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# Eye On IBOR Transition

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With December 31, 2021, in plain sight, preparation for the transition from the London Interbank Offered Rate ("LIBOR") and similar interbank offered rates ("IBORs") to replacement benchmark interest rates is accelerating rapidly. In this article, we explore a number of recent core developments affecting structured finance products.

## ISDA IBOR Fallbacks Protocol and Supplement

The International Swaps and Derivatives Association ("ISDA") launched the long-awaited IBOR Fallbacks Protocol and related IBOR Fallbacks Supplement on October 23, 2020.[1]

The IBOR Fallbacks Protocol[2] allows market participants that choose to adhere to it to incorporate fallback language into existing non-cleared derivatives with no further action. Derivatives contracts involving a counterparty that has not adhered to the Protocol will require a bilateral amendment to address IBOR cessation. The fallbacks in the Protocol apply upon a permanent cessation of an applicable IBOR. In addition, for LIBOR only, the fallback will become operative upon the occurrence of a pre-cessation trigger; that is, upon a determination by the UK Financial Conduct Authority ("FCA") that a particular LIBOR no longer is representative of its underlying market. ISDA reports that during the two-week period prior to official launch of the Protocol, 257 market participants elected to adhere to it.

Supplement No. 70 to the 2006 ISDA Definitions,[3] which also takes effect on January 25, 2021, amends ISDA's standard definitions to incorporate appropriate fallbacks for GBP (United Kingdom), CHF (Switzerland), USD (United States), EUR (Europe) and JPY (Japan) LIBOR, as well as EURIBOR (Europe), TIBOR (Japan), BBSW (Australia), CDOR (Canada), HIBOR (Hong Kong), SOR (Singapore) and THBFIX (Thailand). These fallback rates are deemed robust and follow the recommendations of applicable governmental working groups. They will apply to new cleared and non-cleared interest rate derivatives that reference the 2006 Definitions from the effective date. The Supplement also addresses the treatment of discontinued rate maturities.

# ARRC Recommendations and Resources

The US Alternative Reference Rates Committee (the "ARRC"), convened by the Federal Reserve Board and New York Federal Reserve Bank, has been very active in producing tools, across numerous product categories, to ease the transition from LIBOR to its recommended replacement: the Secured Overnight Financing Rate ("SOFR").

## FALLBACK LANGUAGE AND SPREAD ADJUSTMENT

After conducting product-specific consultations, and refreshing its loan recommendations based on market evolution, the ARRC has produced final recommendations for key product categories that incorporate a "hardwired" approach to LIBOR fallback rate language. While the rate waterfall within the hardwired approach varies somewhat by product,[4] the essence of falling back to Term SOFR is constant.

Separately, the ARRC published its recommendation for a spread adjustment to recognize the difference between LIBOR and SOFR resulting from the fact that SOFR is a secured rate while LIBOR is not. In response to global market preference to align product fallbacks with potentially linked derivative product fallbacks, the ARRC's recommendation mirrors that of ISDA: a spread adjustment methodology based on a historical median over a five-year lookback period calculating the difference between USD LIBOR and SOFR.

It should be noted that many financial institutions still are considering whether SOFR is the appropriate fallback rate for them based on their funding models and loan activity structures, and specifically whether a more credit-sensitive rate might be more suitable. For the structured finance market, there would be obvious implications for securitization and hedged transactions that are SOFR-based. In a statement[5] released on November 6, 2020, US prudential banking regulators reiterated that banks should choose a robust replacement rate that is appropriate for their needs and include fallback language in their loan agreements providing for the use of such chosen rate if LIBOR were to be discontinued.

## BEST PRACTICES

To assist market participants in preparing for LIBOR cessation, the ARRC released a set of recommended best practices in May 2020, which it updated in September.[6] Included in these best practices are timelines and intermediate steps that market participants should consider to accelerate their transition to a replacement benchmark interest rate. Key recommendations include:

- New USD LIBOR cash products should include ARRC-recommended (or substantially similar) fallback language as soon as possible;
- Institutions should implement clear and rigorous internal programs to assess and address their LIBOR exposure across all relevant activities;
- Third-party technology and operations vendors relevant to the transition should complete all necessary enhancements to support SOFR by the end of 2020;
- For contracts specifying that a party will select a replacement rate at their discretion following a LIBOR transition event, the determining party should disclose their planned selection to relevant parties at least six months prior to the date that a replacement rate would become effective; and
- New use of USD LIBOR should stop, with timing depending on specific circumstances in each cash product market.

The following table shows the ARRC's recommended target end dates by product:

| Product | Hardwired Fallbacks Incorporated By | Tech / Ops Vendor Readiness By | Target For Cessation Of New Use Of USD LIBOR | Anticipated Fallback Rates Chosen By |
|---|---|---|---|---|
| Floating Rate Notes | 6/30/2020 | 6/30/2020 | 12/31/2020 | 6 months prior to re-set after LIBOR's end |
| Business Loans | Syndicated: 9/30/2020<br>Bilateral: 10/31/2020 | 9/30/2020 | 6/30/2021 | 6 months prior to re-set after LIBOR's end |
| Consumer Loans | Mortgages: 6/30/2020<br>Student Loans: 9/30/2020 | Mortgages: 9/30/2020 | Mortgages: 9/30/2020* | In accordance with relevant consumer regulations |
| Securitizations | 6/30/2020 | 12/31/2020 | CLOs: 9/30/2021<br>Other: 6/30/2021 | 6 months prior to re-set after LIBOR's end |
| Derivatives | Not later than 3-4 months after the Amendments to ISDA 2006 Definitions are published | Dealers to take steps to provide liquid SOFR derivatives markets to clients | 6/30/2021 | |

* The September 30, 2020, date for consumer loans refers to new applications for closed–end residential mortgages using USD LIBOR and maturing after 2021.

As this article is published, on November 30, ICE Benchmark Administration ("IBA") has announced that it will consult in early December on its intention to cease the publication of the one-week and two-month USD LIBOR settings after December 31, 2021, and to cease publishing the remaining USD LIBOR settings after June 30, 2023. The effect of this announcement (which has been well received by global regulators), if any, on the ARRC's Best Practices timeline summarized above has not been determined.

## CONVENTIONS

Among the tools published by the ARRC are various recommended conventions for implementing LIBOR transition. The first of these was published in 2019 and related to floating rate notes ("FRNs"),[7] which present a particularly thorny transition issue because, with their widely held market (and like many structured finance products), they are so difficult to amend. These were followed by recommended cross-currency swaps conventions in January 2020,[8] syndicated loan "in arrears" conventions in July 2020,[9] and bilateral loan "in arrears" conventions in November 2020.[10]

The FRN conventions identify considerations for market participants interested in using SOFR in new issuances, including explanations of different SOFR variants, the possible use of a SOFR Index,[11] and the distinction among lockout, lookback and payment delay interest payment conventions. The November 2019 appendix supplemented the conventions with sample key provision term sheets by interest payment convention, and recommended FRN fallback language.

The swaps conventions analyze potential technical specifications for interdealer trading of cross-currency basis swaps based on IBORs and replacement risk-free rates ("RFRs"), including IBOR-IBOR, RFR-RFR and RFR-IBOR swaps. The ARRC notes that these conventions may not be suitable for dealer-to-customer or customer-to-customer transactions.

The most recent ARRC conventions support bilateral loans, are substantially similar to the syndicated loan conventions, and focus on the ARRC's recommended "in arrears" structures: daily simple SOFR and daily compounded SOFR. The conventions address both new and legacy loans, and analyze structural issues, including simple versus compounded SOFR, interest payment conventions, day counts, rounding, interest rate floors, break funding and use of the SOFR Index. The bilateral loan conventions also note that market participants choosing to adopt the Hedged Loan Approach to the ARRC's recommended bilateral loan fallback language (which falls back to ISDA's successor rate and spread adjustment) should follow ISDA's related conventions. Both the bilateral loan conventions and the syndicated loan conventions rely on the ARRC's August 2020 technical reference appendix, which provides additional detailed discussion and spreadsheet calculations of the different lookback methodologies, calculations for daily simple SOFR and daily compounded SOFR for loans and the implementation of daily interest rate floors.

## Sterling Working Group Recommendations and Resources

Another active working group on the global stage is the UK Working Group on Sterling Risk-Free Reference Rates ("Sterling Working Group"), which recently finalized its spread adjustment recommendations and has produced a wealth of transition tools for market participants.

### SPREAD ADJUSTMENT RECOMMENDATION

Consistent with its global counterparts, in September the Sterling Working Group recommended[12] the use of the historical five-year median spread adjustment methodology when calculating the credit adjustment spread that should be applied to any relevant Sterling Overnight Index Average ("SONIA") rate chosen or recommended to replace GBP LIBOR pursuant to contractual fallback and replacement of screen rate provisions following a permanent cessation or pre-cessation trigger in relation to GBP LIBOR.

### CONVENTIONS AND OTHER GUIDANCE

During September and October 2020 alone, the Sterling Working Group has produced over a half-dozen resources, including an updated list of "top level priorities," a paper describing how issuers might transition difficult-to-amend contracts, such as bonds and securitizations, from LIBOR to risk-free rates, and several resources relating to loan market conventions and transition.

In updating its top level priorities,[13] the Sterling Working Group emphasized the need to cease issuing LIBOR-referencing products not later than the end of the first calendar quarter of 2021, and to accelerate efforts to transition derivative volumes from LIBOR to SONIA. Also updated were the roadmaps included in the priorities, as well as the product-specific target milestones, with active portfolio conversion still targeted to complete by the end of the third calendar quarter of 2021.

The guidance on transitioning difficult-to-amend bond and securitization transaction documents includes a discussion of the consent solicitation process, which already has been used successfully to transition these tough legacy contracts.[14]

Half of the recent resources relate to the loan market and the instruments that underlie many structured finance products. In publishing these resources, the Sterling Working Group has stated that it hoped to facilitate "the maximum possible degree of consistency across currencies, products and market,"[15] and that although some interim transition targets were adjusted to address the COVID-19 pandemic, the importance of transitioning product portfolios before the end of 2021 is unchanged.[16] The suite of resources includes detailed loans conventions[17] (intended to support the use of SONIA in loan markets for sterling bilateral and syndicated facilities, including multicurrency syndicated facilities where there is a sterling currency option) and a paper outlining practical steps that market participants can take to amend GBP LIBOR-referencing loans to SONIA.[18] The latter resource in particular emphasizes (i) the need to ensure that operating systems are updated to accommodate alternative reference rates, (ii) the importance of treating customers fairly and mitigating any transfer of value between the parties and (iii) the substantial time that will be required to amend all existing LIBOR-referencing loans.

The two most recent Sterling Working Group tools, released on October 16, 2020, are an overview of the key features of SONIA term rates[19] and a summary of the freely available independent RFR calculators (particularly addressing compounded rates) in the market.[20] The aim of these tools is to inform market participants about, and support, the use of SONIA variants, and to allow market participants to consider whether any amendments might be required to their operating systems or product offerings ahead of transition to such rates.

The UK Prudential Regulation Authority and FCA stated earlier this year[21] that firms should expect stepped up regulatory engagement with respect to LIBOR transition, which will be a "key input to [the Financial Policy Committee's] consideration … whether sufficient progress is being made to avoid seeking recourse to supervisory tools."

## Progress in Europe

The transition to a new risk-free rate—the Euro Short-Term Rate, or €STR—has been slower in Europe than in the United States and United Kingdom. This may be because its interbank offered rate—EURIBOR—was reformed in 2019 to employ a "hybrid methodology" of rate quotation that relies on a three-level waterfall that prioritizes the use of real transaction data whenever available from a group of quoting banks that is larger than the LIBOR panel. The robustness of EURIBOR is reassessed annually, and currently is deemed to comply with the EU Benchmark Regulation ("BMR"). As a result of the 2019 reformation, the quotation and use of EURIBOR is not expected to cease as of January 1, 2022 (subject, of course, to ongoing robustness and BMR compliance).

Nonetheless, the European Central Bank ("ECB") is moving forward to establish €STR as a robust and appropriate replacement rate and in October 2020 released a summary of the responses[22] to its July 2020 consultation on compounded €STR term rates.[23] The respondents supported the proposed calculation methodologies for compounded rates and index values, as well as proposed day-count conventions, selection of maturities and rate precision of four decimal places.

Most recently, on November 23, 2020, the ECB released two new consultations: one on EURIBOR Fallback Trigger Events[24] and one on €STR-based EURIBOR Fallback Rates.[25] The consultations seek market feedback with respect to a proposed set of potential permanent EURIBOR fallback trigger events, and to the most appropriate EURIBOR fallback provisions for cash products, including rate structure, spread adjustment, and market calculation conventions. Comments are due by January 15, 2021.

The National Working Group on Swiss Franc Reference Rates (the "Swiss Working Group") also has been making steady progress,[26] emphasizing that conventions for its replacement rate, the Swiss Average Rate Overnight, or SARON, be consistent with the international market. The Swiss Working Group has published recommended fallback language that tracks ISDA's implementation.

## Singapore Working Group Recommendations and Resources

The most ample set of transition guidance in Asia has been published in Singapore. On October 27, 2020, the Steering Committee for SOR Transition to SORA ("SC-STS") published[27] a suite of IBOR transition guidance documents to lay the foundation for "a coordinated shift" from SOR to SORA.

Included in these resources were: recommended timelines[28] for discontinuing the issuance of SOR-linked products (following an approach consistent with the United States, United Kingdom and Europe, but not beginning until late in the first quarter of 2021); a report on customer segments and preferences,[29] which was compiled based on surveys of a range of market participants and provides guidance on adopting SORA for various types of loan products; a SORA market compendium[30] (intended to serve as a companion to the customer segments report, and which analyzes key issues by product type and provides fallback language and conventions); and an end-user checklist[31] providing practical steps that should be taken to effectively transition away from SOR.

These resources follow the publication by the Monetary Authority of Singapore, the administrator of SORA, of a SORA methodology document[32] and related User Guide[33] in September. SC-STS has stated that it will be publishing additional resources to assist corporate users and retail customers.

## Legislative Solutions for Legacy Contracts

Perhaps the thorniest issue delaying transition from IBORs to applicable replacement benchmark rates is how to address so-called legacy contracts; that is, active contracts due to mature after 2021, that were entered into before fallback rates for a permanent discontinuance of LIBOR were contemplated, that are widely held by holders that are difficult or impossible to identify, and that require unanimous holder consent to amend essential provisions, such as the interest rate. The nature of these contracts has thwarted efforts to effectively transition them to a new benchmark interest rate. In response, governmental authorities in the United States, UK, and Europe have introduced legislative solutions to effect a mandatory and automatic transition, under specified circumstances, for these contracts.

### UNITED STATES

New York Senate Bill S9070,[34] introduced October 28, 2020, proposes to add a new Article 12 to New York's Uniform Commercial Code that substantially adopts the language from the proposed legislative solution[35] produced by the ARRC in March 2020. The ARRC's proposal establishes both mandatory (for contracts that either are silent as to LIBOR cessation or that default to the last quoted LIBOR in such event) and permissive (for contracts granting the parties discretion to choose a fallback rate) applications of the statutory language, sets forth an "opt-out" provision, applies to all product types and provides a safe harbor for "conforming changes" consisting of operational or administrative adjustments to implement the transition. We understand that a similar bill, applicable to all states, including New York, is under consideration at the federal level.

### UNITED KINGDOM

On October 21, 2020, the UK government released its promised draft legislation[36] to assist the "tough legacy" issue for certain LIBOR-referencing contracts by providing the FCA with new and enhanced powers to oversee the orderly wind-down of critical benchmarks, such as LIBOR. The legislation includes the authority, subject to specified requirements, for the FCA to direct a change in the methodology of a critical benchmark and extend its publication for a limited time period.

Contemporaneously, HM Treasury issued a policy statement[37] supporting the proposed amendments to the UK Benchmark Regulation, encouraging firms to continue to prioritize active transition away from LIBOR to alternative benchmarks, and providing further detail on the framework for the FCA's enhanced powers.

Additional momentum was gained on November 18, 2020, when IBA announced its intention to cease the publication after December 31, 2021, of all tenors of GBP, EUR, CHF, and JPY LIBOR settings,[38] and again on November 30, when IBA announced its intention to continue to publish the most frequently used tenors of USD LIBOR through June 30, 2023.[39] Each of these proposals is subject to IBA consultations expected in December 2020. In connection with IBA's November 18 announcement, FCA stated[40] that it will consult on policies for implementing its proposed new powers under the Financial Services Bill and released two new consultations: one with respect to the designation of benchmarks[41] and one with respect to the exercise of its proposed new powers.[42 43]

### EUROPE

Earlier this summer, in July, the European Commission proposed an amendment to the EU Benchmark Regulation[44] to enable the amendment of specified financial instruments or contracts by way of a directly applicable regulation, to avoid a significant disruption in the functioning of the EU financial markets. A new Article 23(a) would empower the European Commission to designate a mandatory replacement benchmark and, by operation of law, replace all references to a benchmark that has ceased to be published with the replacement benchmark. This legislative solution would apply to financial instruments, financial contracts and measurements of the performance of an investment fund that are within the scope of the BMR; that is, in EU contracts involving EU supervised entities.[45] The key components are consistent with the New York legislative approach, with the EU Benchmark Regulation amendment making the use of the statutory replacement mandatory in contracts with no fallback provision, fallbacks that only contemplate temporary benchmark suspension, and fallbacks that reference the last quoted benchmark (and operate to convert floating rate instruments into fixed rate instruments). For contracts that provide parties with a choice of fallback rates, as well as contracts involving non-supervised entities, the EU legislative solution is available as an option if the parties so choose.

## Next Steps

Although December 31, 2021, is still more than a year away, multiple global regulators have targeted dates by which new originations of LIBOR-referencing products should cease, and the earliest of those dates are imminent.[46] Transition efforts are accelerating quickly, and wise market participants should be well advanced in assessing their product portfolios and related operating systems, choosing an appropriate replacement rate (by product, if necessary), and commencing a move to hardwired fallbacks and related contract amendments. The complexities of structured finance products and their underlying instruments and possible hedges make this effort all the more critical.

# Endnotes

1 ISDA Launches IBOR Fallbacks Supplement and Protocol, October 23, 2020.

2 ISDA 2020 IBOR Fallbacks Protocol, published on October 23, 2020.

3 Amendments to the 2006 ISDA Definitions to include new IBOR fallbacks - Supplement number 70 to the 2006 ISDA Definitions, Final on October 23, 2020, and published and effective on January 25, 2021.

4 For example, the recommended waterfall of replacement benchmark rates for securitization transactions, set forth in the ARRC's May 2019 Recommendations, is (a) Term SOFR, (b) Compounded SOFR, (c) the rate recommended by the Relevant Governmental Body, (d) the ISDA Fallback Rate and, optionally, (e) the rate chosen by a party designated with that responsibility in the transaction documents. The ARRC Recommendations for Floating Rate Notes, issued in April 2019, are slightly different in that they recommend the calculation of an interpolated LIBOR rate before resorting to the waterfall (which is substantially identical to the securitization waterfall). In contrast, the refreshed Syndicated Loan Recommendations and Bilateral Loan Recommendations offer a simpler recommended hardwired waterfall that starts with Term SOFR but then prefers Daily Simple SOFR and ends with a rate selected by the administrative agent and borrower, for syndicated loans, or lender, for bilateral loans (i.e., an amendment approach, which was removed as an alternate first-step approach in the refreshed recommendations).

5 Statement on Reference Rates for Loans, Federal Reserve Board, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, November 6, 2020.

6 ARRC Recommended Best Practices for Completing the Transition from LIBOR, Alternative Reference Rates Committee, September 3, 2020, which includes links to numerous additional tools.

7 SOFR Floating Rate Note Conventions Matrix, Alternative Reference Rates Committee, August 1, 2019, and supplemented by an Appendix to SOFR FRN Conventions Matrix dated November 21, 2019.

8 Recommendations for Interdealer Cross-Currency Swap Market Conventions, Alterative Reference Rates Committee, January 24, 2020.

9 SOFR "In Arrears" Conventions for Syndicated Business Loans, Alternative Reference Rates Committee, July 22, 2020, and supplemented by a Technical Reference Appendix to Syndicated Loan Conventions dated August 27, 2020.

10 SOFR "In Arrears" Conventions for Use in Bilateral Business Loans, Alternative Reference Rates Committee, November 25, 2020

11 Further analyzed in the ARRC's Statement on the Use of the SOFR Index in FRNs, May 6, 2020, including transaction structuring considerations and sample key terms for a floating rate note referencing the SOFR Index.

12 Statement on behalf of the Working Group on Sterling Risk-Free Reference Rates – Recommendation of Credit Adjustment Spread Methodology for fallbacks in cash market products referencing GBP LIBOR, Working Group on Sterling Risk-Free Reference Rates, September 10, 2020.

13 UK Working Group 2020-21 Top Level Priorities, Working Group on Sterling Risk-Free Reference Rates, updated September 28, 2020.

14 Active Transition of GBP LIBOR-Referencing Bonds, Working Group on Sterling Risk-Free Reference Rates, September 10, 2020.

15 Statement on behalf of the Working Group on Sterling Risk-Free Reference Rates – Recommendations for SONIA Loan Market Conventions, Working Group on Sterling Risk-Free Reference Rates, September 1, 2020.

16 Securing a SONIA-based sterling loan market, Working Group on Sterling Risk-Free Reference Rates, September 10, 2020.

17 Detailed Loans Conventions, Working Group on Sterling Risk-Free Reference Rates, September 1, 2020. These conventions include a recommendation to employ compounded SONIA in arrears using a five banking days' lookback without observation shift.

18 Active Transition of GBP LIBOR-Referencing Loans, Working Group on Sterling Risk-Free Reference Rates, September 10, 2020.

19 Term SONIA Reference Rate Publication Summary, Working Group on Sterling Risk-Free Reference Rates, October 16, 2020.

20 Freely Available Independent RFR Calculator Summary, Working Group on Sterling Risk-Free Reference Rates, October 16, 2020.

21 Letter to Senior Managers re Next Steps on LIBOR Transition, Prudential Regulation Authority and Financial Conduct Authority, January 16, 2020.

22 Summary of responses to the ECB's public consultation on the publication of compounded term rates using the €STR, European Central Bank, October 7, 2020.

23 Public consultation on the publication by the ECB of compounded term rates using the €STR, European Central Bank, July 24, 2020.

24 Public consultation on EURIBOR fallback trigger events, European Central Bank, November 23, 2020.

25 Public consultation on €STR-based EURIBOR Fallback Rates, European Central Bank, November 23, 2020.

26 Executive summary of the 29 September 2020 meeting of the National Working Group on Swiss Franc Reference Rates, October 22, 2020.

27 Industry Steering Committee Announces Timelines to Cease Issuance of SOR-Linked Financial Products, and Publishes Market Guidance to Support Transition to SORA, SC-STS, October 27, 2020.

28 Timelines to Cease Issuance of SGD Swap Offer Rate (SOR) Linked Financial Products, SC-STS, October 27, 2020.

29 Overview on the Usage of SORA in Loans - Customer Segments and Preferences, SC-STS, October 27, 2020.

30 SORA Market Compendium: Transition from SOR to SORA, SC-STS, October 27, 2020.

31 SC-STS End-User Checklist on Benchmark Transition, October 27, 2020.

32 Singapore Overnight Rate Average - Key Features and Calculation Methodology, Monetary Authority of Singapore, September 1, 2020.

33 Compounded Singapore Overnight Rate Average Index, Compounded SORA and MAS Floating Rate Notes: A User Guide, Monetary Authority of Singapore, September 1, 2020.

34 Senate Bill S9070 (2019-20 Legislative Session) – An act to amend the uniform commercial code, in relation to the effect of a LIBOR discontinuance event on contracts, securities and other agreements, New York State Senate, October 28, 2020.

35 Proposed Legislative Solution to Minimize Legal Uncertainty and Adverse Economic Impact Associated with LIBOR Transition, Alternative Reference Rates Committee, March 6, 2020.

36 Financial Services Bill 200, House of Commons, October 21, 2020. Benchmarks are addressed in sections 8-21 and Schedule 5.

37 Amendments to the Benchmarks Regulation to support LIBOR transition - Policy Statement, Her Majesty's Treasury, October 21, 2020.

38 ICE Benchmark Administration to Consult On Its Intention to Cease the Publication of GBP, EUR, CHF and JPY LIBOR, Intercontinental Exchange, November 18, 2020.

39 ICE Benchmark Administration to Consult on Its Intention to Cease the Publication of One Week and Two Month USD LIBOR Settings at End-December 2021, and the Remaining USD LIBOR Settings at End-June 2023, Intercontinental Exchange, November 30, 2020.

40 FCA consults on new benchmarks powers, Financial Conduct Authority, November 18, 2020.

[41] Consultation on proposed policy with respect to the designation of benchmarks under new Article 23A, Financial Conduct Authority, November 18, 2020.

[42] Consultation on proposed policy with respect to the exercise of the FCA's powers under new Article 23D, Financial Conduct Authority, November 18, 2020.

[43] In response to the announcements of IBA and FCA, ISDA issued a statement clarifying that "neither of these statements constitute an index cessation event under the IBOR Fallbacks Supplement or the ISDA 2020 IBOR Fallbacks Protocol," nor do they trigger fallbacks under the 2018 ISDA Benchmarks Supplement or its related protocol. ISDA Statement on IBA and UK FCA Announcements on LIBOR Consultations, November 18, 2020.

[44] Proposal to amend EU Benchmark Regulation as regards the exemption of certain third country foreign exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation, European Commission, July 24, 2020.

[45] Defined in Regulation (EU) No 468/2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation), European Central Bank, April 16, 2014.

[46] The ARRC recommends a date of December 31, 2020, for USD LIBOR-linked floating rate notes and June 30, 2021, for most other products, including securitizations. The Sterling Working Group has targeted March 31, 2021, for the cessation of GBP LIBOR-linked loan products.