

Clients & Friends Memo

IBA to Consult on End of USD LIBOR; U.S. and UK Regulators Respond

December 1, 2020

On November 30, ICE Benchmark Administration ("**IBA**"), the administrator of LIBOR, [announced](#) a consultation on its intention to cease publishing USD LIBOR (1) in the case of 1-week and 2-month LIBOR, on December 31, 2021; and (2) in the case of overnight, 1-, 3-, 6- and 12-month LIBOR, on June 30, 2023. It was previously expected that IBA would announce their intention to cease publishing all tenors of USD LIBOR on December 31, 2021. In separate statements, U.S. banking regulators and the UK Financial Conduct Authority (the "**FCA**") welcomed the IBA announcement. The announcement follows IBA's [previously announced consultation](#) on its intention to cease euro, sterling, CHF and yen LIBOR at the end of 2021.

IBA announced that, based on feedback from USD LIBOR panel banks and discussions with the FCA and other regulatory authorities, it will consult on the intention to cease publication of USD LIBOR. IBA indicated that it intends to close the consultation for feedback at the end of January 2021.

The Regulators' Statements

The FCA (which regulates IBA) "welcome[d] and support[ed]" the move by IBA and [said](#) that it will coordinate with U.S. authorities and authorities in other jurisdictions to consider how to most appropriately limit new use of USD LIBOR after the end of 2021. The FCA also noted that under the [Financial Services Bill](#) introduced in Parliament in October 2020, it would receive new powers to prohibit use by supervised entities in the UK of a "critical benchmark" (such as LIBOR) and said that it "may exercise this power if we consider doing so protects consumers or market integrity." The FCA further indicated that (1) it plans to consult in the second quarter of 2021 on a proposed policy approach to the use of authority to prohibit some or all new use of USD LIBOR and (2) does not expect to use the power before the end of 2021. The FCA also reiterated encouragement for market participants to transition away from LIBOR, including by adhering to the IBOR Fallbacks Protocol (the "**Protocol**") published by the International Swaps and Derivatives Association ("**ISDA**"). The FCA also explicitly said that its statement should not be read as an announcement that USD LIBOR has ceased or will cease, or that it is not or will not be "representative" for purposes of the Protocol. (ISDA separately issued a [statement](#) noting that the IBA and FCA

statements do not constitute an "index cessation event" under the Protocol or the recent amendments to the 2006 ISDA Definitions.¹ Following the results of the IBA consultation, IBA's announcement that it will cease publishing USD LIBOR as of a certain date is expected to constitute an "index cessation event" for purposes of the Protocol, and the spread adjustment between LIBOR and SOFR—the recommended replacement rate for USD LIBOR—would be calculated as of the date of such announcement.)

Separately, the Federal Reserve Board, the Federal Deposit Insurance Corporation (the "FDIC") and the Office of the Comptroller of the Currency (the "OCC") issued a [joint statement](#) to encourage banks to transition away from USD LIBOR "as soon as practicable." The regulators said that extending LIBOR tenors through June 30, 2023 "would allow most legacy USD LIBOR contracts to mature before LIBOR experiences disruptions." The statement also cautioned that "failure to prepare for disruptions to USD LIBOR, including operating with insufficiently robust fallback language, could undermine financial stability and banks' safety and soundness" and that entering into new contracts using USD LIBOR as a reference rate after December 31, 2021 "would create safety and soundness risks and [we] will examine bank practices accordingly." The statement recognized, however, that there "may be limited circumstances" when it would be appropriate to enter into new USD LIBOR transactions and gave the following examples: (1) transactions executed for required participation in clearinghouse action procedures; (2) market making in support of client activity related to USD LIBOR transactions executed before January 2022; (3) transactions that hedge or reduce a bank or bank client's USD LIBOR exposure on contracts entered into before January 2022; and (4) novations of USD LIBOR contracts executed before January 2022.

The statements from IBA, the FCA and the U.S. banking regulators were "[applauded](#)" by the Alternative Reference Rates Committee, a group that was convened by the Federal Reserve Board and the New York Fed to publish industry-recommended fallbacks for LIBOR-referencing contracts.

IBA's announcement comes on the heels of the [testimony](#) before the House Financial Services Committee by Randal Quarles, Vice Chair of Supervision to the Federal Reserve, in which he indicated that federal legislation to provide a fix for LIBOR-referencing contracts would be "ultimately required" but was not urgently needed.

¹ A Cadwalader memorandum discussing the Protocol is available [here](#).

Summary and Considerations

The statements from IBA and the regulators are extremely significant to market participants working on a transition away from USD LIBOR and are likely to be followed by further clarifications and market developments. For now, it seems clear that regulators have been persuaded to permit USD LIBOR to survive, at least for “legacy” transactions, for at least 18 months longer than most had previously expected. It is likely, however, that regulators on both sides of the Atlantic will continue to press for financial institutions to transition from USD LIBOR as soon as practicable, despite the extended timetable for legacy USD transactions.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

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