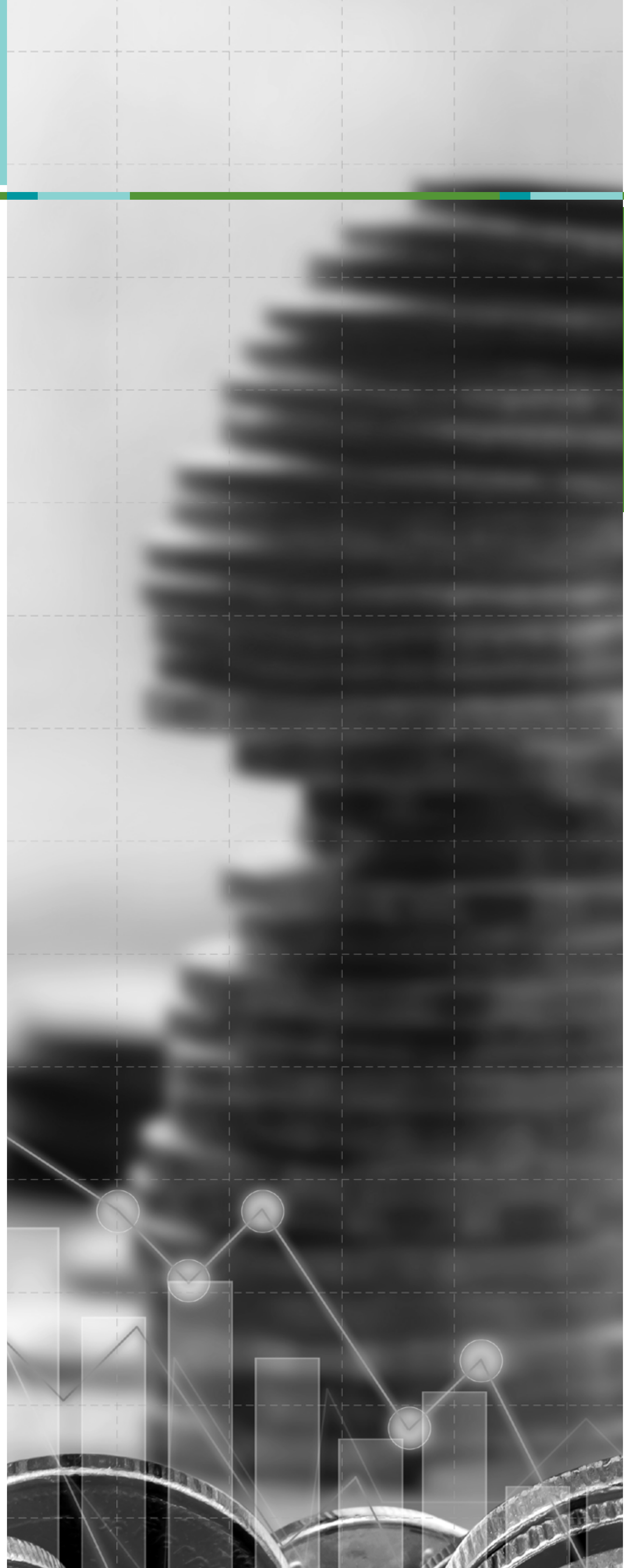
ARRC RELEASES GUIDANCE TO HELP FIRMS TRANSITION TO SOFR

On 8 July 2020, the ARRC published a paper entitled "Internal Systems and Processes: Transition Aid for SOFR Adoption" to support market participants transitioning from USD LIBOR to SOFR.

The paper identifies the processes and systems that might need to be updated for a successful transition to SOFR and groups transition activities into several categories, with summaries for the sub-topics covered in each. The categories include:

- Product and Business Development;
- Trading and Brokerage;
- Risk Controls;
- Financial Controls; and
- Legal and Compliance.

The document builds on previous ARRC publications, including the User's Guide to SOFR, the Practical Implementation Checklist, and the Buy-Side Checklist, to identify processes and systems that may need to be updated for a successful transition to SOFR.



ARRC RUNS "SOFR SUMMER SERIES"

On 7 July 2020, the ARRC announced the SOFR Summer Series, a series of webinars held during July and August 2020. The webinars were aimed at educating attendees about the history of LIBOR, the development and strengths of SOFR, progress made in the transition away from LIBOR, and how to ensure that organisations are ready for the discontinuation of LIBOR.

Webinars from the SOFR Summer Series include:

- LIBOR: Entering the Endgame;
- SOFR Explained;
- Preparing to move from LIBOR Derivatives;
- Accounting/Tax/Regulation; and
- Approaching the Transition.

The recordings of the webinars are available here.

ARRC ANNOUNCES FURTHER DETAILS REGARDING RECOMMENDATION OF SPREAD ADJUSTMENTS FOR CASH PRODUCTS

On 30 June 2020, the ARRC announced further details on its recommendations for cash product spread adjustments.

The ARRC recommends a historical median over a five-year lookback period with a one-year "transition period" for consumer products. Following a supplemental consultation on technical details, the ARRC intends to implement its spread methodology recommendations as follows:

- for cash products other than consumer products, the recommended spread adjustment will match the value of ISDA's USD LIBOR spread adjustment; and
- in a pre-cessation scenario, the spread adjustment will be determined at the same time as the ISDA spread adjustment (which will be at the time of the statement announcing loss of representativeness, or future loss of representativeness).

ARRC RELEASES UPDATED RECOMMENDED FALLBACK LANGUAGE FOR SYNDICATED LOANS

On 30 June 2020, the ARRC updated its recommendations for fallback language for new syndicated loans, amending the "hardwired fallback" language.

The hardwired fallback language includes the same three components as the original 2019 recommendation: (i) the trigger that starts the transition; (ii) the determination of the replacement rate and spread adjustment in accordance with a predetermined waterfall; and (iii) the use of the agent's ability to implement conforming changes to allow for the successful administration of the successor rate.

The changes to the recommendations are, broadly, that:

- a tenor-by-tenor trigger event has been added;
- while a forward-looking term rate (which is not yet available) remains the first step in the replacement waterfall, the second step is now daily simple SOFR, rather than compounded SOFR; and
- the "early opt-in" triggers have been broadened.

ARRC PUBLISHES APRIL-MAY 2020 NEWSLETTER

On 29 May 2020, the ARRC published its April-May 2020 newsletter, which includes updates on the ARRC's recent work, US and international developments, and SOFR market liquidity.

Among other things, the newsletter includes COVID-19 considerations and highlights the top three takeaways of the ARRC's work over April and May, which include:

- the publication of the ARRC's recommended Best Practices that outline key transition milestones that market participants should aim to meet;
- the publication of the ARRC's key objectives for 2020, which aim to advance the ARRC's work and mission; and
- the announcement of the recommended spread adjustment methodology for cash products referencing USD LIBOR (see also ARRC announces further details regarding recommendation of spread adjustments for cash products).

Spotlight on Euro

ESMA PUBLISHES SPEECH ON EURIBOR FALLBACKS AND FINALISING TRANSITION FROM EONIA TO €STR

On 14 December 2020, ESMA published a speech by ESMA Chair, Steven Maijoor, which highlights ESMA's outlook on interest rate reform in the Euro area. Points of interest include:

- while EURIBOR's discontinuation is not currently anticipated, firms should not risk contract frustration in EURIBOR products, therefore should include fallback provisions in all EURIBOR contracts (including legacy contracts). This is a regulatory and supervisory priority for ESMA;
- during 2021, ESMA will work with National Competent Authorities to monitor the implementation of the final recommendations on EURIBOR fallback provisions by the Working Group on Euro RFRs. ESMA and National Competent Authorities will use all the tools at their disposal to ensure supervised entities across the EU act on a timely basis to adopt viable EURIBOR fallback provisions that are compliant with the EU BMR;
- ESMA intends to monitor EURIBOR's representativeness very closely;
- many traders are still using EONIA in new contracts "out of habit and inertia", despite the fact that EONIA will be discontinued in January 2022. ESMA asks market participants to take the necessary action to ensure the full and timely transition from EONIA to €STR; and
- firms should actively use €STR instead of EONIA in all new contracts, as well as in internal systems and calculations. It is fundamental that, in the next few months, EU benchmark administrators are able to regularly publish a forward-looking term €STR to enable it to be used as a EURIBOR fallback rate.

EUROPEAN PARLIAMENT ANNOUNCES POLITICAL AGREEMENT ON AMENDMENTS TO EU BMR

On 30 November 2020, the European Parliament announced political agreement on amendments to the EU BMR that would allow the Commission to designate a statutory replacement rate for certain discontinued or non-representative benchmarks. The original proposal is covered in our briefing.

The announcement states that the amendments will give the Commission the power to designate a statutory replacement rate for the following categories of benchmark, should they be discontinued or cease to be representative:

- critical benchmarks referenced in financial instruments and contracts with an aggregate value of at least €500bn;
- benchmarks with no or very few appropriate substitutes, if their cessation would have a significant and adverse impact on market stability; and
- third-country benchmarks, if their cessation would significantly disrupt the functioning of financial markets or pose a systemic risk for the financial system in the EU.

Under the proposed amendments, the EU BMR third-country transitional period will be amended so that it runs until the end of 2023, rather than the end of 2025 as originally proposed. However, the amendments will permit an extension until the end of 2025, where this is deemed necessary. This may put the EU regime out of step with the UK regime, which is likely to have a third-country transitional period lasting until end 2025.

Subject to final approval, the amending regulation is expected to be published in the Official Journal of the EU in Q1 2021.

The Commission previously published a corresponding Q&A webpage, an impact assessment report and an executive summary of the proposal.

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WORKING GROUP ON EURO RFRS RELEASES CONSULTATIONS ON EURIBOR FALLBACKS

On 23 November 2020, the Working Group on Euro RFRs launched two consultations on fallback rates for EURIBOR.

The consultation on €STR-based EURIBOR fallback rates seeks views on the most appropriate fallback provisions for cash products and considers both forward-looking and backward-looking rates. The consultation aims to establish:

- the most appropriate EURIBOR fallback rate, based on (a) an €STR-based term structure methodology for each financial product assessed against a list of key criteria, and (b) a spread adjustment methodology used to avoid potential value transfer if a fallback is triggered; and
- the market conventions which should be used to calculate the compounded term rate based on €STR.

The consultation on trigger events to include within EURIBOR fallback provisions considers various triggers, including announcements of permanent discontinuation, pre-cessation triggers, illegality, and material change to EURIBOR's calculation methodology.

Comments on the consultations are required by 15 January 2021. The Working Group expects to issue final recommendations in Q1 2021.

WORKING GROUP ON EURO RFRS PUBLISHES OCTOBER 2020 NEWSLETTER

On 22 October 2020, the Working Group on Euro RFRs published a newsletter providing an overview of Working Group developments and market developments. The newsletter:

- says that final recommendations on EURIBOR fallback measures are expected to be published by the end of Q1 2021; and
- highlights the ECB's publication of the summary of feedback following its public consultation regarding compounded €STR rates. For more information, please see ECB publishes summary of feedback on public consultation on compounded €STR rates.

ECB PUBLISHES SUMMARY OF FEEDBACK ON PUBLIC CONSULTATION ON COMPOUNDED €STR RATES

On 7 October 2020, the ECB published a summary of responses to its consultation on compounded term rates using €STR. The feedback was broadly supportive of the main parameters and elements of the ECB's envisaged methodology, and contained suggestions which will be considered by the ECB when finalising the methodology.

Key points are that, generally, respondents:

- favour the ECB as a trusted authority publishing compounded term rates using €STR;
- agree with the proposed calculation methodologies for compounded rates as well as index values;
- favour the proposed modified previous business day day-count convention and agree with the proposed use of four decimal places for €STR compounded rates;
- support the proposed selection of maturities; and
- support the proposed publication timing.

ESMA PUBLISHES SPEECH ON DEVELOPMENTS IN GLOBAL INTEREST RATES REFORM

On 21 September 2020, ESMA published a speech by ESMA Chair, Steven Maijoor, outlining recent and expected developments in the reform of global interest rates. Points of interest include:

- European CCPs switched at the end of July 2020 from the EONIA discounting curve to the €STR discounting curve. ESMA expects the high liquidity of EONIA derivative markets to gradually move to €STR derivative markets in the coming months, before EONIA is discontinued in January 2022. The widespread use of €STR derivative contracts should therefore be a matter of time;
- EURIBOR is considered to be EU BMR compliant and is not currently expected to be discontinued, but the robustness of EURIBOR-referencing contracts (including the incorporation of fallback provisions) will be a supervisory priority for ESMA when it becomes EURIBOR's supervisor in January 2022; and
- the ECB's Working Group on Euro RFRs is expected to finalise key recommendations on EURIBOR fallback provisions shortly.

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ECB CONSULTS ON POTENTIAL PUBLICATION OF COMPOUNDED €STR RATES AND DAILY INDICES

On 24 July 2020, the ECB launched a public consultation on whether it should publish compounded €STR rates and daily indices.

The ECB notes that EURIBOR is not currently expected to be discontinued, but suggests that the availability of compounded rates for the Euro would facilitate the development of corresponding markets for the Euro and promote consistency in the way benchmarks are used across major markets. They may also be used in contractual fallback provisions by users of EUR LIBOR and EURIBOR required to prepare contingency plans for EUR LIBOR and EURIBOR ceasing to exist.

ECB PUBLISHES GOOD PRACTICE GUIDELINES FOR BANKS PREPARING FOR INTEREST RATE TRANSITION

On 23 July 2020, the ECB published the following to assist banks with interest rate transition preparation:

- the results of its industry-wide assessment of the preparedness of banks supervised under the Single Supervisory Mechanism in relation to interest rate reform, including a list of risks and challenges for banks; and
- good practices for banks in relation to interest rate transition.

Surveyed banks regard communication with counterparties to EURIBOR contracts as the greatest challenge, followed by the expected impact on pricing systems and the impact on banks' reporting and risk systems.

The ECB notes that, although EURIBOR has been reformed, its long-term sustainability is not assured and banks need to be prepared for all scenarios, including its discontinuation.

WORKING GROUP ON EURO RFRS PUBLISHES JULY 2020 NEWSLETTER

On 17 July 2020, the Working Group on Euro RFRs published a newsletter, providing an overview of Working Group developments, market developments, and recommendations regarding the transition from EONIA to €STR.

The newsletter:

- recommends that counterparties voluntarily exchange compensation for legacy swaption contracts affected by the transition of CCP discounting from EONIA to €STR (for more information, please see Working Group on Euro RFRs recommends voluntary compensation for swaptions impacted by transition to €STR); and
- includes a letter sent to the IASB to express concerns regarding potential accounting issues that could be considered a direct consequence of IBOR reform (for more information, please see Working Group on Euro RFRs publishes letter to IASB addressing potential accounting issues resulting from IBOR reform).

WORKING GROUP ON EURO RFRS PUBLISHES LETTER TO IASB ADDRESSING POTENTIAL ACCOUNTING ISSUES RESULTING FROM IBOR REFORM

On 8 July 2020, the Working Group on Euro RFRs published a letter to the IASB addressing concerns about potential accounting issues that could be considered a direct consequence of IBOR reform.

In the letter, the Working Group asks the IASB for (i) relief on the use of basis swaps in hedge accounting, and (ii) guidance on the use and form of regulated rates in the context of "solely payment of principal and interest" testing.

WORKING GROUP ON EURO RFRS RECOMMENDS VOLUNTARY COMPENSATION FOR SWAPTIONS IMPACTED BY TRANSITION TO €STR

On 16 June 2020, the Working Group on Euro RFRs published a paper recommending voluntary compensation for legacy swaption contracts affected by the CCP discounting transition from EONIA to €STR.

The Working Group acknowledges that the implementation of voluntary compensation may vary and does not recommend one approach above others. The paper advises market participants to contact swaption counterparties to determine whether they intend to consider voluntary compensation.

Spotlight on Swiss Franc

NATIONAL WORKING GROUP ON SWISS FRANC REFERENCE RATES PUBLISHES SEPTEMBER MEETING MINUTES AND RECOMMENDATIONS

On 22 October 2020, the National Working Group on Swiss Franc Reference Rates published the minutes of its September meeting, summarising developments since its previous meeting in May 2020. The meeting summary:

- says that a "synthetic" CHF LIBOR is not expected and therefore active transition is encouraged;
- encourages market participants to adhere to the ISDA 2020 IBOR Fallbacks Protocol and similar protocols for other agreements, such as the Swiss Master Agreement;
- reiterates its recommendation to use the "shift" methodology for contracts with a domestic focus (while noting that the "lag" methodology is a feasible alternative);
- reiterates its recommendation of floored compounded SARON in domestic trades; and
- clarifies the fallback language for mortgages and also recommends this fallback language for bilateral loans with corporates or SMEs.

Spotlight on Japanese Yen

CROSS-INDUSTRY COMMITTEE LAUNCHES SECOND PUBLIC CONSULTATION ON BENCHMARK REFORM

On 7 August 2020, the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks launched a second public consultation on interest rate benchmark reform.

The purpose of the consultation is to present the results of the Committee's deliberations and to solicit comments from a range of market participants on specific matters relating to the trigger of fallbacks in JPY LIBOR cash products.

The consultation also contains the outcome of the Committee's deliberations regarding the enhancement of the robustness of term reference rates and a transition plan for JPY LIBOR cash products maturing after the end of 2021, with a timeframe.

FINANCIAL SERVICES AGENCY AND BANK OF JAPAN PUBLISH LETTER TO CEOS OF MAJOR FINANCIAL INSTITUTIONS

On 1 June 2020, the Financial Services Agency and the Bank of Japan jointly issued a notice to the CEOs of major financial institutions to ascertain whether their Boards of Directors and other stakeholders have (i) fully understood and assessed the risks associated with the potential future discontinuation of LIBOR, (ii) taken steps to reduce and control such risks, and (iii) taken appropriate action to transition away from LIBOR.

The notice requires the submission of relevant documentation to confirm that such assessments have been carried out and that transition plans are under way.

Spotlight on Hong Kong Dollar

HKMA ISSUES CIRCULARS REQUESTING AUTHORISED INSTITUTIONS TO ADHERE TO THE ISDA 2020 IBOR FALLBACKS PROTOCOL AND STRESSING THE IMPORTANCE OF CUSTOMER PROTECTION

On 16 October 2020, the HKMA issued a circular requesting authorised institutions to adhere to the ISDA 2020 IBOR Fallbacks Protocol and adjusting the original transition timeline stipulated in the previous circular so that, for derivatives contracts, the inclusion of fallback provisions can be done within (rather than from the beginning of) January 2021. This is to align with the effective date of 25 January 2021 of the Protocol and Supplement 70 to the 2006 ISDA Definitions. For information on the previous circular, please see HKMA issues circular announcing LIBOR transition survey results and milestones.

On 21 October 2020, the HKMA also reminded authorised institutions to uphold customer protection principles in the processes of reform and transition of interest rate benchmarks. In particular, the HKMA stressed the importance of treating customers fairly and acting with due skill, care and diligence, and stated its expectation in relation to client communication and education and staff training and preparation.

HKMA ISSUES CIRCULAR ANNOUNCING LIBOR TRANSITION SURVEY RESULTS AND MILESTONES

On 10 July 2020, the HKMA issued the results of its survey on interest rate benchmark reform and announced key milestones for authorised institutions.

The survey results show that, while the amount of LIBOR-linked exposures maturing beyond 2021 with no adequate fallback provisions had increased, authorised institutions had made progress in developing transition plans.

The key milestones announced are:

- from 1 January 2021, authorised institutions should be in a position to offer products referencing alternative reference rates to LIBOR and have adequate fallback provisions in all newly issued LIBOR-linked contracts maturing after 2021; and
- by 30 June 2021, authorised institutions should cease issuance of new LIBOR-linked products maturing after 2021.

TMA PUBLISHES EXPLANATORY NOTE ON BENCHMARK REFORM FOR CORPORATE TREASURERS

In July 2020, Hong Kong's TMA published an explanatory note on benchmark reform, aimed at corporate treasurers and prepared in conjunction with the HKMA.

The note incorporates a Q&A and emphasises that corporates should avoid entering into new LIBOR-referencing contracts maturing after 2021. The note also acknowledges that, while there is no plan to discontinue HIBOR, as HONIA has been identified as an alternative rate to HIBOR, market participants are free to choose either rate.

Spotlight on Singapore Dollar

SC-STS PUBLISHES REPORT ON CONSULTATION ON SIBOR DISCONTINUATION AND PROPOSED TIMELINES FOR CESSATION

On 11 December 2020, the SC-STS released responses to feedback received on their earlier consultation on SIBOR discontinuation (for more information, please see Industry groups issue joint consultation on transition to SORA). As respondents were broadly supportive of the proposed SIBOR discontinuation and timelines, the SC-STS established the following milestones for SIBOR cessation:

- the discontinuation of 1-month and 3-month SIBOR by the end of 2024; and
- the discontinuation of 6-month SIBOR three months after the discontinuation of 6-month SOR.
- Taking this into account, the MAS announced the expansion of the mandate of the SC-STS to also oversee transition from SIBOR to SORA, which originally only covered SOR transition to SORA.

SC-STS ANNOUNCES TIMELINES AND PUBLISHES MARKET GUIDANCE FOR TRANSITION TO SORA

On 27 October 2020, the SC-STS announced industry timelines to support the coordinated shift from SOR to SORA.

Key milestones include:

- by end-April 2021, all lenders and borrowers are to cease issuance of SOR-linked loans and securities that mature after end-2021;
- by end-February 2021, all Domestic Systemically Important Banks are to be ready to offer a full suite of SORA-based products to their customers, while by end-April 2021 all non- Domestic Systemically Important Banks are to be ready to offer new SORA-based products; and
- to incorporate contractual fallbacks in all existing SOR derivatives when the ISDA 2020 IBOR Fallbacks Protocol becomes effective on 25 January 2021 and to incorporate contractual fallbacks by end-Q2 2021 in a majority of SOR-referencing cash market products that mature after end-2021, and that would not be transitioned to alternative reference rates.

The SC-STS also published a compendium, which provides an overview of SORA market conventions across different products and contractual fallbacks for relevant SOR contracts.

SC-STS OUTLINES THE ROLES OF FALLBACK RATE (SOR) AND SORA

On 1 September 2020, the SC-STS published a press release outlining the role of Fallback Rate (SOR) in the ongoing transition from SOR to SORA. The statement reiterates support for the use of Fallback Rate (SOR) as the primary fallback rate for SOR derivatives, and notes that SORA-based reference rates rank lower in the hierarchy of fallbacks under Supplement 70 to the 2006 ISDA Definitions, applying only if Fallback Rate (SOR) itself is unavailable.

However, the SC-STS also emphasises that Fallback Rate (SOR) is intended for use solely as a fallback rate, and is not intended for use in new derivative contracts. In order to limit reliance on Fallback Rate (SOR) and encourage the long-term shift to SORA, the SC-STS announced that Fallback Rate (SOR) will only be published for approximately three years following the occurrence of a fallback trigger.

SC-STS ENCOURAGES ADHERENCE TO ISDA 2020 IBOR FALLBACKS PROTOCOL

On 18 August 2020, the SC-STS issued a letter to ABS member banks encouraging adherence to the ISDA 2020 IBOR Fallbacks Protocol.

The letter provides an overview of Supplement 70 to the 2006 ISDA Definitions and the Protocol, and emphasises the importance of having contractual fallbacks in place upon the discontinuation of SOR where contracts are unable to transition from SOR to SORA by the end of 2021.

INDUSTRY GROUPS ISSUE JOINT CONSULTATION ON TRANSITION TO SORA

On 29 July 2020, the ABS, the SFEMC and the SC-STS issued a consultation report recommending the discontinuation of SIBOR in three to four years and a transition to the use of SORA as the main interest rate benchmark for SGD financial markets.

Although the ABS and the SFEMC previously initiated a reform of SIBOR and consulted on a new waterfall methodology, results of the transitional testing showed that the new benchmark cannot directly replace SIBOR. The report concluded that it would be beneficial to adopt a SORA-centred approach, and recommended transition from SIBOR in a phased manner.

On 5 August 2020, the MAS also announced several initiatives to support the adoption of SORA, including its issuance of SORA-based floating rate notes on a monthly basis and publication of key statistics to enhance transparency and data availability in relation to SORA.

Spotlight on Canadian Dollar

REFINITIV ANNOUNCES CESSATION OF 6-MONTH AND 12-MONTH CDOR TENORS

On 12 November 2020, Refinitiv, the administrator of CDOR, announced the cessation of the six-month and 12-month CDOR tenors after 14 May 2021. The one-month, two-month and three-month tenors are not affected by the announcement.

The announcement constitutes the first "Index Cessation Event" under Supplement 70 to the ISDA 2006 Definitions since it was published, and crystallises the applicable spread adjustments determined by Bloomberg.

Insights from AFME

AFME PUBLISHES EURIBOR BENCHMARK RATE MODIFICATION CLAUSE FOR SECURITISATIONS

On 12 October 2020, AFME published a model clause for EURIBOR benchmark rate modifications in securitisation bond issues. The model clause sets out a procedure to replace a EURIBOR-based interest rate mechanism with an alternative benchmark following a cessation or disruption of EURIBOR.

AFME PUBLISHES WHITE PAPER ON CLIENT COMMUNICATIONS DURING LIBOR TRANSITION

On 23 June 2020, AFME published a white paper on managing conduct and compliance risks relating to client communications during LIBOR transition. This follows an earlier paper containing guidance on effective compliance governance frameworks, published in December 2019.

The new paper provides transition guidance for firms to consider when developing client engagement strategies. Areas covered include:

- establishing a client communications strategy;
- communication content;
- methods and timing of client communications; and
- monitoring and record-keeping.

Insights from APLMA

APLMA PUBLISHES DISCUSSION DRAFT USD SOFR FACILITY AGREEMENTS

On 12 November 2020, the APLMA published two discussion draft USD SOFR Facility Agreements. One of the drafts references compounded interest, and the other references daily simple interest. The drafts are based on the latest APLMA multiple borrower, multiple guarantor, multicurrency term and revolving facilities agreement template, but have been adapted to reference a single currency (USD) and to reflect the approach and methodologies set out in the LMA Rate Switch Agreement (for more information, please see LMA publishes revised exposure draft facility agreements).

The "compounded interest" draft uses a lookback without observation shift mechanism, as recommended by the Working Group on Sterling RFRs and the ARRC. The "simple interest" draft has reflects the ARRC's preference for daily simple interest as indicated in its recommended fallback language for syndicated loans.

Insights from ASIFMA

ASIFMA PUBLISHES IBOR TRANSITION GUIDE FOR ASIA

On 13 July 2020, ASIFMA published an IBOR Transition Guide for Asia, which was co-produced with the APLMA, ISDA and ICMA. The guide provides information on IBOR transition for financial institutions in Asia and includes a practical implementation checklist covering key considerations in several areas, including:

- transition management;
- communication strategies;
- the identification and validation of exposures;
- risk management;
- transition of existing contracts and new contracts; and
- operational and technology readiness.

The guide also highlights key questions for consideration by financial institutions and points out the consequences of failing to prepare for the transition away from LIBOR, including the likelihood that financial models and forecasts will be based on a rate that no longer exists.

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Insights from FMLC

FMLC PUBLISHES PAPER ON LIBOR TRANSITION AND LEGAL UNCERTAINTY

On 23 October 2020, the FMLC published a paper entitled "LIBOR Transition: Issues of Legal Uncertainty" which summarises uncertainties arising from LIBOR transition.

The paper considers Brexit and the implications of LIBOR becoming a third-country benchmark under the EU BMR. It also discusses the solutions proposed in different jurisdictions to the problem of tough legacy contracts and analyses various possible solutions, including repapering, legislation, preserving screen continuity, and mandating a specific successor rate within a set timeframe. The paper concludes that preserving screen continuity by continuing to publish an amended "LIBOR" on the relevant screen pages would offer the best prospect of avoiding disruption in the wholesale financial markets.

The FMLC also suggests that the publication of a robust legal opinion could reassure market participants that any related adjustments made to the rate would not take it outside market standard contractual definitions.

Insights from ISDA

ISDA PUBLISHES SONIA ICE SWAP RATE DOCUMENTATION

On 14 December 2020, ISDA published the following SONIA ICE Swap Rate documentation:

- Supplement 66 to the 2006 ISDA Definitions containing amendments to Sections 7.1, 13.9 and 18.2(f) of the 2006 ISDA Definitions;
- an updated draft of the Collateral Cash Price Matrix; and
- an updated draft of the Settlement Matrix for Early Termination and Swaptions.

The following day IBA announced the launch of the GBP SONIA ICE Swap Rate as a benchmark for use by licensees. For more information, please see IBA launches GBP SONIA ICE Swap Rate.

ISDA LAUNCHES WEBINAR ON THE PATH FORWARD FOR LIBOR

On 4 December 2020, ISDA posted on its website a webinar on IBOR transition and recent developments, including IBA's consultation on LIBOR cessation (for more information on the consultation, please see IBA consults on future cessation of LIBOR). Speakers included Edwin Schooling Latter from the FCA and Tim Wipf from the ARRC. A transcript of the webinar is also available.

ISDA LAUNCHES PODCAST ON BENCHMARK REFORM AND LIBOR TRANSITION

On 3 November 2020, ISDA launched its new monthly podcast, The Swap.

The first three episodes provide an overview of developments relating to LIBOR transition, as follows:

- Episode 1: Goodbye LIBOR;
- Episode 2: The Milestones to LIBOR Transition; and
- Episode 3: Building Momentum in Alternative Rates.

ISDA LAUNCHES SUPPLEMENT 70 AND ISDA 2020 IBOR FALLBACKS PROTOCOL

On 23 October 2020, ISDA officially launched Supplement 70 to the 2006 ISDA Definitions and the ISDA 2020 IBOR Fallbacks Protocol. The Supplement sets out amendments to certain floating rate options for use in new derivative transactions and the Protocol acts as a delivery mechanism for multilateral implementation of the Supplement terms in legacy transactions. Both the Supplement and the Protocol will become effective on 25 January 2021.

In addition, ISDA has published standard forms of bilateral documentation that can be used to:

- amend the scope of the Protocol to include agreements or transactions that would otherwise be out of scope;
- amend the scope of the Protocol to exclude agreements or transactions that would otherwise be in scope;
- amend excluded agreements or transactions so that bespoke provisions apply instead; and
- disapply the LIBOR pre-cessation trigger.

ISDA has also produced this short animated video, explaining the basics of benchmark fallbacks.

For more information on the Supplement and Protocol, please see our briefing.

ISDA PUBLISHES UPDATED IBOR FALLBACK RATE ADJUSTMENTS FAQS

On 29 September 2020, ISDA published updated FAQs on IBOR Fallback Rate Adjustments to include the following new or revised questions on access to fallback adjustment data:

- What is an "Index Cessation Event"?
- When can I access the data?
- At what times of the day is the data published?

ISDA PUBLISHES IBOR FALLBACKS AND RFR CONVENTIONS PRODUCT TABLE

On 28 September 2020, ISDA published its IBOR Fallbacks and RFR Conventions Product Table. The table summarises how the IBOR fallbacks apply to various products, including certain non-linear products. The table also includes language that counterparties could use if they voluntarily choose to bilaterally negotiate any changes to the Payment Dates, Business Day conventions and/or fixing dates/observation dates/reference days in order to modify the impact of the fallbacks for certain products.

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ISDA PUBLISHES SOFR AND €STR BILATERAL AMENDMENT AGREEMENTS

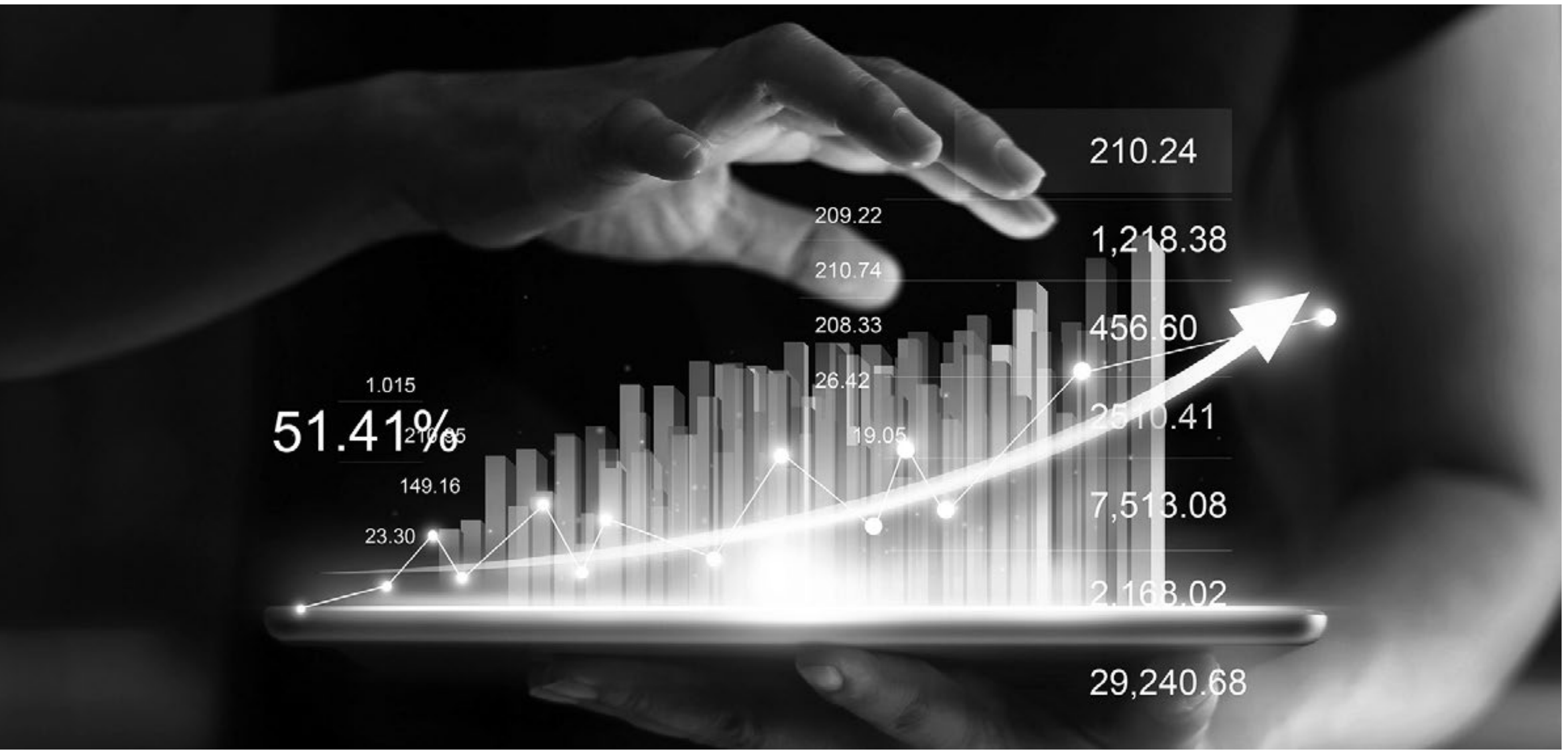
On 14 August 2020, ISDA published the following template amendment agreements, which can be used to amend references to USD and/or Euro interest rates in existing Credit Support Annexes so that they reference "SOFR (Collateral Rate)" and/or "EuroSTR (Collateral Rate)", as applicable, instead:

- bilateral agreement for amending references to USD interest rates in Credit Support Documents (SOFR Bilateral Amendment Agreement);
- bilateral agreement for amending references to EUR interest rates in Credit Support Documents (€STR Bilateral Amendment Agreement); and
- bilateral agreement for amending references to EUR interest rates and USD interest rates in Credit Support Documents (€STR and SOFR Bilateral Amendment Agreement).

ISDA also published a set of accompanying FAQs.

ISDA UPDATES COLLATERAL AGREEMENT INTEREST RATE DEFINITIONS

On 14 August 2020, ISDA updated the ISDA Collateral Agreement Interest Rate Definitions to include several additional definitions, including "SONIA (Collateral Rate)" and "SOFR (Collateral Rate)". The Collateral Agreement Interest Rate Definitions can be used by market participants to incorporate standardised definitions, including fallback provisions, relating to overnight interest rates into ISDA collateral agreements and can be used in connection with the bilateral amendment agreements referenced in ISDA publishes SOFR and €STR bilateral amendment agreements.



ISDA ISSUES STATEMENT ON ADHERENCE TO THE ISDA 2020 IBOR FALLBACKS PROTOCOL

On 29 July 2020, ISDA published a statement from its Board of Directors on adherence to the ISDA 2020 IBOR Fallbacks Protocol.

The statement encourages all market participants with non-cleared derivatives referencing an IBOR to adhere to the Protocol. It also emphasises that fallbacks will be critical to ensure that derivative contracts continue to reference clear, transparent and consistent rates if the IBOR that they currently reference is discontinued or becomes non-representative.

ISDA LAUNCHES RFR ADOPTION INDICATOR

On 28 July 2020, ISDA launched a new indicator to monitor the adoption of alternative RFRs across multiple interest rate derivative products and currencies. The indicator will provide a monthly snapshot of trading activity in RFR-based interest rate derivatives, based on global cleared OTC and exchange-traded derivatives data from seven CCPs spanning six currencies. The Indicator chart shows a general increase in the adoption of RFRs since April 2020.

ISDA has also published a paper providing an overview of the methodology used for the indicator.

ISDA AND BLOOMBERG ANNOUNCE PUBLICATION OF ADJUSTED RFRS

On 21 July 2020, Bloomberg and ISDA announced that Bloomberg had started calculating and publishing, on a daily basis:

- the adjusted fallback RFR (compounded in arrears);
- the indicative spread adjustment; and
- the "all-in" fallback rate, being the adjusted RFR plus the spread adjustment,

for each of the IBORs included in Supplement 70 to the 2006 ISDA Definitions.

ISDA PUBLISHES GUIDE TO BENCHMARK REFORM AND REDUCING IBOR EXPOSURE

On 16 July 2020, ISDA published "Benchmark Reform at a Glance", summarising the steps that market participants can take to reduce their exposure to IBORs. The publication is divided into three sections, covering:

- how to reduce IBOR exposure;
- the consequences of having exposure to an IBOR at the time of discontinuation; and
- background on "pre-cessation" fallbacks.

ISDA PUBLISHES FACT SHEET ON IBOR FALLBACKS

On 29 June 2020, ISDA published a fact sheet on IBOR fallbacks, giving an overview of the RFR calculation methodology and the implementation of fallbacks for IBOR-referencing derivatives. The fact sheet also:

- explains and summarises key terminology;
- contains timelines and other diagrams explaining the various steps involved in calculating fallbacks;
- shows the interaction of key dates referenced in Bloomberg's Rule Book and Supplement 70 to the 2006 ISDA Definitions;
- summarises the fallback triggers; and
- explains how to access the fallback rates.

BLOOMBERG AND ISDA PRESENT WEBINAR ON CALCULATION METHODOLOGY AND ISDA DOCUMENTATION

On 11 June 2020, Bloomberg and ISDA presented a webinar on IBOR transition. Among other things, it includes:

- a summary of ISDA's fallback documentation;
- an explanation of how the methodology set out in Bloomberg's Rule Book works, with examples; and
- an explanation of how the methodology interacts with Supplement 70 to the 2006 ISDA Definitions.

Insights from ICMA

ICMA PUBLISHES Q4 REPORT FEATURING ARTICLES ON LIBOR TRANSITION IN THE BOND MARKET

On 8 October 2020, ICMA published a Quarterly Report for Q4, which includes four articles on LIBOR transition in the bond market. The articles discuss:

- new bond issuances using the SONIA Compounded Index;
- the recommended adjustment spread for use in certain LIBOR bond fallbacks;
- consent solicitations; and
- comparisons between the approaches of the UK, EU and US to their respective tough legacy legislative proposals.

ICMA PUBLISHES Q3 REPORT FEATURING ARTICLES ON LIBOR TRANSITION IN THE BOND MARKET

On 10 July 2020, ICMA published a Quarterly Report for Q3 which features two articles on LIBOR transition in the bond market. The first article considers the transition from LIBOR to SONIA, and the second provides an overview of transition in the Euro area. The articles cover, among other things:

- new SONIA issuances;
- the SONIA Compounded Index;
- fallbacks in legacy LIBOR bond contracts;
- consent solicitations;
- "tough legacy" bond contracts; and
- issues relating to EURIBOR.

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Insights from ICMSA

ICMSA PUBLISHES BULLETIN ON THE TIMELINE OF A CONSENT SOLICITATION

On 10 June 2020, the ICMSA published a bulletin giving an overview and timeline of the typical consent solicitation process for notes in global form held in Euroclear and/or Clearstream, Luxembourg. While this publication is in the context of the need to transition outstanding LIBOR-referencing FRNs to another benchmark, the overview of the consent solicitation process is of more general application.

The bulletin stresses the length of time taken for a typical consent solicitation process, which usually takes at least three months from start to finish. In view of this, and the potential volume of affected issues, the bulletin urges preparation sooner rather than later.

Insights from JSLA

JSLA ISSUES SAMPLE SYNDICATED LOAN FALLBACK CLAUSES AND EXPLANATORY NOTES

On 27 October 2020, the JSLA published sample syndicated loan fallback clauses together with explanatory notes for syndicated loan arrangers and agents, in preparation for the permanent cessation of LIBOR.

There are two types of sample clauses: the hard-wired approach and the modified approach. The modified approach refrains from giving the borrower the right to object regardless of reasons, and the borrower may not reject the agreement without reasonable cause to the lender.

The sample clauses are based on the developments in the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks, discussions in other countries and the ARRC's recommended fallback language for syndicated loans, updated on 30 June 2020.

Insights from LIBOR Trade Association Working Party

LIBOR TRADE ASSOCIATION WORKING PARTY PUBLISHES 28 OCTOBER 2020 MEETING MINUTES

On 17 November 2020, the LIBOR Trade Association Working Party met to provide updates in respect of LIBOR transition.

Among other things, the meeting minutes provide information on the following developments:

- ICMA's ongoing work on various aspects of LIBOR transition, including work on operational issues in connection with the trigger of fallbacks, particularly pre-cessation triggers, and considerations of conflict of laws issues with respect to proposed tough legacy solutions;
- ISDA's focus on developing new "rate options" for daily RFRs, which will be added to the 2006 ISDA Definitions; and
- the LMA's publication of a note on the Revised Replacement of Screen Rate Clause to include a pre-cessation trigger following ISDA's IBOR Fallbacks announcement. For more information, please see LMA publishes note on incorporation of pre-cessation trigger into Revised Replacement of Screen Rate Clause.

LIBOR TRADE ASSOCIATION WORKING PARTY PUBLISHES 30 SEPTEMBER 2020 MEETING MINUTES

On 30 September 2020, the LIBOR Trade Association Working Party met to provide updates in respect of LIBOR transition.

Among other things, the meeting minutes provide information on the following developments:

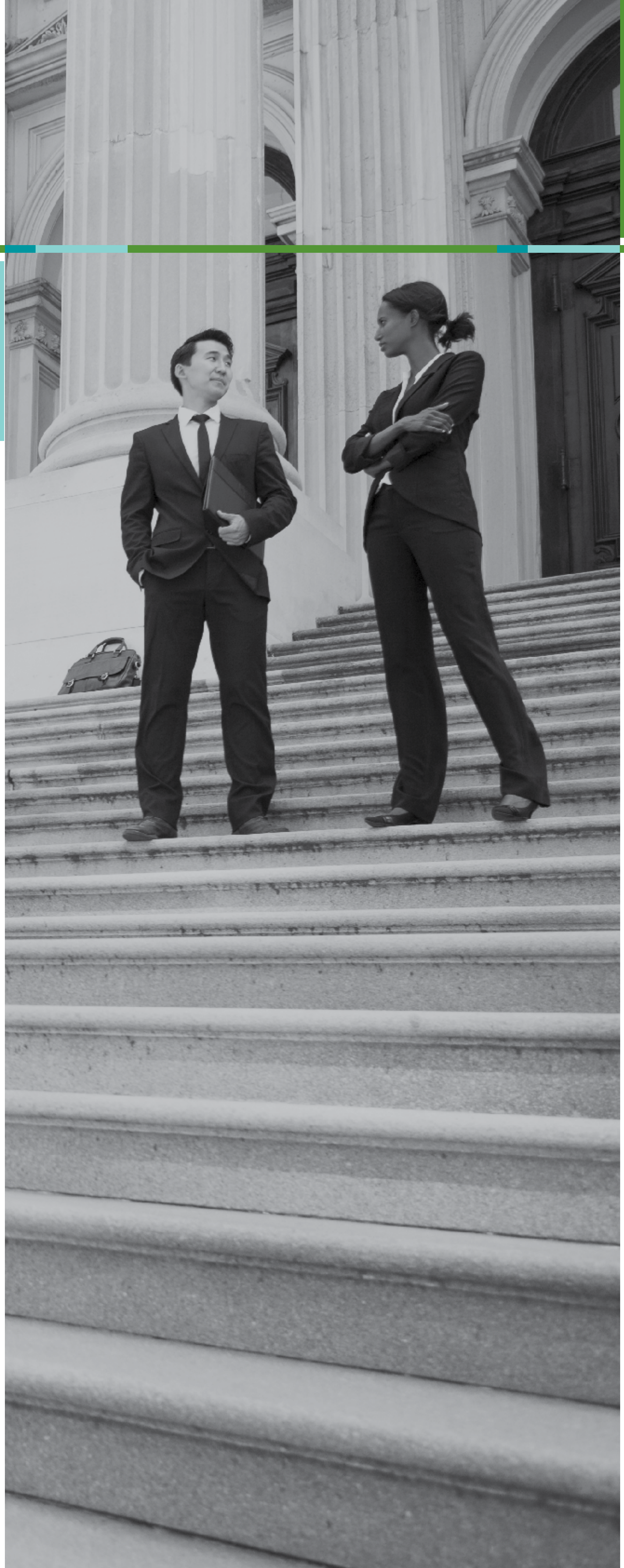
- the first consent solicitation for LIBOR-linked pass-through residential mortgage-backed securities;
- ICMA's consideration of conventions in the bond market in the light of those announced for the loan market;
- ICMA's work with the LMA on the appointment of a provider to publish the recommended credit adjustment spread for fallbacks in cash products referencing GBP LIBOR; and
- ICMA's analysis of the proposed solutions for transitioning tough legacy LIBOR contracts.

LIBOR TRADE ASSOCIATION WORKING PARTY PUBLISHES 29 JULY 2020 MEETING MINUTES

On 29 July 2020, the LIBOR Trade Association Working Party met to provide updates in respect of LIBOR transition.

Among other things, the meeting minutes provide information on the following developments:

- AFME's continued focus on securitisation issues;
- the APLMA's focus on market outreach and education, including the publication of an overlay of the LMA's Exposure Drafts;
- ICMA's and the LMA's intention to recommend credit adjustment spreads for fallbacks in cash products referencing GBP LIBOR, following the results of a consultation by the Bank of England; and
- ICMSA's work on reviewing draft wording for negative consent language for EURIBOR.



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LIBOR TRADE ASSOCIATION WORKING PARTY PUBLISHES 25 JUNE 2020 MEETING MINUTES

On 25 June 2020, the LIBOR Trade Association Working Party met to provide updates in respect of LIBOR transition.

Among other things, the meeting minutes provide information on the following developments:

- ICMSA's publication of a bulletin discussing the process of consent solicitation, including timelines (for more information, please see ICMSA publishes bulletin on the timeline of a consent solicitation); and
- the issue of a Risk Alert by the SEC, discussing plans to conduct examinations of investment advisers, broker-dealers, investment companies and other entities.

Insights from LMA

LMA UPDATES LIST OF LOANS REFERENCING RFRS

On 27 November 2020, the LMA updated its list of publicly-disclosed RFR-referencing syndicated and bilateral loans. The purpose of the list is to outline the key conventions used in these transactions.

In particular, information is provided on the following types of transactions:

- syndicated loans that reference LIBOR but contain an in-built switch mechanism to reference an RFR;
- new bilateral loans that directly reference an RFR; and
- legacy LIBOR-referencing bilateral loans that have been amended to reference an RFR.

Links to related public information and documentation are also included in the list.

Relatedly, in November 2020, the LMA published a panel discussion of the terms of GlaxoSmithKline's US$2.5bn and £1.9bn SOFR- and SONIA-linked revolving credit facilities and a note of an interview with Michael Dawson, Head of Liquidity & FX at Shell.

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LMA PUBLISHES RFR TERMS FOR INCLUSION IN REVISED REPLACEMENT OF SCREEN RATE CLAUSE

On 23 November 2020, the LMA updated its recommended Replacement of Screen Rate Clause, publishing suggested full terms relating to the use of RFRs to replace the placeholder in the original draft of the Replacement of Screen Rate Clause.

The supplementary wording includes optionality to specify terms that have already been agreed in relation to the alternative rate to which the loan will transition.

The LMA also published a form of declaration of non-representativeness trigger for inclusion in the Replacement of Screen Rate Clause in October, discussed in LMA publishes note on incorporation of pre-cessation trigger into Revised Replacement of Screen Rate Clause.

LMA PUBLISHES REVISED EXPOSURE DRAFT FACILITY AGREEMENTS

On 23 November 2020, the LMA published exposure draft multicurrency term and revolving facilities agreements incorporating rate switch provisions, with options for lookbacks with and without observation shifts, along with supporting documents.

The publications include:

- a revised exposure draft rate switch facility agreement (lookback without observation shift), which revises the exposure draft published on 11 September 2020 (for more information, please see LMA publishes exposure draft multicurrency rate switch facility agreement);
- a new exposure draft rate switch facility agreement (lookback with observation shift);
- revised commentary relating to the rate switch facility agreements to reflect the new and revised exposure drafts; and
- a term sheet for rate switch facility agreements, for use in conjunction with the rate switch facility agreements.

The key differences between the two forms of rate switch agreements are contained in Schedule 16 (Daily Non-Cumulative Compounded RFR Rate) and Schedule 17 (Cumulative Compounded RFR Rate) of each agreement.

LMA PUBLISHES NOTE ON INCORPORATION OF PRE-CESSATION TRIGGER INTO REVISED REPLACEMENT OF SCREEN RATE CLAUSE

On 21 October 2020, the LMA published a note highlighting points for consideration by market participants wishing to incorporate a pre-cessation trigger into the LMA's Revised Replacement of Screen Rate Clause.

The note includes suggested pre-cessation trigger wording and instructions on how to incorporate it into LMA documents. The note also indicates that the LMA will consider inserting a pre-cessation trigger into the recommended form of syndicated facility agreements in due course.

LMA PUBLISHES EXPOSURE DRAFT MULTICURRENCY RATE SWITCH FACILITY AGREEMENT

On 11 September 2020, the LMA published an exposure draft multicurrency term and revolving facilities agreement, which incorporates "rate switch" provisions allowing for multicurrency facility agreements that originally reference an IBOR as the base rate to switch to a compounding RFR on the occurrence of a trigger event.

The draft is still subject to market feedback and is not a recommended form. Many practices and conventions regarding the use of RFRs in loans have yet to achieve market consensus.

In line with the SONIA Loan Market Conventions, the exposure draft adopts:

- a lookback without observation shift methodology; and
- a non-cumulative compounded methodology for interest calculation.

In connection with the exposure draft, the Working Group on Sterling RFRs has acknowledged that the observation shift approach, which is used by ISDA and has been used in previous loans, is also viable, and that several methods exist to calculate SONIA compounded in arrears. Implementation choice is specifically left to individual market participants.

The LMA recommends that market participants consider the extent to which the preference will be to adopt a single set of conventions for use across all currencies, or to adopt a bifurcated approach under which the conventions applied will vary across currencies.

LMA UPDATES RECOMMENDED REPLACEMENT SCREEN RATE CLAUSE

On 24 August 2020, the LMA updated its recommended Replacement Screen Rate Clause, adding an additional paragraph to the standard form clause found in existing LMA form facility agreements.

The new provision is contained in a note which is accessible via the LMA's LIBOR microsite and which provides for a long-stop date for the Screen Rate replacement to take effect, in compliance with the Working Group on Sterling RFRs' requirement that credit agreements do not reference GBP LIBOR beyond 2021. The Working Group, via its Loan Enabler Task Force's Q&A published in July 2020, stated that the standard form clause in its then current form was not compliant with this timeline. For more on the Q&A, please see Working Group on Sterling RFRs publishes materials on LIBOR transition.

LMA PUBLISHES LIBOR TRANSITION GLOSSARY

On 11 June 2020, the LMA announced the publication of its Glossary of key terms relating to LIBOR transition. The LMA developed the Glossary to assist LMA members in navigating the new phrases and acronyms that have accompanied LIBOR transition and the adoption of RFRs.

The Glossary covers key terms relating to the transition to RFRs in the loan market, including compounded/averaged in arrears, observation shift, lookback, the amendment approach and the hardwired approach.

Insights from LSTA

LSTA ISSUES LIBOR TRANSITION AMENDMENT FEE ADVISORY

On 23 November 2020, the LSTA published a market advisory to recommend that amendment transactions executed on or before 30 June 2021 that are intended solely to incorporate ARRC updated hardwired (or substantially similar) fallback language into existing credit agreements should not be accompanied by any amendment fee.

The LSTA advises that amending such credit agreements without an amendment fee will increase the incentive of borrowers to enter into such amendments in the first half of 2021, prior to any "amendment wave" that is likely to occur around LIBOR cessation or pre-cessation.

LSTA PUBLISHES DAILY SIMPLE SOFR CONCEPT CREDIT AGREEMENT

On 15 September 2020, the LSTA published a concept credit agreement for documenting term loans referencing daily simple SOFR or daily compounded SOFR.

The agreement supports the use of hardwired fallback language, and is intended to help ease the transition to new originations of SOFR-referenced loans by offering an illustrative example of a daily simple SOFR and daily compounded SOFR loan.

Following a trigger event, the first step in the replacement rate waterfall is a SOFR term rate. If that rate is not available (noting that a SOFR term rate is not expected until H2 2021), then the fallback is to daily simple SOFR or, as an alternative, daily compounded SOFR.

The concept credit agreement includes an option for transition to a SOFR term rate if an ARRC-recommended term SOFR were to exist in the future, but the LSTA notes that market participants should carefully consider whether to include an automatic transition to such a rate in their credit agreements, including the potential disruption to existing hedging arrangements that such a transition could cause. The LSTA suggests that, instead of an automatic transition to a SOFR term rate, an "opt-in option" may be more appropriate.

Insights from UK Finance

UK FINANCE AND LSB PUBLISH BEST PRACTICE GUIDANCE ON TRANSITIONING SME CUSTOMERS TO NON-LIBOR LINKED PRODUCTS

On 28 October 2020, UK Finance and the LSB published a report containing guidance for firms on transitioning SME customers under loans, overdrafts, mortgages, credit cards and charge cards.

Key areas of focus include ensuring that all communication is clear and minimising the impact of the LIBOR transition. In particular, the LSB notes that the COVID-19 pandemic has created significant challenges for SMEs across the UK, underlining the need for firms to support them throughout the transition process.

UK FINANCE PUBLISHES GUIDE TO LIBOR DISCONTINUATION FOR BUSINESS CUSTOMERS

On 16 September 2020, UK Finance published a guide to LIBOR discontinuation for business customers. The guide is intended to help business customers with LIBOR-linked loans understand the discontinuation of LIBOR and what they should expect to hear from their bank or lender in the coming months.

The guide refers to the key milestones set out in the latest version of the Working Group on Sterling RFRs' LIBOR transition roadmap, alongside a statement on continuing the pace of GBP LIBOR transition and a Q&A on the Working Group's revised end-Q3 milestones for loan markets.

Among other things, the guide includes a potential plan of action for businesses, suggesting they take the following steps:

- make an inventory of LIBOR exposures;
- analyse and assess affected instruments;
- review alternatives and consider their pros and cons;
- consider other elements, such as systems, accounting and tax matters; and
- discuss with lenders and finance providers the steps that may need to be taken to address LIBOR exposure.

The guide also notes that a business may have other commercial, non-borrowing, contracts that reference LIBOR that may also require attention in the context of its discontinuation.

UK Finance has also published a related blog post commenting that the discontinuation of LIBOR will affect a significant proportion of British businesses in some way and that, while the COVID-19 pandemic has resulted in there being more immediate concerns to contend with, businesses must make time to consider the implications.

Regulatory Watch

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FCA ANNOUNCES FUTURE CONSULTATION ON PROPOSED UK BMR POWERS WHERE A BENCHMARK IS TO BE DISCONTINUED

On 30 November 2020, the FCA announced plans to consult in Q2 2021 on its proposed powers to prohibit new use in the UK of a critical benchmark which is to be discontinued. The powers are proposed to be granted under the forthcoming Financial Services Bill, and are discussed further at UK Government introduces Financial Services Bill 2019-21 to Parliament. The FCA has also launched consultations on related powers proposed to be granted under the Financial Services Bill, as discussed in FCA launches consultations on approach to new UK BMR powers and LIBOR transition and in our briefing.

The FCA's announcement also welcomes IBA's consultation on the cessation of USD LIBOR as providing an incentive to swift transition while allowing time to address legacy USD LIBOR contracts (for more information, please see IBA consults on future cessation of LIBOR).

The FCA says that it will coordinate with US and other authorities to consider whether and how to limit future use of USD LIBOR, and that it will continue to consider whether it would be necessary and feasible to support "tough legacy" contracts and instruments referencing the more heavily-used USD LIBOR rates. The FCA's considerations of tough legacy contracts are discussed in our briefing.

In its announcement, the FCA encourages market participants to actively transition away from LIBOR in order to achieve certainty and control over amended contractual terms. The announcement also expressly states that it should not be interpreted as confirmation that LIBOR has ceased, or will cease, to be provided, or that it is not, or no longer will be, representative for the purposes of contractual fallback triggers (in particular, those adopted under ISDA documentation).

FCA UPDATES Q&AS ON CONDUCT RISK

On 20 November 2020, the FCA updated its Q&As on conduct risk during LIBOR transition. The Q&As outline the FCA's expectation that (i) firms have a strategy in place and will take the necessary action during LIBOR transition, and (ii) customers will be treated fairly. The Q&As were originally published in November 2019, and two new Q&As address:

- how firms that are actively transitioning existing customers from LIBOR to alternative rates can do so fairly, given that the spread between LIBOR and SONIA will vary; and
- whether LIBOR contracts can be converted to the Bank Rate plus an appropriate spread, rather than SONIA plus an appropriate spread.

FCA LAUNCHES CONSULTATIONS ON APPROACH TO NEW UK BMR POWERS AND LIBOR TRANSITION

On 18 November 2020, the FCA launched two consultations seeking feedback on its intended approach to the exercise of new powers under Article 23A and Article 23D of the UK BMR. The powers are proposed to be granted by the forthcoming Financial Services Bill.

The consultation results will inform future FCA policy statements setting out how it intends to exercise its new powers to:

- designate a critical benchmark that is no longer representative or is at risk of becoming unrepresentative as an "Article 23A benchmark"; and
- manage the orderly wind-down of such benchmarks, potentially by requiring a change of methodology.

The consultation closes on 18 January 2021 and will be followed by a more specific consultation seeking feedback on "synthetic LIBOR". For more information, please see our briefing.

The FCA has also published a statement on its approach to the use of these powers to ensure an orderly wind-down of LIBOR and has announced its intention to consult next year on proposed powers to prohibit the use in the UK of critical benchmarks which are to be discontinued (for more information, see FCA announces future consultation on proposed UK BMR powers where a benchmark is to be discontinued).

FCA PUBLISHES NEW WEBPAGE ON GETTING FIRMS READY FOR LIBOR TRANSITION

On 17 September 2020, the FCA published a new webpage for firms on "getting ready for LIBOR transition".

On the webpage, the FCA sets out information and actions for firms to consider in preparation for LIBOR transition, including practical guidance on how to transition and information on how to treat customers fairly and avoid falling foul of overarching regulatory requirements.

FCA DELIVERS SPEECH ON CRITICAL TASKS AHEAD OF LIBOR TRANSITION

On 14 July 2020, Edwin Schooling Latter of the FCA delivered a speech on the critical tasks ahead for the second half of 2020.

Among other things, the speech makes the following points:

- the need to transition has not been diminished by the impact of the COVID-19 pandemic;
- the proposed powers enabling the FCA to compel IBA to produce a "synthetic LIBOR" for use in tough legacy contracts are not an alternative to transition and will only be used in specific circumstances; and
- the FCA may not be comfortable using these powers unless there has been a wide take-up of the ISDA 2020 IBOR Fallbacks Protocol.

For more information on the FCA powers, please see UK Government introduces Financial Services Bill 2019-21 to Parliament and FCA launches consultations on approach to new UK BMR powers and LIBOR transition.

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FCA QUERIES POTENTIAL INTERACTION OF FUTURE LIBOR CESSATION AND/ OR STATEMENT OF UNREPRESENTATIVENESS

On 25 June 2020, the FCA responded to an earlier request from ISDA for more information on how multiple statements on the cessation and/or loss of representativeness of LIBOR could interact. In the letter, the FCA:

- reiterates its view that any loss of representativeness will be an "irreversible step towards the end of panel bank LIBOR";
- reiterates its view that an unrepresentative LIBOR based on reduced panel bank submissions is likely to last for months rather than years;
- clarifies that, where there are multiple announcements, the credit spread calculated by Bloomberg should fix on the date of the first statement in time, and should not change;
- clarifies that, where there are multiple announcements, the actual fallback transition date should be the effective date that occurs first in time; and
- says that proposed future FCA powers to compel publication of a "synthetic LIBOR" do not diminish the importance of wide adoption of the ISDA 2020 IBOR Fallbacks Protocol (for more information on the FCA powers, please see FCA launches consultations on approach to new UK BMR powers and LIBOR transition).

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FCA ISSUES STATEMENT ON PROPOSED POWERS TO PRODUCE "SYNTHETIC LIBOR"

On 23 June 2020, the FCA made a statement, in conjunction with a statement by the UK Government regarding planned amendments to the UK BMR. The Government intends to give the FCA new powers in respect of benchmarks designated as "critical" under the BMR (which include LIBOR) which have ceased to be representative of their underlying market and have no realistic prospect of being restored to representativeness.

The proposed changes are intended to reduce disruption to holders of tough legacy LIBOR contracts by enabling continued publication of a LIBOR rate using a different and more robust methodology.

In the statement, the FCA emphasises that the primary focus of market participants should continue to be on LIBOR transition, particularly as (i) the use of any such powers might not be possible in all circumstances or for all LIBOR currencies and (ii) parties relying on any such regulatory action will not have control over the resulting economic terms.

For subsequent developments on these planned amendments to the UK BMR, please see UK Government introduces Financial Services Bill 2019-21 to Parliament.

FCA WARNS OF POTENTIAL LIBOR DISCONTINUATION ANNOUNCEMENTS THIS YEAR

On 22 June 2020, Edwin Schooling Latter of the FCA made a speech warning that announcements about the discontinuation of LIBOR from the end of 2021 could be made later this year. Key points are that:

- once the ISDA 2020 IBOR Fallbacks Protocol becomes effective (that is, on 25 January 2021), there is a good case for making a statement about the future discontinuation of LIBOR sooner rather than later; and
- while there may be enough panel banks to continue a representative rate for a period, the market should also be prepared for a situation where there are not enough panel banks to continue producing a representative rate.

FMSB PUBLISHES SPOTLIGHT REVIEW ON LIBOR TRANSITION CONDUCT RISKS

On 11 June 2020, the FMSB published a review of case studies for navigating conduct risks in relation to LIBOR transition.

The review contains four practical examples and looks at the possible risks to market fairness and effectiveness that could arise during LIBOR transition. It also considers how market participants could address these risks and highlights how uncertainties such as the future performance of RFRs and LIBOR, liquidity in RFR products, and evolving industry conventions can present conduct risk challenges for market participants when offering new products to clients or changing benchmarks.

FSB PUBLISHES LIBOR GLOBAL TRANSITION ROADMAP

On 16 October 2020, the FSB published a global transition roadmap, which sets out a timetable of actions to be taken by firms with exposure to LIBOR benchmarks.

Key deadlines include:

- firms should be able to offer non-LIBOR linked loans to their customers by the end of 2020;
- firms should have adhered to the ISDA 2020 IBOR Fallbacks Protocol by 25 January 2021 (the date on which the Protocol becomes effective);
- firms should have established formalised plans by mid-2021 to amend legacy contracts before the end of 2021; and
- firms should be prepared for LIBOR to be discontinued by the end of 2021.

CONTENTS

FSB AND BCBS PUBLISH REPORT ON SUPERVISORY ISSUES ASSOCIATED WITH BENCHMARK TRANSITION

On 9 July 2020, the FSB and the BCBS jointly published a report on the remaining challenges associated with benchmark transition. The report focuses on the transition away from LIBOR as opposed to other IBORs, and summarises questionnaire responses received from 24 FSB and 22 non-FSB jurisdictions. A follow-up assessment is expected early next year.

In summary, the report says that progress varies across jurisdictions, with FSB and LIBOR jurisdictions being more advanced than non-FSB and non-LIBOR jurisdictions. The report sets out a high-level summary of questionnaire responses and makes various recommendations, including:

- authorities should work to increase awareness of the issues and risks, especially among non-financial institutions and smaller financial institutions;
- further "desktop reviews" and on-site examinations should be undertaken;
- consideration should be given to increasing the intensity of supervisory engagement when the preparatory work of individual banks is unsatisfactory; and
- jurisdictions should cooperate and share information on best practices for transition.

Annex 3 to the report summarises the major transition risks for financial institutions.

FSB PUBLISHES STATEMENT ON IMPACT OF COVID-19 ON GLOBAL BENCHMARK REFORM

On 1 July 2020, the FSB published a statement on the impact of the COVID-19 pandemic on global benchmark reform. The statement acknowledges that certain aspects of transition plans are likely to be temporarily disrupted or delayed by the pandemic, but says that firms across all jurisdictions should ensure that their transition programmes still enable them to transition to RFRs before the end of 2021.

Glossary

€STR – Euro Short-Term Rate

ABS – Association of Banks in Singapore

AFME – Association for Financial Markets in Europe

APLMA – Asia Pacific Loan Market Association

ARRC – Alternative Reference Rates Committee

ASIFMA – Asia Securities Industry & Financial Markets Association

BCBS – Basel Committee on Banking Supervision

CCP – Central Clearing Counterparty

CDOR – Canadian Dollar Offered Rate

CFTC – Commodity Futures Trading Commission

CME – Chicago Mercantile Exchange

Commission – European Commission

ECB – European Central Bank

EFFR – Effective Federal Funds Rate

EONIA – Euro Overnight Index Average

EU BMR – EU Benchmark Regulation (EU Regulation 2016/1011)

EURIBOR – Euro Interbank Offered Rate

FCA – Financial Conduct Authority

FDIC – Federal Deposit Insurance Corporation

FFIEC – Federal Financial Institutions Examination Council

FMLC – Financial Markets Law Committee

FMSB – Fixed Income, Currencies and Commodities Markets Standards Board

FRB – Federal Reserve Board

FRN – Floating Rate Note

FSB – Financial Stability Board

HIBOR – Hong Kong Interbank Offered Rate

HKMA – Hong Kong Monetary Authority

HMRC – Her Majesty's Revenue and Customs

HONIA – Hong Kong Dollar Overnight Index Average

IASB – International Accounting Standards Board

IBA – ICE Benchmark Administration

IBOR – Interbank Offered Rate

ICMA – International Capital Market Association

ICMSA – International Capital Market Services Association

ISDA – International Swaps and Derivatives Association

JSLA – Japan Syndication and Loan-trading Association

LCH – London Clearing House

LIBOR – London Interbank Offered Rate

LMA – Loan Market Association

LSB – Lending Standards Board

LSTA – Loan Syndications and Trading Association

MAS – Monetary Authority of Singapore

OCC – Office of the Comptroller of the Currency

PRA - Prudential Regulation Authority

RFR – Risk-Free Rate

SC-STS – Steering Committee for SOR Transition to SORA

SEC – U.S. Securities and Exchange Commission

SFEMC – Singapore Foreign Exchange Market Committee

SIBOR – Singapore Interbank Offered Rate

SME – Small and Medium-sized Enterprises

SOFR – Secured Overnight Financing Rate

SONIA - Sterling Overnight Index Average

SOR - Singapore Dollar Swap Offer Rate

SORA - Singapore Overnight Rate Average

TMA – Treasury Markets Association

Treasury – Her Majesty's Treasury

TSRR – Term SONIA Reference Rate

UK BMR – EU Regulation 2016/1011 as given effect in English law by the European Union (Withdrawal) Act 2018, as amended, and regulations made thereunder

Over the past 18 months, we have been at the forefront of the IBOR transition market, having advised on various 'market first' transactions and having been mandated by a number of investment, commercial and retail banking clients on their IBOR transition projects.

We differentiate ourselves through our fully integrated and seamless offering which combines:

TOP TIER SUBJECT MATTER EXPERTS

With extensive knowledge of IBOR reform across the impacted currencies, jurisdictions and products (including loans, bonds, securitisation and derivatives).

ASHURST ADVANCE

Our efficient delivery platform comprising scalable and cost-efficient resourcing, tried and tested legal project management and legal process improvement specialists, and cutting-edge legal technology.

OUR CAPABILITY

Top tier IBOR/product subject matter expertise

Our expertise in IBOR and financial markets products and intimate knowledge of market practice enable us to identify and mitigate the key IBOR issues, risks and challenges for banks

Strong project management

Our professional legal project managers ensure successful delivery on time and to budget, and produce sophisticated management reporting

Process improvement

Our legal process improvement professionals drive continual process improvement to learn lessons real-time throughout the project

Cutting edge legal technology

Best in class contract automation, document review/AI and collaboration tools are applied by our expert legal technologists to increase efficiency and improve risk management

Cost-effective resourcing

Our team of over 70 legal analysts in Glasgow and Brisbane, combined with our South African managed legal services offering, drive efficiency as a scalable lower cost resourcing solution

Large scale bank project experience

We have worked on a significant number of large scale regulatory-driven due diligence and repapering projects for banks

TOP TIER IBOR EXPERTISE

Our extensive experience has enabled us to identify and mitigate the key issues, risks and challenges faced by banks including:

- SCOPING AND PRIORITISING
- DUE DILIGENCE, DATA CLEANSING AND ACCURACY
- UNDERSTANDING THE COMMERCIAL IMPACT
- CLEAR ROUTE TO EXECUTION
- UNIFORMITY OF APPROACH
- COMMUNICATION WITH CLIENTS AND CUSTOMERS
- TREATING CUSTOMERS FAIRLY
- DOCUMENT AUTOMATION

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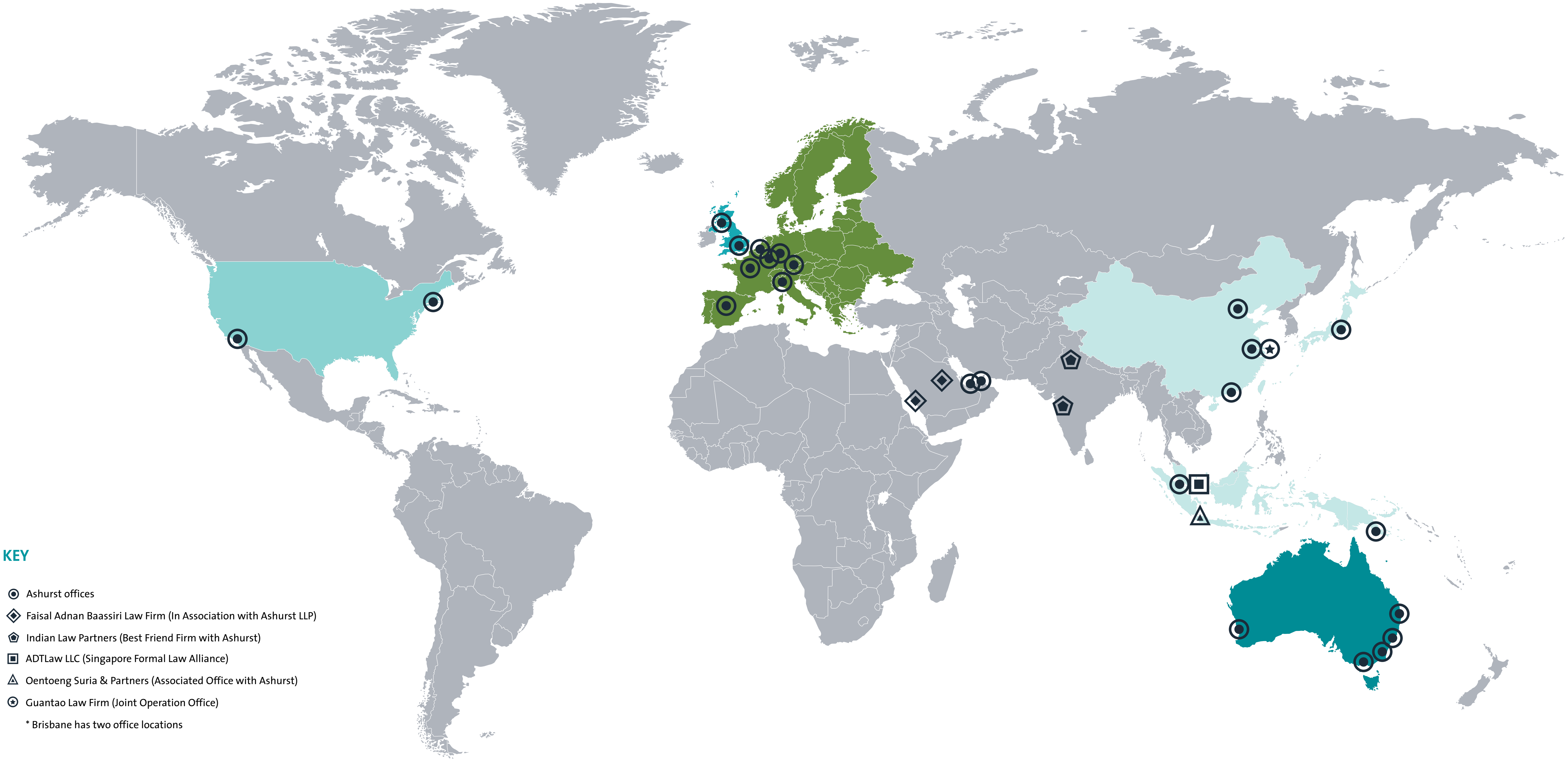

KEY

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- ADTLaw LLC (Singapore Formal Law Alliance)
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