

MEMO# 33161

March 5, 2021

LIBOR Update: UK Financial Conduct Authority Formally Announces Dates for LIBOR Discontinuation

[33161]

March 5, 2021 TO: ICI Members

ICI Global Members

Derivatives Markets Advisory Committee

ICI Global Regulated Funds Committee

LIBOR Transition Working Group SUBJECTS: Compliance

Derivatives

Financial Stability

Operations RE: LIBOR Update: UK Financial Conduct Authority Formally Announces Dates for LIBOR Discontinuation

On March 5, the UK Financial Conduct Authority (FCA) announced the future cessation and non-representativeness dates for all LIBOR rates. As of the dates stated below, the ICE Benchmark Administration (IBA) will cease providing LIBOR for all currencies.[\[1\]](#) The move was commended by stakeholders, including the Alternative Reference Rate Committee (ARRC) in the US.

The FCA also announced that it will consult on requiring IBA to provide “synthetic” LIBOR for some currencies after the cessation date as well as consult on permitting synthetic LIBOR use in tough legacy contracts.

We discuss below the cessation dates, the potential for synthetic LIBOR, and the impact of the announcement on ISDA derivatives and other contracts or financial instruments under the EU Benchmarks Regulation, the proposed New York State legislation, and other types of agreed-upon contractual fallback language.

Formal Cessation Dates for LIBOR Currencies and Tenors

The FCA announced the following LIBOR rates will cease publication as of the dates below:

- All 7 euro LIBOR settings, all 7 Swiss France LIBOR setting, the Spot Next, 1-week, 2-month, and 12-month Japanese yen LIBOR settings, the overnight 1-week, 2-month, and 12-month sterling LIBOR settings, and the 1-week and 2-month USD LIBOR settings will cease immediately after December 31, 2021.
- Overnight and 12-month USD LIBOR settings will cease immediately after June 30,

2023.

The FCA also announced that the following LIBOR rates will be no longer representative after December 31, 2021:

- 1-month, 3-month, and 6-month sterling LIBOR.
- 1-month, 3-month, and 6-month Japanese yen LIBOR.

Finally, it announced that 1-month, 3-month, and 6-month USD LIBOR will be no longer representative after June 30, 2023.

Announcements Regarding Potential Synthetic LIBOR Currencies and Tenors

The FCA stated that it would consult with the IBA on continuing to publish the following rates for a short period of time as synthetic LIBOR after 2021:

- 1-month, 3-month, and 6-month sterling LIBOR
- 1-month, 3-month, and 6-month Japanese yen LIBOR

The FCA also announced it would continue to consider the case for synthetic USD LIBOR to be published after June 2023.

Alongside the announcement, the FCA issued its statement of policy^[2] on how it would exercise its expected Article 23D powers to change a critical benchmark's calculation methodology (*i.e.*, create synthetic LIBOR). The statement of policy contends that the FCA will only use its Article 23D powers if it determines that:

- Tough legacy contracts will exist as of the benchmark's cessation date, which the FCA will determine in reviewing public and non-public data from all affected jurisdictions about the practicability of amending contracts without intervention.
- It would be desirable to use its powers to advance its statutory objectives to provide protection for consumers and the UK financial system.
- Where a benchmark is used outside the UK, the impact of that use and of a disorderly wind-down.
- It is feasible to produce a synthetic benchmark.

In exercising its powers, the FCA will seek to achieve a fair approximation of the ceased benchmark through the changed methodology and to make the least disturbance to affected parties. It will take into account the likely impact of the use of its power outside the UK by extending its engagement to global market participants.

Notably, in its LIBOR cessation announcement, the FCA reminded market participants that the "new" use of synthetic LIBOR by UK regulated firms would be prohibited and continued use by regulated firms in legacy financial instruments would be subject to the FCA allowing such use. The FCA intends to further consult on the prohibition on new use and the permitting exceptional use for tough legacy contracts in Q2 2021.

Effect of Announcement on Transition Triggers

As expected, the formal cessation announcement impacts several transition efforts, including as follows:

- **ISDA Protocol and Supplement:** ISDA released a statement alerting market participants that the FCA announcement represented an index cessation event under

the IBOR Fallbacks Supplement and Protocol, triggering a fixing of the fallback spread adjustment at the point of the announcement.[\[3\]](#) The spread adjustment is the part of the overall ISDA post-LIBOR fallback rate that accounts for a credit risk premium and other factors, calculated using a historical median approach over a five-year lookback period from the date of an announcement on cessation or non-representativeness.

- **EU Benchmarks Regulation:** Under the recently adopted EU Benchmarks Regulation, the FCA announcement will trigger the process of the European Commission designating one or more replacement rates for a benchmark that is to be discontinued.[\[4\]](#)
- **ARRC Proposed New York State Legislation:** Although the ARRC's proposal has not been adopted by New York state or any other legislatures, under the drafted language, the FCA announcement would be a "LIBOR Discontinuance Event." The LIBOR Discontinuance Event would cause any fallback language that is based on LIBOR to be disregarded and would provide authority for a contractual determining person to choose the statute's recommended replacement rate to replace LIBOR in a contract. However, the "LIBOR Replacement Date," which would trigger actual replacing LIBOR in contracts with a replacement rate, would be the later date of the actual permanent cessation of LIBOR. It is not yet clear whether or how ARRC or the New York State legislature may change this language in light of today's announcement.
- **Other Fallback Language Recommendations:** Other fallback language that has been voluntarily entered into by contractual parties, including some ARRC-recommended language for cash products that may have sought to follow the methodology of the ISDA Fallbacks Supplement, may also be affected by today's announcement.[\[5\]](#)

Other FCA Statements on Exercise of Its Powers

Concurrent with issuing the formal cessation notice, the FCA issued an updated statement of policy on the considerations it will take into account when exercising its powers, as proposed under the Financial Services Bill, to 'designate' a critical benchmark and to impose changes to that benchmark. [\[6\]](#)

Pursuant to the consultations that the FCA issued earlier this year, it also issued statements of policy on its expected new powers under Article 23A[\[7\]](#) of the UK Benchmarks Regulation. Regarding the Article 23A power to designate a benchmark as critical, which would be one requirement before deciding to issue a synthetic version of that ceased benchmark, the FCA will consider among other factors:

- Whether such a designation would be desirable as part of an orderly wind-down of a critical benchmark.
- Whether its action would align with action other authorities are taking, in recognition that a benchmark's use may be global.
- The effect of timing a designation decision and an effective date.

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endnotes

[1] See FCA announcement on future cessation and loss of representativeness of the LIBOR benchmarks (March 5, 2021), *available at* <https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf>. See also ARRC Commends Decisions Outlining the Definitive Endgame of LIBOR (March 5, 2021), *available at* https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Press_Release_Endgame.pdf.

[2] <https://www.fca.org.uk/publication/policy/statement-policy-fca-powers-article-23d-bmr.pdf>

[3] See LIBOR Cessation and the Impact on Fallbacks (March 5, 2021), *available at* <https://www.isda.org/2021/03/05/libor-cessation-and-the-impact-on-fallbacks/>.

[4] See Amendments to Regulation (EU) 2016/1011, Article 23b, *available at* <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0168&from=EN>.

[5] See, e.g., ARRC Announces Further Details Regarding Its Recommendation of Spread Adjustments for Cash Products (June 30, 2020) (“For all cash products, in the event that a pre-cessation event is operative, the ARRC’s recommended 5-year historical median spread adjustments will be determined at the same time as the ISDA’s spread adjustments, which will be at the time of any announcement that LIBOR will or has ceased or will or has become no longer representative.”), *available at* https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Recommendation_Spread_Adjustments_Cash_Products_Press_Release.pdf.

[6] See Benchmarks Regulation and proposed amendments under the Financial Services Bill (March 2021), *available at* <https://www.fca.org.uk/publication/policy/benchmarks-regulation-proposed-amendments-financial-services-bill.pdf>.

[7] <https://www.fca.org.uk/publication/policy/statement-policy-benchmarks-article-23a-bmr.pdf>