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FUND FINANCE FRIDAY

Five Bullet Points on the LIBOR Transition That Happened in March (That You Want to Act Like You Know All About in Case Your Boss Asks)

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March was a big month for the LIBOR endgame. There were several big announcements, some important (but technical) developments, and new deadlines. Simply put, the March developments matter to the fund finance community because they provide certainty to market participants as to the date by which credit agreements that reference USD LIBOR will transition to an alternative reference rate and a date by which new credit agreements may not use USD LIBOR. Note that while there were other developments in March that impact a variety of financial products, this article will cover the developments that matter most to the fund finance market.

Here we will break it down for you and put it in context to help you make sense of it all, and make sure you look great in front of your boss.

Bullet 1: On March 5th the IBA and FCA made announcements regarding the dates when the publication of LIBOR will cease as well as the non-representativeness of various settings of LIBOR.

The first announcement came from the Intercontinental Exchange Benchmark Administration ("IBA"), which is the administrator of LIBOR. The IBA, among other things, confirmed its intention to cease publication of all 35 LIBOR settings immediately following the dates listed below. The IBA stated that because it would not have the requisite data to calculate LIBOR settings on a representative basis beyond the intended cessation dates, it would have to cease publication of the applicable LIBOR settings immediately following the dates listed below. The IBA noted in its message that the UK Financial Conduct Authority (the "FCA") could potentially require the IBA to publish synthetic LIBOR settings using new powers it would have if proposed amendments to the UK Benchmarks Regulation are approved.

The FCA issued its own announcement on March 5, 2021. In its announcement, the FCA confirmed that the IBA had notified it of its intent to cease publishing all LIBOR settings and that all 35 LIBOR settings will cease to be provided by any administrator or will no longer be representative. It too left open the possibility of establishing new powers where it could require IBA to produce certain LIBOR tenors on a synthetic basis.

Here are the key dates/handy "cheat sheet":

Last Date of Publication or Representativeness is December 31, 2021:			
Currency	**Tenors**	**Spread Adjustment Fixing Date**	**Result**
EUR LIBOR	All Tenors (Overnight, 1 Week, 1, 2, 3, 6 and 12 Months)	5-Mar-21	Permanent Cessation.
CHF LIBOR	All Tenors (Spot Next, 1 Week, 1, 2, 3, 6 and 12 Months)	5-Mar-21	Permanent Cessation.
JPY LIBOR	Spot Next, 1 Week, 2 Month and 12 Month	5-Mar-21	Permanent Cessation.
JPY LIBOR	1 Month, 3 Month and 6 Month	5-Mar-21	Non-Representative. "Synthetic" rate possible for one additional year.
GBP LIBOR	Overnight, 1 Week, 2 Month and 12 Month	5-Mar-21	Permanent Cessation.
GBP LIBOR	1 Month, 3 Month and 6 Month	5-Mar-21	Non-Representative. "Synthetic" rate possible for a "further period" after end-2021.

Last Date of Publication or Representativeness is June 30, 2023:			
Currency	**Tenors**	**Spread Adjustment Fixing Date**	**Result**
USD LIBOR	Overnight and 12 Month	5-Mar-21	Permanent Cessation.
USD LIBOR	1 Month, 3 Month and 6 Month	5-Mar-21	Non-Representative. "Synthetic" rate possible for a "further period" after end-June 2023.

Bullet 2: The announcements from the FCA and IBA were not unexpected and were the result of feedback from market participants.

The IBA feedback statement and the FCA announcement were anticipated as a result of a process by the IBA where it sought input from market participants regarding proposed end dates for certain settings for LIBOR.

The FCA announced in July of 2017 its intention that it would no longer be necessary to request or require banks to submit to LIBOR after December 31, 2021. Since that announcement, the FCA and other regulators and industry groups have advised market participants of the need to transition away from LIBOR by this date.

The IBA engaged multiple constituents, including market participants, panel banks, the FCA and others, regarding the potential for continuing certain widely used LIBOR settings after December 2021. In December 2020, following discussions with the FCA and others, the IBA published a consultation of its intention to cease publication of certain LIBOR settings by certain dates, subject to the rights FCA has to compel the IBA to continue publishing LIBOR. Respondents to the consultation had until late January 2021 to provide feedback to the IBA. The announcements were the result of that feedback it received.

Bullet 3: The March 5th announcements are a "Trigger Event" under the terms of your credit agreement – but do not require immediate transition.

Almost every credit agreement in the fund finance market for a LIBOR-based deal contains contractual fallback provisions recommended by the Alternative Reference Rates Committee ("ARRC") with respect to USD LIBOR.

The FCA announcement and the IBA feedback statement each serve as a "trigger event" for these contractual fallback provisions. Indeed, on March 8, 2021, ARRC confirmed that the FCA announcement and the IBA feedback statement constitute a "Benchmark Transition Event" with respect to all USD LIBOR settings under the ARRC-recommended fallback language for bilateral and syndicated business loans.

The impact of this "trigger" event on your loan agreement depends on whether the credit agreement uses the hardwired approach or the amendment approach. For credit agreements that include the ARRC hardwired fallback language (which is the current recommended approach), the occurrence of this trigger event (called a "Benchmark Transition Event" in the drafting) does not mean anything changes other than potentially a notice requirement from the lender in a bilateral deal or the agent in a syndicated deal to the borrower. The actual transition will occur when LIBOR actually ceases or the FCA declares it non-representative at the end of June 2023 (this will be the "Benchmark Replacement Date" in your credit agreement).

If your credit agreement contains the ARRC or another variation of the amendment fallback language, the occurrence of a trigger event may require notice of the event from the lender in a bilateral deal or the agent in a syndicated deal to the borrower, and this notice would allow an amendment process to begin. In the case of the ARRC language, the effective date of such an amendment would not occur until the 90-day window (or another number of days agreed by the parties) begins starting on April 1, 2023, leading up to the cessation date in June 2023.

Note that under either approach the drafting in the credit agreement typically contemplates an "Early Opt-In" concept which allows the parties to elect an earlier transition.

Bullet 4: The March 5th announcements also fixed the spread adjustment contemplated under certain documents as of March 5, 2021.

Both forms of the ARRC fallback language contemplate a spread adjustment to account for the economic difference between LIBOR and the risk-free rates. The ISDA Spread Adjustments published by Bloomberg were also set on March 5, 2021, giving market participants economic certainty for the transition. ARRC has said that it will match ISDA's spread adjustment values for products such as business loan agreements.

Bullet 5: "Synthetic" LIBOR could really be a "thing."

The IBA and FCA each noted in their announcements that if the UK Benchmark Regulation is amended in accordance with proposed amendments, the FCA would have the power to require the IBA to continue publishing certain LIBOR settings for certain limited purposes on a "synthetic" basis. The FCA has made clear that these synthetic LIBOR settings will no longer be deemed "representative of the underlying market and economic reality the setting is intended to measure." It would also be calculated using a different methodology.

The proposed powers are intended to be of limited use, intended to assist parties to "tough legacy" contracts that do not have appropriate LIBOR alternatives and cannot practically be amended. The table below sets out the LIBOR settings that FCA may require IBA to publish on a synthetic basis. The FCA has indicated that it does not intend to use its proposed expanded powers to require the IBA to continue publishing any other LIBOR setting beyond the intended cessation dates.

Currency	Tenors	Non-Representativeness
JPY LIBOR	1 Month, 3 Months and 6 Months	Synthetic rate possible for one additional year after Dec. 31, 2021
GBP LIBOR	1 Month, 3 Months and 6 Months	Synthetic rate possible for a "further period" after Dec. 31, 2021
USD LIBOR	1 Month, 3 Months and 6 Months	Synthetic rate possible for a "further period" after June 30, 2023

Bonus Bullets: What else happened in March?

- On March 23rd, ARRC provided an update on forward-looking SOFR. The committee is encouraging market participants to transition away from LIBOR without relying on a SOFR Term rate. There is a bit of tension here as U.S. banking regulators have said that LIBOR originations must end by the end of 2021 but "ARRC has said that it cannot guarantee that it will be in a position to recommend an administrator that can produce a robust forward-looking rate by the end of 2021." This means that Term SOFR may not be recommended before LIBOR originations cease. For existing loans, it is a small risk – USD LIBOR cessation for most tenors is pushed out to June 30, 2023 and an ARRC Recommended Term SOFR may exist by then. The existing ARRC Hardwired Fallback Language has a waterfall of replacement rates upon LIBOR cessation, so while Term SOFR is the first step in the waterfall, there are other options.

- On March 25, 2021, the State of New York passed legislation (Senate Bill 297B/Assembly Bill 164B) designed to smooth transition issues for certain legacy contracts that do not have sufficient fallback language. New York Governor Andrew Cuomo signed the legislation into law just this week. Congress is working on federal legislation that will largely mirror the New York State legislation.
- New riders! ARRC published a supplemental recommendation for abridged hardwired fallback language for both syndicated and bilateral business loans. This simplified language is intended to be more straightforward and user-friendly. According to the ARRC Business Loans Working Group, which drafted this language, it is intended to encourage the adoption of hardwired fallback language in certain loan markets, and it is anticipated that simpler and shorter provisions will be more readily adopted by borrowers.

  The events of March 5th allowed for this simplified language because the existing ARRC language contemplates multiple trigger events for replacement of USD LIBOR. The March 5th announcements are seen as that event, so the language can be streamlined there. The spread adjustment was also set on March 5th, which simplifies the drafting.