

ALERTS

LIBOR Transition Update: ARRC Publishes Best Practices

May 28, 2020

On May 27, 2020, the Alternative Reference Rates Committee (“ARRC”) published best practices^[1] which outline a set of key, recommended transition milestone dates that market participants should aim to achieve across different categories of financial products.

The ARRC underscores that the milestone dates (and its suggested recommendations) are all based upon its guidance for preparing for the transition from LIBOR. Below are the ARRC’s general recommendations for best practices.

Recommendation 1. To the extent not already utilized, new USD LIBOR cash products should include ARRC-recommended, or substantially similar, fallback language as soon as possible.

Recommendation 2. Relevant third-party technology and operations vendors should complete all necessary enhancements to support the Secured Overnight Financing Rate (SOFR) by the end of 2020.

Recommendation 3. New use of USD LIBOR should stop:

- For new issuances of floating rate notes with maturities after Dec. 31, 2021 (excluding securitizations), by Dec. 31, 2020;
- For new business loans, including renewals and refinancings, by June 30, 2021;
- For consumer loans that are mortgages, no applications for mortgages using USD LIBOR and maturing after 2021 should be accepted after

Sept. 30, 2020;

- For securitizations other than collateralized loan obligations, by June 30, 2021, and for collateralized loan obligations, by Sept. 30, 2021; and
- For derivatives, market participants should refrain from initiating new LIBOR derivatives trades that increase LIBOR risk (unless such trades are for risk or default management of legacy LIBOR positions) after June 30, 2021.

Recommendation 4. For contracts specifying that one or more parties will select a replacement rate following a LIBOR-transition event, the determining party (or parties) should disclose the planned selection at least six months prior to the date the replacement rate will become effective.

The ARRC notes that as the timing of official-sector statements about the end of LIBOR is uncertain, and absent any statements (before June 30, 2021) by the FCA that LIBOR will continue past 2021, market participants should assume that LIBOR will end as of Dec. 31, 2021.[2]

In addition, the ARRC recommends that derivatives market participants should adhere to the ISDA Fallback Protocol for Interbank Offered Rates within the four-month period after it is published and before the amendments to embed the fallbacks in legacy transactions take effect. Dealers should seek to promote liquidity and client access to SOFR derivative products by offering electronic market-making and execution of SOFR swaps by Sept. 30, 2020, making markets in SOFR-linked interest rate volatility products (including swaptions, caps and floors) by Dec. 31, 2020 and changing the market convention for quoting USD derivatives contracts from LIBOR to SOFR by March 31, 2021.

The ARRC also recommends that institutions have clear internal programs in place to prepare for a transition away from USD LIBOR across all of their relevant activities, including a rigorous assessment of exposures. The ARRC suggests that institutions refer to the ARRC's "Practical Implementation Checklist for SOFR Adoption"[3] for additional guidance.

Finally, the ARRC suggests that institutions be aware of additional ARRC recommendations, such as the ARRC's selection of SOFR as a replacement rate for USD LIBOR, and incorporate ARRC-recommended conventions into new contracts in order to support robust contract

language in the event USD LIBOR is no longer usable. Institutions should have an ongoing dialogue with their key stakeholders to promote awareness of the transition and their preparedness for it.

One of the many lessons that can be learned from the COVID-19 crisis is that the time to prepare for anticipated material changes, like the discontinuation of LIBOR, is sooner rather than later. The ARRC's best practices and recommendations are a helpful resource to assist market participants as they prepare for the transition.

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If you have any questions concerning this *Alert* or would like assistance with the transition from LIBOR, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] See "ARRC Recommended Best Practices for Completing the Transition from LIBOR," available [here](#).

[2] The ARRC has proposed legislation designed to address LIBOR discontinuation in legacy financial agreements governed by New York law that do not have adequate fallback language. See "Proposed Legislative Solution to Minimize Legal Uncertainty and Adverse Economic Impact Associated with LIBOR Transition," available [here](#). The proposed legislation has not yet been submitted for consideration by the New York legislature.

[3] See "Practical Implementation Checklist for SOFR Adoption," available [here](#).

This is a fast-moving topic and the information contained in this Alert is current as of the date it was published.

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