Major New Developments Related to the Future Cessation and Loss of Representativeness of LIBOR

In important developments in the transition from LIBOR to alternative reference rates, LIBOR's regulator and its administrator, as well as trade groups, have made recent announcements related to the future of LIBOR that are both consistent with the phased transition plan and prior announcements, but nonetheless represent crucial operational progress. Importantly, these announcements fixed the fallback spread adjustment for certain derivatives and cash products as of March 5, 2021. Consistent with market expectations based on prior announcements, the actual dates on which all LIBOR settings will either cease to be provided or no longer be representative, at the end of 2021 or in mid-2023 (depending on the setting), have been confirmed.

On March 5, 2021, the UK Financial Conduct Authority (the "**FCA**") **confirmed** that all LIBOR settings will either cease to be provided by any administrator or no longer be representative:

- immediately after December 31, 2021, in the case of all sterling, euro, Swiss franc and Japanese yen settings, as well as the 1-week and 2-month U.S. dollar settings; and
- immediately after June 30, 2023, in the case of the remaining U.S. dollar settings (i.e., the overnight, 1-month, 3-month, 6-month and 12-month U.S. dollar settings).

In its press release, the FCA indicates that, based on undertakings received from the panel banks, it does not expect that any LIBOR settings will become unrepresentative before the relevant dates set out above. However, representative rates **will not** be available beyond such dates. In a related **announcement**, the FCA clarified that it has decided not to require any panel banks to continue to submit to LIBOR beyond the dates of their scheduled departure or to require ICE Benchmark Administration Limited ("**IBA**"), the administrator of LIBOR, to continue to publish LIBOR on the basis of panel bank submissions beyond such dates.

Addressing so-called "tough legacy" contracts, which are existing LIBOR contracts that are particularly difficult to amend, the FCA notes that it will consult in the second quarter of 2021 on using proposed new powers that the UK Government is legislating to grant to it under the Benchmarks Regulation (the "**BMR**") to require continued publication on a "synthetic" basis (i.e., on a changed methodology) for some sterling LIBOR settings and, for one additional year, some Japanese yen LIBOR settings. The FCA will also continue to consider the case for using these powers for some U.S. dollar LIBOR settings, taking into account views and evidence from the U.S. authorities and other stakeholders. Importantly, the FCA highlights that any "synthetic" LIBOR will no longer be representative for the purposes of the BMR and is not for use in new contracts. Rather, it is intended for use in "tough legacy" contracts only.[1]

Also on March 5, 2021, the International Swaps and Derivatives Association, Inc. ("**ISDA**") issued a **statement** on the FCA's announcement. Notably, the statement confirms that the FCA's announcement constitutes an "Index Cessation Event" under the IBOR Fallbacks Supplement and the ISDA 2020 IBOR

[1] Please also see our previous **client memorandum** on November 2020 guidance from certain U.S. agencies on the use of LIBOR in new contracts by U.S.-regulated banks, bank holding companies and similar institutions. As a follow-up to that guidance, on March 9, 2021, the Federal Reserve issued **guidance** to assist examiners in assessing supervised firms' progress in preparing for the LIBOR transition.

Fallbacks Protocol for all 35 LIBOR settings. Accordingly, for those purposes, the fallback spread adjustment is fixed as of March 5, 2021 for all euro, sterling, Swiss franc, U.S. dollar and Japanese yen LIBOR settings.

In the cash product space, the Alternative Reference Rates Committee (the "**ARRC**") **confirmed** on March 8, 2021 that, in its opinion, the FCA announcement (and the related **announcement** by IBA) constitute a "Benchmark Transition Event" with respect to all U.S. dollar LIBOR settings pursuant to the ARRC's recommended fallback language for new issuances or originations of LIBOR floating rate notes, securitizations, syndicated business loans and bilateral business loans. On the same date, the ARRC published its ***ARRC FAQs Regarding the Occurrence of a Benchmark Transition Event***. Importantly, the ARRC notes in this document that, for cash products other than loans to consumer borrowers, the ARRC's recommended spread adjustment will match the value of ISDA's spread adjustments to U.S. dollar LIBOR. The ARRC further clarifies that the occurrence of a Benchmark Transition Event does not require an immediate transition under ARRC-recommended fallback language. Actual transition under ARRC-recommended fallback language is based upon the "Benchmark Replacement Date," which is expected to be on or immediately after (i) December 31, 2021 for 1-week and 2-month U.S. dollar LIBOR and (ii) June 30, 2023 for overnight, 1-month, 3-month, 6-month and 12-month U.S. dollar LIBOR.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

Jeong M. Lee	212 450 4954	jeong.lee@davispolk.com
Gabriel D. Rosenberg	212 450 4537	gabriel.rosenberg@davispolk.com
Christopher S. Schell	212 450 4011	christopher.schell@davispolk.com
Shane Tintle	212 450 4526	shane.tintle@davispolk.com
Yan Zhang	212 450 4463	yan.zhang@davispolk.com
Vidal Vanhoof	212 450 4237	vidal.vanhoof@davispolk.com