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LIBOR Cessation: ISDA Announces Preliminary Results of Consultation on Pre-cessation Fallbacks for LIBOR

On April 15, 2020, the International Swaps and Derivatives Association, Inc. (“ISDA”) announced the preliminary results of its consultation with market participants regarding the implementation of pre-cessation fallbacks for derivatives contracts referencing the London Interbank Offered Rate (“LIBOR”). Based on its review of the initial results, ISDA found that “a significant majority of respondents are in favor of including both pre-cessation and permanent cessation fallbacks as standard language in the amended 2006 ISDA Definitions for LIBOR and in a single protocol for including the updated definitions in legacy trades.”¹

For several years, ISDA has been working to identify fallback language for derivatives contracts that reference certain key Interbank Offered Rates (“IBORs”), including LIBOR, to account for the anticipated cessation of IBORs at the end of calendar year 2021 and to include such fallback language in an amended version of the 2006 ISDA Definitions. In conjunction with the amendment of the 2006 ISDA Definitions, ISDA intends to publish a protocol later this year to allow market participants to incorporate these amendments into existing derivatives contracts that reference IBORs. One of the issues ISDA needs to determine in connection with these amendments is whether fallbacks should apply only following the permanent cessation of an IBOR or following the occurrence of an earlier “non-representative” pre-cessation event.²

ISDA’s 2019 consultation with market participants was “unable to find market consensus on how to implement pre-cessation fallbacks in derivatives contracts,”³ and ISDA launched a new consultation in February 2020 to revisit the question. Although ISDA continues to analyze the results of the new consultation, it “currently expects to move forward on the basis that pre-cessation fallbacks based on a ‘non-representativeness’ determination and permanent cessation fallbacks would apply to all new and legacy derivatives referencing LIBOR that incorporate the amended 2006 ISDA Definitions.”⁴ ISDA’s inclusion of pre-cessation fallbacks for LIBOR will further align modifications to legacy derivatives contracts with modifications to legacy cash products that have been recommended by the Alternative Reference Rate

¹ ISDA Announces Preliminary Results of Consultation on Pre-cessation Fallbacks for LIBOR, available [here](#).

² ISDA Launches New Consultation on Pre-cessation Fallbacks, available [here](#).

³ *Id.*

⁴ ISDA Announces Preliminary Results of Consultation on Pre-cessation Fallbacks for LIBOR, available [here](#). Note that ISDA expects to “continue to include permanent cessation fallbacks only” for definitions referencing IBORs other than LIBOR.

Committee (“ARRC”), a working group convened to help prepare for the cessation of the U.S. Dollar LIBOR.⁵

ISDA has announced that it will release a final report further analyzing the consultation results and providing information on next steps in the coming weeks.⁶

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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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⁵ The AARC has included pre-cessation triggers in its suggested fallback language. An overview of recommended fallback language for various contracts is available [here](#).

⁶ *ISDA Announces Preliminary Results of Consultation on Pre-cessation Fallbacks for LIBOR*, available [here](#).