

LIBOR endgame announced

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On March 5, 2021, the United Kingdom's Financial Conduct Authority (FCA) and ICE Benchmark Administration (IBA) issued key announcements (which can be found [here](#) and [here](#)) with regard to the future cessation and loss of representativeness of the London Interbank Offered Rate (LIBOR) for all currencies and settings.

These announcements are viewed as constituting a permanent cessation trigger (i.e., Benchmark Transition Event) under the Alternative Reference Rate Committee (ARRC)'s amendment approach and hardwired fallback language for U.S. dollar LIBOR under credit agreements.^[1] The announcements, which were commended by ARRC,^[2] accordingly trigger an obligation on the part of administrative agents or sole lenders under credit agreements that include ARRC's language^[3] to notify the borrower and (if applicable) other lenders about the announcements. On March 10, 2021, the Loan Syndications and Trading Association (LSTA) published a [form of administrative agent or sole lender notice to borrowers of the announcements](#). View a [summary](#) by the LSTA of the effect of the FCA's announcement on loan markets.

For credit agreements that use ARRC's amendment approach language for U.S. dollar LIBOR, the announcements are viewed as triggering the availability of permissive language allowing the administrative agent and borrower to agree on amendments to reflect a successor rate to U.S. dollar LIBOR (e.g., the secured overnight financing rate or SOFR), subject to negative consent rights of the "required" (e.g., majority) lenders.^[4] For credit agreements that use ARRC's hardwired fallback language for U.S. dollar LIBOR, the announcements do not actually trigger a fallback to SOFR — rather, that fallback will only occur on the date established on March 5, 2021, by the FCA and IBA for the permanent cessation and non-representativeness of U.S. dollar LIBOR: June 30, 2023.^[5] At that date, credit agreements that use ARRC's hardwired fallback approach for U.S. dollar LIBOR will fall back to SOFR; and credit agreements that use ARRC's amendment approach for U.S. dollar LIBOR, but that have not been amended to replace U.S. dollar LIBOR, will typically fall back to a U.S. dollar prime rate in accordance with their terms.

In addition, although ARRC's amendment approach and hardwired fallback language for credit agreements only apply to U.S. dollar LIBOR, ARRC's amendment approach language is sometimes expanded (or other language is included) to address non-U.S. dollar LIBOR fallbacks in the context of multi-currency facilities. Accordingly, the impact of the announcements in this context must also be considered.

Of course, the actual implications under a given credit agreement will depend on the precise language used and the extent to which that language may depart from ARRC's recommended language.

In addition, the International Swaps and Derivatives Association (ISDA) has stated that the

FCA's announcement constitutes an index cessation event under ISDA's IBOR Fallbacks Supplement and 2020 IBOR Fallbacks Protocol, triggering the fixing of fallback spread adjustments^[6] for all LIBOR currencies and settings.^[7] This fixing of spread adjustments is relevant both for derivatives and for credit agreements that use ARRC's amendment or hardwired fallback language alike.^[8] Consistent with the position under credit agreements that use ARRC's amendment or hardwired language, the FCA's announcement does not trigger an immediate fallback to the relevant risk-free rate under derivatives that incorporate ISDA's IBOR Fallbacks Supplement. Rather, fallbacks for such derivatives will apply when each LIBOR setting ceases or becomes non-representative — being December 31, 2021, for non-U.S. dollar LIBOR settings, and June 30, 2023, for U.S. dollar LIBOR settings.

The FCA's and IBA's March 5, 2021 announcements mark a critical step in the continuing move away from LIBOR to alternative risk-free rates. They provide certainty on when fallbacks to new risk-free rates will apply and on spread adjustments and appear likely to shift LIBOR transition efforts into higher gear.

[1] There was technical uncertainty as to whether the FCA's announcement constituted a "Benchmark Transition Event," owing to language in the announcement referring to "cessation or loss of representativeness" (e.g., in the alternative) and the fact that the "Benchmark Transition Event" definition's non-representativeness prong only picks up a statement of *present* non-representativeness, not *future* non-representativeness. On March 8, 2021, ARRC accordingly issued a statement confirming its view that the FCA and IBA announcements constituted a "Benchmark Transition Event": https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Benchmark_Transition_Event_Statement.pdf

[2] See https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Press_Release_Engame

[3] For syndicated loans, see https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/Syndicated_Loan_Fallback_Language.pdf (amendment approach) and <https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/Updated-Final-Recommended-Language-June-30-2020.pdf> (hardwired)

[4] Under the definition of "Benchmark Transition Start Date" in the ARRC amendment approach language, no amendment replacing U.S. dollar LIBOR as a result of a Benchmark Transition Event could take effect until the 90th day (or whatever other number of days is specified) before U.S. dollar LIBOR's June 30, 2023 cessation or non-representativeness — so, before April 1, 2023, where 90 days is specified.

[5] The announcements specify that two unpopular U.S. dollar LIBOR tenors, the one-week and two-month settings, will permanently cease immediately after December 31, 2021. However, ISDA CEO Scott O'Malia has observed that fallbacks for those tenors will not immediately take effect upon their December 31, 2021 cessation — rather, the rate for one-week and two-month U.S. LIBOR will be linearly interpolated between the next shorter and next longer tenors that continue to be published, until fallbacks for all U.S. dollar LIBOR settings apply immediately after June 30, 2023. Note also that the FCA's March 5, 2021

announcement indicates it will consider requiring the possible publication of certain U.S. dollar LIBOR tenors on a “synthetic” basis after June 30, 2023 (popularly understood as a means of addressing LIBOR cessation in “tough legacy” contracts with inadequate or non-existent fallbacks and as to which amendments to replace LIBOR are not feasible), but that those settings would nonetheless cease to be representative after June 30, 2023 (i.e., the possible publication after June 30, 2023, of U.S. dollar LIBOR rates for certain tenors on a “synthetic” basis would not impede the June 30, 2023 fallback of those rates to their replacements).

[6]

https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation_Announcement_20210305.pdf

[7] See:

<https://www.isda.org/a/KPZTE/ISDA-Guidance-on-the-UK-FCA-Announcement-on-the-LIBOR-Benchmarks.pdf> and

https://www.isda.org/2021/03/05/libor-cessation-and-the-impact-on-fallbacks/?_zs=4PF791&_zl=ar0C6

[8] ARRC has stated that it will match ISDA’s spread adjustment values for loans:

https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Recommendation_Spread_Adjustments_Cash_Products_Press_Release.pdf