ALERTS

FCA Announces Dates LIBOR Settings Will Cease to Be Provided or Be Representative; ISDA Declares Index Cessation Event and Fixing of Spread Adjustment

March 8, 2021

On March 5, 2021, the United Kingdom's Financial Conduct Authority ("FCA") announced ("Announcement")[1] dates when all settings for the London Interbank Offered Rate ("LIBOR") will cease to be provided by LIBOR's administrator, the ICE Benchmark Administration ("IBA"), or will no longer be representative. As set forth in the Announcement, LIBOR rates either will no longer be published, or will cease to be representative, as follows:

1. Immediately after Dec. 31, 2021, for all euro LIBOR settings, all Swiss franc LIBOR settings, Spot-next, 1-week, 2-month and 12-month Japanese yen LIBOR settings, the overnight, 1-week, 2-month and 12-month sterling LIBOR settings and the 1-week and 2-month U.S. dollar LIBOR settings;

2. Immediately after June 30, 2023, in the case of the remaining U.S. dollar LIBOR settings (overnight, 1-month, 3-month, 6-month and 12-month);

3. The FCA will consult on requiring IBA to continue to publish 1-month, 3-month and 6-month sterling LIBOR settings on a "synthetic" basis, using a changed methodology, after the end of 2021 using powers granted under the U.K. Benchmarks Regulation ("BMR")[2] to help protect consumers and preserve market integrity for difficult legacy

contracts; however, after Dec. 31, 2021 any such synthetic settings will no longer be representative of the underlying market and economic reality the settings are intended to measure (as provided in the BMR) and will no longer be restored;

4. The FCA will consult on requiring IBA to continue to publish 1-month, 3-month and 6-month Japanese yen LIBOR settings on a "synthetic" basis for one more year, to allow more time for the transition away from Japanese yen LIBOR; however, the FCA does not expect that it would compel IBA to publish synthetic yen LIBOR rates after year-end 2022, and after Dec. 31, 2021 any such synthetic settings will no longer be representative of the underlying market and economic reality the settings are intended to measure and will no longer be restored; and

5. The FCA will consider the case to use its proposed powers to require publication on a "synthetic basis" of the 1-month, 3-month and 6-month U.S. dollar LIBOR settings after these settings cease publication on June 30, 2023; however, any such synthetic settings will no longer be representative of the underlying market and economic reality the settings are intended to measure and will no longer be restored.

The FCA reminded market participants that, although publications of certain LIBOR settings on a synthetic basis would be intended to assist legacy contract holders, new use of synthetic LIBOR by U.K.-regulated firms in regulated financial instruments would be prohibited under the BMR (as amended by a current bill in Parliament), and continued use by regulated firms in legacy financial instruments would also be subject to the FCA using its proposed powers to permit such use (which will be the subject of a consultations later in 2021).

In a follow-up to the Announcement by the FCA, the International Swaps and Derivatives Association Inc. ("ISDA") announced[3] that the Announcement constitutes an "Index Cessation Event" under its IBOR Fallbacks Supplement and ISDA 2020 IBOR Fallbacks Protocol[4] for all 35 LIBOR settings. As a result of this, ISDA stated that the fallback spread adjustment published by *Bloomberg* has been fixed as of the date of the Announcement for all euro, sterling, Swiss franc, U.S. dollar and yen LIBOR settings. *Bloomberg* published a corresponding announcement[5] containing a table of fixed spread adjustments based on March 5, 2021 as the "Spread Adjustment Fixing Date" for all LIBOR tenors across all currencies. The fallbacks will automatically occur for outstanding derivatives contracts that incorporate the IBOR Fallbacks Supplement or are subject to adherence of the ISDA 2020 IBOR Fallbacks Protocol after Dec. 31, 2021 for outstanding derivatives referenced to all euro, sterling, Swiss franc and yen LIBOR settings, and after June 30, 2023 for outstanding derivatives referenced to all U.S. dollar LIBOR settings, where the rate for the 1-week and 2-month U.S. dollar LIBOR settings will be computed by each calculation agent using linear interpolation between the end of 2021 and June 30, 2023, before falling back to the adjusted risk-free rate plus spread.

The Alternative Reference Rates Committee ("ARRC") also published a press release[6] commending the announcements regarding when LIBOR panels will end, including ISDA's statement relating to an "Index Cessation Event." The ARRC noted that when the panels for all U.S. dollar LIBOR tenors cease after June 2023 and the fallback rates apply, fallbacks for derivatives under the ISDA documentation will shift to the Secured Overnight Financing Rate ("SOFR"), which is the ARRC's recommended fallback to U.S. dollar LIBOR, plus the spread adjustment that has now been fixed. The ARRC stated that its recommended spread adjustments for fallback language in non-consumer cash products will be the same as applicable to fallbacks in ISDA's documentation for U.S. dollar LIBOR.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

For the latest information on preparing for the transition from LIBOR, visit SRZ's LIBOR Transition Resource Center.

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[1] The FCA's Announcement can be found here.

[2] The FCA notes that its proposed new powers under the BMR are subject to the Financial Services Bill being enacted by the U.K. Parliament. The Financial Services Bill may be found here.

[3] The ISDA announcement can be found here.

[4] The IBOR Fallbacks Supplement and ISDA 2020 IBOR Fallbacks Protocol can be found here.

[5] *Bloomberg*'s announcement on the spread fixing event can be found here.

[6] The ARRC's press release can be found here.

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