FCA makes cessation and "pre-cessation" announcement for all LIBOR tenors

05 March 2021

- This morning, the FCA announced the dates on which all 35 LIBOR rates will either cease or will lose representativeness ("pre-cessation").
- The FCA's announcement also specifies the LIBOR tenors for which the production of successor synthetic LIBOR rates, subject to further consultation, is being considered.
- This briefing summarises the key points of the FCA's announcement, which has repercussions for all contracts and instruments referencing LIBOR.

Key points

The FCA's announcement specifies, for each LIBOR tenor:

- the date on which the rate will cease (ie stop being published); or
- if the production of a synthetic LIBOR rate is being considered (see further below), the date on which the relevant rate will "lose representativeness".

The dates and actions applicable to each tenor are summarised in the table at the end of this briefing.

Contractual implications

The announcement has important implications for LIBOR-referencing derivatives that incorporate ISDA's IBOR Fallbacks Supplement or between adherents to ISDA's IBOR Fallbacks Protocol (see our previous briefing Managing IBOR derivatives).

On the cessation/pre-cessation dates specified in the announcement, an Index Cessation Event will occur under ISDA's IBOR Fallbacks, triggering the application of the risk-free rate based fallbacks. Note that the cessation of certain US Dollar LIBOR tenors on 31 December 2021 will not trigger fallbacks in US Dollar LIBOR derivatives. Instead, the remaining LIBOR tenors will be interpolated as required through to 30 June 2023.

ISDA has published a helpful guidance document which explains the implications of the announcement under its IBOR Fallbacks in more detail.

The FCA's announcement may also clarify the dates on which fallback rates or re-negotiation processes are triggered under other contracts and instruments referencing LIBOR. For example:

- Loans on LMA terms may include a "replacement of screen rate" clause, under which today's announcement triggers a re-negotiation process with a view to agreeing amendments to the agreement to replace LIBOR.
- More recently agreed loans may include a rate switch mechanism, which is triggered upon the relevant LIBOR rate ceasing or becoming non-representative.
- Certain LIBOR bonds may contain fallbacks that cater for the permanent cessation of LIBOR (with either "cessation" or "pre-cessation" triggers).

Parties to LIBOR-referencing contracts and instruments should review the precise drafting of the applicable fallbacks to determine the potential impact of today's announcement.

The Bloomberg CAS

ISDA's IBOR Fallbacks provide that upon the occurrence of the relevant triggers, LIBOR will be replaced by the relevant risk-free rate compounded in arrears, plus a credit adjustment spread (CAS).

Bloomberg Index Services Limited (BISL) have been publishing the CAS on an indicative basis until now. The FCA's announcement has the effect of fixing the CAS for all LIBOR tenors. The CAS rates, fixed as of 5 March are set out in Bloomberg's technical announcement.

The CAS applicable to fallbacks in LIBOR derivatives under ISDA's IBOR Fallbacks is therefore now clear. Under BISL's terms of use, the fixing of the CAS also means the rates can be used as primary fallback rates. BISL recently confirmed to the Sterling Risk-free rates Working Group that once fixed, the BISL CAS can be used as a reference point in sterling cash products. Certain rate-switch loans agreed more recently have set the CAS applicable on the rate switch by reference to the BISL CAS.

The Financial Services Bill and "synthetic LIBOR"

The Financial Services Bill, currently making its way through Parliament, empowers the FCA, in summary, to require the continued publication of LIBOR for a specified period using a synthetic methodology. The FCA has indicated that "synthetic LIBOR" is likely to comprise a forward looking term rate version of the risk-free rate in the relevant currency (eg Term SONIA) plus a fixed CAS calculated on the same basis as the BISL CAS. FCA-regulated institutions may only use synthetic LIBOR for the purposes of the UK Benchmark Regulation to the extent permitted to do so by the FCA.

The FCA's announcement was accompanied by two new statements of policy providing more detail about the basis on which the FCA plans to exercise its powers under the Financial Service Bill. Further consultation on this topic is anticipated during Q2.

While this legislative solution and the creation of synthetic LIBOR may help certain tough legacy instruments that do not contain appropriate fallback triggers dealing with the cessation or pre-cessation of LIBOR, which contracts will fall within its scope, the duration of synthetic LIBOR and the existence of any safe-harbour provisions for its use, remain subject to the on-going legislative and regulatory process. The FCA therefore continues to urge market participants to actively transition legacy instruments rather than rely on a legislative solution. Today's announcement, which gives market participants more clarity on the LIBOR end-game, may therefore result in renewed focus on active transition.

Cessation/pre-cessation dates

	overnight /spot next	1 wk	1mth	2mth	3mth	6mth	12mth
Sterling	C31.12.21	C31.12.21	NR31.12.21 SL to ?	C31.12.21	NR31.12.21 SL to ?	NR31.12.21 SL to ?	C31.12.21
Dollar	C30.06.23	C31.12.21	NR30.06.23 SL to ?	C31.12.21	NR30.06.23 SL to ?	NR30.06.23 SL to ?	C30.06.23
Euro	C31.12.21	C31.12.21	C31.12.21	C31.12.21	C31.12.21	C31.12.21	C31.12.21
CHF	C31.12.21	C31.12.21	C31.12.21	C31.12.21	C31.12.21	C31.12.21	C31.12.21
Yen	C31.12.21	C31.12.21	NR31.12.21 SL to 31.12.22?	C31.12.21	NR31.12.21 SL to 31.12.22?	NR31.12.21 SL to 31.12.22?	C31.12.21

C: cessation – date LIBOR ceases to be published

NR: non-representative – date LIBOR rates ceases to be representative

SL: "synthetic" LIBOR – FCA to consult on publication of a synthetic LIBOR rate

Slaughter and May are closely monitoring developments in relation to the transition from LIBOR and other major benchmarks across all of the major financial products. We are advising a range of borrowers, issuers and financial institutions on all aspects of LIBOR transition. For further information, please contact any of the lawyers listed below or your usual adviser at Slaughter and May.

Contacts

Philip Snell
T +44 (0) 20 7090 3105
M +44 (0) 7776 240 275
E philip.snell@slaughterandmay.com

Matthew Tobin
T + (0) 20 7090 3442
M +44 (0) 7789 980 325
E matthew.tobin@slaughterandmay.com

Richard Jones
T +44 (0) 20 7090 4733
M +44 (0) 7736 045271
E richard.jones@slaughterandmay.com

Oliver Wicker
T +44 (0) 20 7090 3995
M +44 (0) 7717 505 155
E oliver.wicker@slaughterandmay.com

Kathrine Meloni
T +44 (0) 20 7090 3491
M +44 (0) 7717 691 987
E kathrine.meloni@slaughterandmay.com

Eric Phillips
T +44 (0) 20 7090 3055
M +44 (0) 7786 436 639
E eric.phillips@slaughterandmay.com

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