

CADWALDER

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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By **Leah Edelboim**
Partner | Fund Finance

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.

Key Takeaways from FFA Quarterly Update

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The Fund Finance Association hosted a virtual quarterly update mini-conference attended by over 380 people on Tuesday, headlined by a presentation from Rahmin Maali, the Associate Vice President of Private Capital at Preqin. The agenda also included two market update panels. Below are our key takeaways.

Preqin Presentation

Rahm Maali's great presentation gave us a sense of where things stand with private funds. He touched on how much dry powder is waiting to be deployed and shared with us how some fund managers successfully raised capital despite the obstacles they faced during COVID. He gave us a sense of how private capital funds performed relative to public markets and the prospects for private capital over the longer term. Here are the highlights:

- Assets under management in alternatives have tripled over the last decade. Preqin forecasts the rate of AUM growth to accelerate over the next 5 years, rising to \$17.1 trillion by 2025.
- The greater "private equity" asset class accounts for about 2/3 of all private capital AUM.
- Despite COVID, there was still over \$1 trillion raised in 2020.
- The "flight to quality" is real, in that over 42% of 2020 capital was raised by very large sponsors, who are raising larger and larger funds. Note, however, this trend is not new and was clearly evident prior to COVID as well.
- Both 2019 and 2020 were challenging for first-time fund managers, although there were a number of notable success stories.
- From a capital deployment perspective, 2020 deal flow in terms of both number of transactions as well as aggregate value was on par with 2019, despite the virtual shutdown of deal activity in the 2nd quarter occasioned by COVID.
- Fund sponsors are reporting that Investors are emphasizing ESG extensively.

Market Update Panels

Next up were two update panels on the current state of the fund finance market across the U.S., Europe and Asia. Focus was on the strong close to 2020 and a robust open to 2021, which is expected to continue, innovations in fund finance, how ESG and SPACs are here to stay and due diligence.

Here were our takeaways:

- The 4th Quarter was very active in all segments: investor fundraising, fund finance deal flow and investment acquisition. Professionals all went very hard at year-end to keep up with demand.
- COVID accelerated fund finance innovation. The product was seen as essential, and at times in 2020 there was even relative price insensitivity in the subscription credit facility space. COVID allowed sponsors to think harder about how they could expand the use of fund finance products to improve their overall investor product offering.
- Into 2021, all aspects of the market continue to function with effect. Many funds that had their initial close last year are successfully closing subsequent rounds. This is leading to significant upside requests in the subscription credit facility market, many of which need to be syndicated.
- Extensive investment deal flow is driving higher than historical median utilization. Banks are also focused on balance sheet efficiency, and are guiding funds to more properly size commitment amounts (in turn, furthering utilization). It will be interesting to see if the increase in SPAC activity will negatively impact PE deal volumes in 2021.
- ESG-related requests are now commonplace. While the fund finance market is still learning and honing its fund finance product offerings, there is strong general support in the market that is driving a solution-oriented reception to ESG requests from syndication participants.
- The panelists forecasted a continued strong business environment for fund finance for the rest of the year, with double-digit growth contemplated.
- GP-led secondaries transactions are forecasted to grow extensively, driving another large source of fund finance volume.

- A lot of top-tier fund sponsors are listing SPACs and creating SPAC programs, suggesting this phenomena may have legs.

Danielle Roman Joins FFA Board

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The Fund Finance Association this week announced that long-time FFA contributor and fund finance lawyer Danielle Roman has been appointed to the FFA Board. Based in Hong Kong, Danielle has led or co-led many of the FFA's initiatives in the Asia-Pacific region, including co-chairing the FFA's flagship Asia-Pacific conferences since their inception in 2017. She is also a board member of Women in Fund Finance and co-chair of the Asia chapter. In 2019, she was awarded the Dee Dee Sklar Women in Fund Finance Award for her outstanding contributions to the industry.

Danielle is a Partner at Mourant and has practiced banking and finance in Asia for over 15 years, advising on a broad spectrum of cross-border transactions, including fund finance, asset finance (in particular, aviation and shipping), acquisition and leveraged finance, debt restructurings and general corporate lending.

Outside of work, Danielle is an obstacle course racer as a Spartan Ambassador for Hong Kong, an avid trail-runner and proud mother of three kids. Welcome to the board!

Women in Fund Finance: Trends in Venture Capital

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By **Leah Edelboim**
Partner | Fund Finance

Women in Fund Finance this week hosted “Trends in Venture Capital,” a virtual event that looked at the highly creative, high-demand, and ever-evolving world of venture capital. The panel consisted of four distinguished industry leaders: Sarah Anderson, a Partner and founder at Vault Fund; Zack Ellison, Managing General Partner at Applied Real Intelligence; Veronica Juarez, Scout at Lightspeed Venture Partners; and Tim Schigel, Managing Partner at Refinery Ventures. Laura Hope, Head of the Financial Institutions Group, The Americas at DBS Bank, moderated this lively discussion aimed at demystifying the VC world.

This wide-ranging and interesting discussion covered everything from trends to investment opportunities to diversity and inclusion initiatives in the venture space. The panel also discussed how the venture world can do good and serve underprivileged communities while earning healthy returns. The conversation also helped to demystify certain terms in the venture vernacular.

Sarah explained the role of a venture studio and how they foster growth of early-stage companies.

Zack explained how venture debt is an often misunderstood strategy and tool that founders can use to fund their business. He discussed how venture debt can be a non-dilutive fundraising option for founders. From the investor side, he said that venture debt is an opportunity for outsized returns. In this view, it provides investors with the best risk-adjusted returns for any alternative investment class out there, including PE, real estate and other asset classes.

Veronica and Tim brought great perspectives about how investors can work better and more effectively with the companies they invest in. Veronica’s advice seems obvious but it is probably something more investors should heed: investors should ask the company what it needs. No one knows better what the company needs than the company itself. Tim noted that a board is typically composed following an investment. He said there is great value for investors, board members, and entrepreneurs to spend more time together to gain alignment to better achieve their goals.

The conversation next touched on how the venture community can create access and opportunity for low-income and vulnerable communities. This can take many forms. Veronica stressed the importance of investing in companies that make the lives of low-income individuals better or increase their quality of life and how this is a very broad and flexible concept.

The panel also talked about how the venture community can and should create access for low-income founders. The panel also touched on access to capital for women and minority founders. A number of the panelists discussed how they are helping to democratize access to early-stage capital. Sarah explained how studios provide a shared services model and, in that forum, women and minorities have a better pathway to get to scale and engagement on their ideas.

Finally, the panel touched on cryptocurrency and rounded out the discussion with their predictions for the future. Specifically, they looked at whether there is going to be softening in this market, which has been going strong for many years.

Wildgen Announces Webinar on GP and Management Fee Facilities

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Luxembourg law firm Wildgen will host the 7th edition of its Fund Finance webinar series on April 22 with a focus on GP and Management Fee Facilities. Wildgen Partner Michael Mbayi will moderate, and panelists include Richard Fletcher of Macfarlanes, Brian Foster of Cadwalader, Amira Hajili of Natixis, William Lamain of Raiffeisen and Emily Rose of Silicon Valley Bank. For more information and to register, click [here](#).

WFF Global: SPACs

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Women in Fund Finance will be hosting two panels in its upcoming series on SPACs: “What Is Going On in the SPAC Market?” on April 21 and “The Nuts and Bolts of SPACs” on April 22. Register for the April 21 event [here](#), and the April 22 event [here](#).

ESG-Linked Subscription Credit Lines May Be Another Tool in a Lender's Toolbelt

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A recent *Private Equity International* podcast featured *PEI* editors in a panel discussion about the development of environmental, social, and corporate governance ("ESG")-linked subscription credit lines where the sustainability performance of the assets in the fund is directly related to the facility's costs.

Currently, there are two categories of ESG-linked subscription credit lines. The first category is a general corporate purpose loan taken out either at the fund or corporate level. Under this category, the facility links the loan's interest rate to either a customized set of key performance indicators or ESG ratings. The second category is the use of proceeds loan, in which the facility requires that the funds drawn from the credit line for investment purposes must meet specific ESG criteria.

The panel's primary question is whether ESG-linked subscription credit lines are the best option for a fund. The benefit of having an ESG-linked subscription credit line is that if the fund meets its ESG targets, the fund will reduce its costs. In the alternative, if the fund fails to meet its ESG targets, the fund will have an increase in costs that will ultimately fall on the limited partners to pay. The panel agreed that it might be too early to fully determine the benefits and costs of ESG-linked subscription credit lines. However, lenders may find ESG-linked subscription credit lines as another tool in their toolbox. As ESG-linked subscription credit lines continue to develop in the fund financing world, Cadwalader's Fund Finance Group has helped clients utilize ESG-linked subscription credit lines to achieve their financial needs.

To listen to the *PEI* podcast, click [here](#).

Fund Finance Hiring

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Fund Finance Hiring

Societe Generale is hiring an associate for its subscription finance team. For more information, please contact Laurie Lawler by [email](#) or phone (212-278-6435).

Bridge Bank is hiring for a Senior Vice President in its Equity Fund Resources group for an origination role. For more information, click [here](#).