

## IBA and Regulators Announce Major New Developments Related to the Publication and Use of USD LIBOR Beyond 2021

November 30, 2020

In a very significant development, [Intercontinental Exchange, Inc.](#) announced on November 30 that ICE Benchmark Administration Limited (“**IBA**”), the administrator of LIBOR, expects in early December 2020 to consult on its intention to cease the publication of:

- the one-week and two-month USD LIBOR settings after December 31, 2021; and
- the remaining USD LIBOR settings (overnight and one-, three-, six- and 12-month) after June 30, 2023.

*This is a major development as it means that the most used USD LIBOR settings will likely continue to be published for an additional one-and-a-half years after the expected deadline of December 31, 2021.*

This follows the November 18 [announcement](#) that IBA plans to consult on its intention to cease the publication of all GBP, EUR, CHF and JPY LIBOR settings after December 31, 2021 (please see our previous [client memorandum](#) on this announcement). The November 30 press release indicates that IBA expects to close the consultation for feedback by the end of January 2021.

IBA notes that any publication of the overnight and one-, three-, six- and 12-month USD LIBOR settings based on panel bank submissions beyond December 31, 2021 will need to comply with applicable regulations, including as to the representativeness of the rate. The press release further states that it is not, and must not be taken to be, an announcement that IBA will continue or cease the publication of any LIBOR settings after December 31, 2021 or June 30, 2023, as relevant to the specific LIBOR setting. IBA says that it expects to make separate announcements in this regard following the outcome of the consultation and subject to any rights of the UK Financial Conduct Authority (the “**FCA**”) to compel IBA to continue publication.

Also on November 30, the Board of Governors of the Federal Reserve System (the “**Federal Reserve Board**”), the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency issued a [statement](#) to encourage banks to transition away from USD LIBOR as soon as practicable. Importantly, the statement says that “the agencies believe entering into new contracts that use USD LIBOR as a reference rate after December 31, 2021, would create safety and soundness risks and will examine bank practices accordingly.” With respect to new contracts entered into before December 31, 2021, the statement says that these “should either utilize a reference rate other than LIBOR or have robust fallback language that includes a clearly defined alternative reference rate after LIBOR’s discontinuation.” In addition to this statement, the [Federal Reserve Board](#) issued a separate press release welcoming and supporting the IBA announcement, noting that the announcement and supervisory statements would enable a clear end date for USD LIBOR.

The [FCA](#) also issued a statement welcoming and supporting the IBA announcement, noting that it will “incentivise swift transition, while allowing time to address a significant proportion of the legacy contracts that reference US\$ LIBOR.” In this statement, the FCA also welcomes the supervisory guidance described in the paragraph above, indicating that it will coordinate with U.S. and other authorities to consider whether and, if so, how most appropriately to limit new use of USD LIBOR, consistent with its objectives of protecting consumers and market integrity.

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The **Alternative Reference Rates Committee** (the “**ARRC**”) issued a press release about these developments, noting that they “would support a smooth transition for legacy contracts by allowing time for most to mature before USD LIBOR is proposed to cease, subject to consultation outcomes.” The ARRC further notes that these developments align with its transition efforts and will accelerate market participants’ use of SOFR, its preferred alternative to USD LIBOR.

The **International Swaps and Derivatives Association, Inc.** (“**ISDA**”) has also issued a short press release summarizing the above developments.

Each of the statements by the U.S. agencies and the FCA notes that the relevant statement should not be read as announcing that the LIBOR benchmark has ceased, or will cease, to be provided permanently or indefinitely or that it is not, or no longer will be, representative for the purposes of language adopted by ISDA.

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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.

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