Further information on LIBOR®

Background

In July 2017, the Financial Conduct Authority ("FCA") announced its intention that it would no longer be necessary to persuade, or compel, banks to submit to LIBOR after December 31, 2021. Since then, the FCA and other official sector bodies have strongly encouraged market participants to transition from LIBOR to alternative rates.

ICE Benchmark Administration Limited ("IBA"), the authorized and regulated administrator of LIBOR, engaged with end-users, banks, the FCA and other official sector bodies regarding the potential for continuing certain widely-used LIBOR settings after December 31, 2021. This included surveys of banks and end-users of LIBOR to identify the LIBOR settings that were most widely-used and for which users might have liked to see IBA work to seek an agreement with globally active banks to support publication after year-end 2021. The focus of this engagement was on seeking to facilitate transition by providing support for users with outstanding LIBOR-linked contracts that were impossible or impractical to modify before year-end 2021 (so-called "tough legacy" contracts).

IBA was clear throughout its engagement that: (i) any such settings would need to be compliant with relevant regulations (in particular those regarding representativeness); (ii) there was no guarantee that any LIBOR settings would continue to be published after year-end 2021; and (iii) users of LIBOR should not rely on the continued publication of any LIBOR settings when developing transition or fallback plans.

IBA Consultation on Intended LIBOR Cessation

Following discussions with the FCA and other official sector bodies, and after receiving communications from a majority of LIBOR panel banks that they would not be willing to continue contributing to LIBOR after certain specified dates, IBA considered that it would be unable to publish LIBOR settings on a representative basis after such dates. As a result, on December 4, 2020, IBA published a consultation on its intention to cease the publication of LIBOR.

On March 5, 2021, IBA published a feedback statement for the consultation and announced that, in the absence of sufficient panel bank support and without the intervention of the FCA to compel continued panel bank contributions to LIBOR (which the FCA confirmed it would not do), it would not be possible for IBA to publish the relevant LIBOR settings on a representative basis beyond the intended cessation dates specified for such settings in the consultation (being December 31, 2021 for all LIBOR settings except for the Overnight, 1- , 3-, 6- and 12-Months USD LIBOR settings, for which the date was June 30, 2023). As a result of IBA not having access to input data necessary to calculate LIBOR settings on a representative basis beyond the specified intended cessation dates for such settings, IBA stated that it would have to cease the publication of the relevant LIBOR settings immediately following such dates, unless the FCA exercised its (then anticipated) new legal powers under the United Kingdom Benchmarks Regulation (the "BMR") to require IBA to continue publishing such LIBOR settings using a changed, "synthetic" methodology[1].

FCA Cessation and Unrepresentativeness Statement

On March 5, 2021, the FCA also **announced** that it had no intention of using its anticipated new legal powers to require IBA to continue the publication of any EUR or CHF LIBOR settings, or the Overnight/Spot Next, 1 Week, 2 Months and 12 Months LIBOR settings in any other currency, beyond the intended cessation dates specified for such settings in the consultation, and that consequently:

1. the following LIBOR settings would cease immediately after December 31, 2021:
    - EUR LIBOR - all settings (Overnight, 1 Week, 1-, 2-, 3-, 6- and 12-Months);
    - CHF LIBOR - all settings (Spot Next, 1 Week, 1-, 2-, 3-, 6- and 12-Months);
    - JPY LIBOR - Spot Next, 1 Week, 2 Months and 12 Months;
    - GBP LIBOR - Overnight, 1 Week, 2 Months and 12 Months;
    - USD LIBOR - 1 Week and 2 Months settings; and
2. the Overnight and 12 Months USD LIBOR settings would cease immediately after June 30, 2023.

The FCA also **announced** that it would consult on using its anticipated new legal powers under the BMR to require IBA to continue the publication of the 1-, 3- and 6-Months GBP and JPY LIBOR settings beyond December 31, 2021 under a changed, "synthetic" methodology in order to reduce disruption and support parties to legacy contracts. The FCA noted that any settings published under a "synthetic" methodology would no longer be representative of the underlying market or economic reality the setting is intended to measure, including for the purposes of the BMR. The FCA's new powers

[1] *Please see the FCA's LIBOR transition **website** for statements, speeches and other publications regarding LIBOR transition and the FCA's powers to compel the publication of "synthetic" LIBOR.*

were provided as amendments to the BMR in the Financial Services Act 2021. The FCA has also advised that it will continue to consider the case for using its new legal powers to require IBA to continue the publication of the 1-, 3- and 6-Months USD LIBOR settings beyond June 30, 2023 under a changed, "synthetic", unrepresentative methodology.

FCA Announcement that it would Compel IBA to Publish "synthetic" 1-, 3- and 6-Months GBP and JPY LIBOR

On September 29, the FCA **announced**, following **consultation**, that in order to help ensure an orderly wind-down of the 1-, 3- and 6-Months GBP and JPY LIBOR settings, it would **compel** IBA to publish these six LIBOR settings under a changed, "synthetic" methodology, for the duration of 2022[2].

The **changed methodology** that the FCA requires IBA to use to determine the "synthetic" settings is:

- for 1-, 3- and 6-Months GBP LIBOR, the relevant ICE Term SONIA Reference Rate provided by IBA, and for 1-, 3- and 6-Months JPY LIBOR, the Tokyo Term Risk Free Rate (TORF) provided by QUICK Benchmarks Inc. (adjusted to be on a 360 day count basis); plus
- the respective ISDA fixed spread adjustment (that is published for the purpose of ISDA's IBOR Fallbacks Supplement and Protocol) for each of these six LIBOR settings[3][4].

The FCA **designated** these six LIBOR settings as "Article 23A benchmarks" with effect from January 1, 2022, which it needed to do in order to enable it to require these changes. The FCA noted that the first non-representative publication of these six

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[2]*The FCA is able to compel the publication of a ceasing benchmark for 12 months, and must review its decision to compel publication by the end of this period. The FCA may, where necessary, extend the period of compulsion by up to 12 months, with the maximum period of compulsion being 10 years. The FCA has stated that it does not intend to renew the requirement for publication of "synthetic" JPY LIBOR settings to continue, and that publication will therefore cease at year-end 2022.*

[3]*Please see the FCA's Article 23D notice for full details of the changes the FCA is imposing on IBA regarding the way that the 1-, 3- and 6-Month GBP and JPY LIBOR settings are to be determined after December 31, 2021. The FCA requires IBA to publish each "synthetic" LIBOR setting at or around 11:55 am London time on each applicable London business day, except for London public holidays (as was the case for "panel bank" LIBOR in those currencies).*

[4]*Bloomberg Index Services Limited maintains and calculates the fixed spread adjustment and the ISDA IBOR fallback for each LIBOR setting - please see the disclaimer here.*

“synthetic” LIBOR settings under the changed, unrepresentative, “synthetic” methodology, would be on January 4, 2022.

These six settings are not calculated using the “panel bank” LIBOR methodology and are no longer based on panel bank contributions. As these settings are being published under a “synthetic” methodology, they are no longer representative of the underlying market or economic reality the setting is intended to measure, including for the purposes of the BMR.

Continuing “panel bank” LIBOR settings

The FCA has **confirmed** that it expects that the Overnight and the 1-, 3-, 6- and 12-Months USD LIBOR settings will continue to be published on a representative basis, using panel bank contributions under the “panel bank” LIBOR methodology, until end-June 2023 at which point publication of the Overnight and 12-Month USD LIBOR settings will cease. The FCA has also advised that it will continue to consider the case for using its new legal powers to require IBA to continue the publication of the 1-, 3- and 6-Months USD LIBOR settings beyond June 30, 2023 under a changed, “synthetic”, unrepresentative methodology.

The material and information located on this website is provided for informational purposes only and is not intended to be and should not be relied upon as legal, financial or any other form of advice regarding your use of LIBOR. Please ensure you take legal and financial advice in all relevant jurisdictions to ensure you understand the impact of the cessation or unrepresentativeness of any LIBOR settings on you and your counterparties, and to ensure you understand the implications of the exercise of the FCA’s powers under the BMR.