Clients&FriendsMemo

ARRC Releases Best Practices for Orderly LIBOR Transition

May 28, 2020

On May 27, 2020, the Alternative Reference Rates Committee ("**ARRC**")[1] published recommended best practices for preparing for the end of USD LIBOR (the "**Best Practices**").[2] The Best Practices aim to provide appropriate target milestones and timelines to minimize market disruption for the end of USD LIBOR.[3] The Best Practices are a significant statement, particularly for market participants in the United States, as they establish baseline views for both regulators and market participants. The ARRC acknowledges in the Best Practices that its guidance is subject to contingencies and other regulatory actions; however, in the absence of any statement from the United Kingdom Financial Conduct Authority ("**FCA**"), ARRC recommends that market participants continue to assume that USD LIBOR will cease as of December 31, 2021 and the Best Practices work on that assumption.

I. Key Points

ARRC identified four "key" recommended guidance points:

> (1) LIBOR cash products should use ARRC-recommended fallback language as soon as possible;
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> (2) third-party technology and operations vendors should have necessary enhancements to support SOFR in place by year end;
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> (3) USD LIBOR should not be used in new transactions after the end of the third quarter of 2021, with timing for particular products dependent on circumstances in the relevant market; and

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[1] Disclaimer: Cadwalader acts as counsel to the ARRC on various matters. This memorandum solely represents the views of Cadwalader and not necessarily those of the ARRC or its members.

[2] *See also* ARRC press release, *ARRC Announces Best Practices for Completing Transition from LIBOR* (May 27, 2020) and fact sheet summary of the Best Practices.

[3] ARRC also published an updated graphical timeline of key transition dates.

(4) where contracts provide a party with the ability to select a replacement rate on a discretionary basis, that party should disclose its selection at least 6 months before the replacement would apply.

II. Product-Specific Best Practices

The Best Practices are divided into five product categories: (1) floating-rate notes, (2) business loans, (3) consumer loans, (4) securitizations, and (5) derivatives.

A. Floating-Rate Notes. Hardwired fallbacks and vendor readiness by end of June 2020. Ceasing use of USD LIBOR in new transactions by end of 2020.

B. Business Loans. Hardwired fallbacks and vendor readiness by end of September 2020. Ceasing use of USD LIBOR in new transactions by end of June 2021.

C. Consumer Loans. Hardwired fallbacks: (i) in the case of mortgages, by end of June 2020, (ii) in the case of student loans, by end of September 2020. In each case, vendor readiness and ceasing use of USD LIBOR in new transactions is expected by end of September 2020.

D. Securitizations. Hardwired fallbacks by end of June 2020. Vendor readiness by end of year 2020. Ceasing use of USD LIBOR in new transactions by end of June 2021 (except CLOs, September 2021).

E. Derivatives. Hardwired fallbacks by 4 months following publication of IBOR-related amendments to the 2006 ISDA Definitions. Ceasing use of USD LIBOR in new transactions by end of June 2021.

III. Compliance and Transition Planning Best Practices

Beyond the product-specific considerations, the Best Practices recommend that market participants have in place internal programs to transition away from USD LIBOR "across all of their relevant activities, including a rigorous assessment of exposures." The Best Practices specifically set forth internal governance, diligence and strategy best practices, consistent with ARRC's previously published *Practical Implementation Checklist for SOFR Adoption*.

IV. Takeaways

All financial institutions involved in USD LIBOR-linked transactions should closely review the Best Practices. For large firms that have already devoted significant resources to LIBOR transition, this may simply be a matter of assessing current initiatives against the timelines and suggestions made by the Best Practices. For other firms, the Best Practices should serve as guidelines for establishing internal procedures and engaging (or not engaging) in LIBOR-related transactions. While the Best Practices are not binding regulatory guidance (and ARRC acknowledges as much), firms that act in accordance with the Best Practices should be well-positioned for both regulatory compliance and contract remediation.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys or a member of the Cadwalader LIBOR Preparedness Team. Additional detail on LIBOR transition can be found on the *Cadwalader Cabinet* here.

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