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COVID-19: LIBOR 2021 Cessation Timing Unchanged Though Planning Delays Expected

Notwithstanding numerous COVID-19-related challenges faced by market participants, UK regulators have affirmed that—at least for now—the anticipated cessation of the London Interbank Offered Rate (“LIBOR”) at the end of calendar year 2021 remains unchanged. Complying with regulators’ and working groups’ recommendations for reducing LIBOR exposure and transitioning to alternative reference rates, such as the Federal Reserve Bank of New York–endorsed Secured Overnight Financing Rate (“SOFR”) for USD LIBOR instruments, may prove even more challenging than originally anticipated.¹

The escalating COVID-19 health crisis and accompanying global markets volatility has forced many companies to pivot their resources towards immediate priorities such as managing liquidity, credit risk, and operational hazards. As a result, market participants have expressed concern about meeting internal deadlines involving their transition away from LIBOR, which the UK’s Financial Conduct Authority (“FCA”) has previously advised will cease after the end of 2021.²

Nevertheless, on March 25, 2020, the FCA, Bank of England (“BoE”), and members of the Working Group on Sterling Risk-Free Reference Rates (“RFRWG”), emphasized that the COVID-19 crisis does not affect the underlying need to transition away from LIBOR and therefore—at this point in time—will not delay the transition currently expected for the end of calendar year 2021.³ The FCA, BoE, and the RFRWG also noted that market participants should continue to prepare for the transition despite the COVID-19 crisis.⁴

¹ See, e.g., *Global Regulators Press Market Participants to Prepare Now for LIBOR Transition*, Paul, Weiss (Jan. 29, 2020), available [here](#); *SEC Issues Statement Highlighting Risks Regarding LIBOR Transition*, Paul, Weiss (July 18, 2019), available [here](#).

² See David Crow, *Banks Plead For Rethink Over Post-crisis Rules*, The Financial Times (Mar. 19, 2020), available [here](#) (“[Bank] [e]xecutives have also asked that the transition from the discredited Libor rate to new interest benchmarks be delayed from its current hard deadline of 2022 to free up employees to work on more pressing matters.”).

³ *Impact of the Coronavirus on Firms’ LIBOR Transition Plans*, Financial Conduct Authority (Mar. 25, 2020), available [here](#) (explaining that “[t]he central assumption that firms cannot rely on LIBOR being published after the end of 2021 has not changed and should remain the target date for all firms to meet”).

⁴ *Id.*

The FCA, BoE, and the RFRWG did acknowledge that the pandemic has impacted the transition programs in many firms.⁵ Particularly, some interim milestones in segments of the UK market, such as the loan market, will be affected because they are more reliant on LIBOR and have had made less progress in transition.⁶ The FCA, BoE, and the RFRWG stated that they will continue to assess the impact of the crisis on transition timelines and update the market place as soon as possible.⁷

Conversely, the International Swaps and Derivatives Association (“ISDA”) extended the deadline for responses to its current pre-cessation triggers market consultation in light of the developing COVID-19 crisis, recognizing the diversion of resources by many market participants to crisis-related workstreams.⁸ In the consultation, ISDA is seeking market guidance on the desirability to propose pre-cessation triggers for derivatives contracts that would lead to a transition away from LIBOR under certain specified events prior to a cessation, including if regulators were to declare LIBOR not representative of rates in the underlying market.⁹ ISDA ultimately plans to utilize the consultation results in an amendment of the 2006 ISDA Definitions, which “provide the basic framework for the documentation of privately negotiated interest rate and currency derivative transactions,”¹⁰ as well as an industry-wide protocol to uplift legacy transactions.

LIBOR transition planning may also be impacted by the potential delay of consideration by the New York State Legislature of the recently announced legislative solution by the Alternative Reference Rate Committee (“ARRC”), a working group convened to help prepare for USD LIBOR’s cessation.¹¹ The ARRC’s proposed legislation aims to encourage widespread adoption of SOFR for USD LIBOR instruments by (1) requiring its use in instances when a legacy contract is silent as to fallbacks, or fallbacks that reference a LIBOR-based rate and (2) definitively establishing that the recommended benchmark replacement (SOFR) is a commercially reasonable substitute for, and commercially substantially equivalent to, LIBOR. It also seeks to minimize litigation risk by providing a safe harbor for the use of the recommended benchmark replacement. Although the ARRC had hoped to promote the legislative action within calendar year 2020,¹²

⁵ *Id.*

⁶ *Id.*; see also Huw Jones, *Plan to End Libor Pricing for New Loans by September May Prove Tough*, Reuters (Mar. 25, 2020), available [here](#) (explaining how, due to the COVID-19 pandemic, it may “prove tough” for banks to stop pricing new loans against LIBOR by September 30, 2020, a deadline previously set by the FCA).

⁷ *Impact of the Coronavirus on Firms’ LIBOR Transition Plans*, Financial Conduct Authority (Mar. 25, 2020), available [here](#).

⁸ *Pre-cessation Consultation: Responding to COVID-19*, ISDA (Mar. 18, 2020), available [here](#).

⁹ *Id.*

¹⁰ *2006 ISDA Definitions*, ISDA, available [here](#) (last visited Mar. 29, 2020).

¹¹ *Proposed Legislative Solution to Minimize Legal Uncertainty and Adverse Economic Impact Associated with LIBOR Transition*, Federal Reserve Bank of New York (Mar. 6, 2020) at 4, available [here](#).

¹² *Id.* at 5.

the New York State Legislature likely will focus on the implementation of emergency measures until its June 2, 2020 recess, given New York's emergence as the U.S. epicenter of the COVID-19 crisis.

Market participants are now being forced to invest significant time and resources dealing with a myriad of issues that have arisen in relation to the COVID-19 crisis. Planning for LIBOR's impending cessation may prove even more challenging as a result. Although the timetable for LIBOR's anticipated cessation currently remains the same, we will continue to monitor any changes to previous directives and deadlines issued to market participants occasioned by the unfolding COVID-19 crisis and provide further updates as appropriate.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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