

March 5, 2021 (updated March 8, 2021 and April 16, 2021)

## **Future Cessation and Non-Representativeness Guidance**

### **FCA announcement on future cessation and loss of representativeness of the LIBOR benchmarks**

The International Swaps and Derivatives Association, Inc. (“**ISDA**”) provides the following guidance for parties to over-the-counter derivative transactions that are affected by the announcement made on March 5, 2021 by the Financial Conduct Authority (the “**FCA**”) relating to the future cessation and loss of representativeness of the LIBOR benchmarks (the “**FCA LIBOR Announcement**”). The following guidance relates to CHF LIBOR, EUR LIBOR, GBP LIBOR, JPY LIBOR, USD LIBOR, the Singapore Dollar Swap Offer Rate (“**SOR**”) and the Thai Baht Interest Rate Fixing (“**THBFIX**”).

On March 5, 2021, the FCA announced that:

- (1) immediately after December 31, 2021, publication of all seven euro LIBOR settings, all seven Swiss franc LIBOR settings, the 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 US dollar LIBOR settings will permanently cease;
- (2) immediately after June 30, 2023, publication of the overnight and 12-month US dollar LIBOR settings will permanently cease;
- (3) immediately after December 31, 2021, the 1-month, 3-month and 6-month Japanese yen LIBOR settings and the 1-month, 3-month and 6-month sterling LIBOR settings will cease to be provided or, subject to consultation by the FCA, be provided on a changed methodology (or ‘synthetic’) basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored; and
- (4) immediately after June 30, 2023, the 1-month, 3-month and 6-month US dollar LIBOR settings will cease to be provided or, subject to the FCA’s consideration of the case, be provided on a synthetic basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored.

The FCA stated that, therefore, all thirty-five LIBOR settings will either cease to be provided by any administrator or no longer be representative after the dates set out above. The FCA made its statement in the awareness that it will engage certain contractual triggers for the calculation and future application of fallbacks that are activated by pre-cessation or cessation announcements made by the FCA (howsoever described) in contracts. The FCA LIBOR Announcement can be found [here](#).

Later on March 5, 2021, the ICE Benchmark Administration (the “**IBA**”) announced through a press release (the “**IBA Press Release**”) that it had published a feedback statement (the “**IBA Statement**”) summarizing the responses to its December 4, 2020 consultation on its intention to cease the publication of LIBOR settings. The IBA Press Release and IBA Statement can be found [here](#) and [here](#).

ISDA is issuing this guidance in the interest of mitigating market risk and the promotion of orderly and consistent application of triggers and fallbacks by market participants. This guidance is not legal advice and market participants should consult their legal advisors as appropriate. Market participants should not rely on this guidance for any purpose but should review the contractual terms of each affected transaction in order to understand the effects of the events described above. ISDA does not assume any responsibility for this guidance and it is not intended to set a precedent. Parties are not obliged to follow this guidance. For cleared transactions and transactions executed on electronic confirmation platforms, market participants should refer to the contractual terms of the applicable clearing house or confirmation platform, as applicable.

## Guidance

The purpose of this Guidance is:

- (1) **ISDA IBOR Fallbacks**: to describe how the terms of the ISDA 2020 IBOR Fallbacks Protocol published on October 23, 2020 (the “**IBOR Fallbacks Protocol**”) and Supplement number 70 to the 2006 ISDA Definitions, finalized on October 23, 2020 and published by ISDA and effective on January 25, 2021 (the “**IBOR Fallbacks Supplement**”) apply to the FCA LIBOR Announcement; and
- (2) **2018 ISDA Benchmarks Supplement**: to describe how the terms of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement (the “**ISDA Benchmarks Supplement**”) apply to the FCA LIBOR Announcement.

Terms used but not defined in this Guidance have the meanings given to them in the IBOR Fallbacks Protocol, the 2006 ISDA Definitions, including in the IBOR Fallbacks Supplement, or the ISDA Benchmarks Supplement, as applicable.

### **The FCA LIBOR Announcement**

In relation to the permanent cessation of twenty-six LIBOR settings, in the FCA LIBOR Announcement the FCA stated:

*“...these 26 LIBOR settings will permanently cease as we set out below.*

- *Publication of all 7 euro LIBOR settings, all 7 Swiss franc LIBOR settings, the 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 US dollar LIBOR settings will cease immediately after 31 December 2021.*
- *Publication of the overnight and 12-month US dollar LIBOR settings will cease immediately after 30 June 2023.”*

In relation to the remaining nine LIBOR settings, in the FCA LIBOR Announcement the FCA stated:

*“We will consult on requiring IBA to continue to publish the 3 remaining sterling LIBOR settings (1-month, 3-month and 6-month) for a further period after end-2021 on a changed methodology (also known as a ‘synthetic’) basis using the proposed new powers the government is legislating to grant us under the BMR...”*

*We will consult on requiring IBA also to continue to publish the 1-month, 3-month and 6-month Japanese yen LIBOR settings after end-2021 on a synthetic basis, for one additional year...*

*As the transition away from US dollar LIBOR progresses, we will continue to consider the case for using these proposed powers also to require continued publication on a synthetic basis of the 1-month, 3-month and 6-month US dollar LIBOR settings for a further period after end-June 2023...*

*Where we decide to require IBA to continue the publication of any settings on a synthetic basis... LIBOR settings published on this synthetic basis will no longer be representative of the underlying market and economic reality the setting is intended to measure as those terms are used in the BMR.*

*...[I]t is clear that these 9 LIBOR benchmark settings (1-month, 3-month and 6-month settings in each of sterling, Japanese yen and US dollar LIBOR) will no longer be*

*representative of the underlying market and economic reality that such setting is intended to measure and that representativeness will not be restored, as set out below.*

- *Immediately after 31 December 2021, the 1-month, 3-month and 6-month Japanese yen LIBOR settings and the 1-month, 3-month and 6-month sterling LIBOR settings will no longer be representative and representativeness will not be restored.*
- *Immediately after 30 June 2023, the 1-month, 3-month and 6-month US dollar LIBOR settings will no longer be representative and representativeness will not be restored.”*

The FCA went on to state:

*“It follows that all 35 LIBOR settings will either cease to be provided by any administrator or no longer be representative immediately after the dates set out above.”*

*“We make this statement in the awareness that it will engage certain contractual triggers for the calculation and future application of fallbacks that are activated by pre-cessation or cessation announcements made by the FCA (howsoever described) in contracts, and in accordance with our **11 March 2020 statement** on LIBOR contractual triggers.”*

#### **Relevant Provisions under the IBOR Fallbacks Protocol and IBOR Fallbacks Supplement**

The Attachment to the IBOR Fallbacks Protocol contains the amendments to be made between Adhering Parties. Paragraphs 1 to 5 of the Attachment contemplate amendments being made to the relevant Protocol Covered Documents in accordance with the terms of the IBOR Fallbacks Supplement. Paragraph 6 of the Attachment contemplates amendments being made to the relevant Protocol Covered Documents using language substantially based on language contained in the IBOR Fallbacks Supplement.

An Index Cessation Event under both the IBOR Fallbacks Supplement and the IBOR Fallbacks Protocol can occur in respect of LIBOR upon:

*“a public statement or publication of information by the regulatory supervisor for the administrator of the [rate]...which states that the administrator of the [rate] has ceased or will cease to provide the [rate] permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the [rate]”; or*

*“a public statement or publication of information by the regulatory supervisor for the administrator of such [LIBOR rate] announcing that (A) the regulatory supervisor has determined that such [LIBOR rate] is no longer, or as of a specified future date will no longer be, representative of the underlying market and economic reality that such [LIBOR rate] is intended to measure and that representativeness will not be restored and (B) it is being made in the awareness that the statement or publication will engage certain contractual triggers for fallbacks activated by pre-cessation announcements by such supervisor (howsoever described) in contracts.”*

Under both the IBOR Fallbacks Supplement and the IBOR Fallbacks Protocol, an Index Cessation Effective Date will occur upon the earlier of the rate no longer being provided or becoming Non-Representative.

Sections 7.3(r) and 7.3(s) of the 2006 ISDA Definitions introduced by the IBOR Fallbacks Supplement applies the concept of Index Cessation Event to individual tenors. Similarly, Paragraph

6(e)(iii) of the Attachment to the IBOR Fallbacks Protocol contemplates an Index Cessation Event applying to individual tenors.

The IBOR Fallbacks Supplement introduced a new Section 8.5 (*Discontinued Rates Maturities*) in respect of certain Rate Options. Pursuant to this Section, if a LIBOR tenor is discontinued or declared Non-Representative, linear interpolation applies unless there is no shorter (Nearest Short Rate) or no longer tenor (Nearest Long Rate) available, in which case an Index Cessation Event shall be deemed to have occurred. While Section 8.5 does not apply to the SOR and THBFX Rate Options covered by the IBOR Fallbacks Supplement, if USD LIBOR tenors cannot be interpolated to provide a rate in respect of SOR or THBFX (as applicable), an Index Cessation Event will occur.

### ***Application of the IBOR Fallbacks Protocol and IBOR Fallbacks Supplement to the FCA LIBOR Announcement***

The FCA LIBOR Announcement contemplates all thirty-five LIBOR settings will either cease to be provided by *any* administrator or no longer be representative. On this basis, ISDA understands that there will be no successor administrator for the LIBOR settings that will cease to be published.

Therefore, for the purposes of both the IBOR Fallbacks Protocol and IBOR Fallbacks Supplement, an Index Cessation Event with respect to all thirty-five LIBOR settings currently published by the IBA has, or will be deemed to have, occurred on March 5, 2021 by virtue of the announcement by the FCA that all LIBOR settings will either permanently cease to be published or become Non-Representative. The related Index Cessation Effective Date for each LIBOR setting will occur on:

- (1) the first London Banking Day on or after January 1, 2022<sup>1</sup> for all seven EUR LIBOR settings, all seven CHF LIBOR settings, all seven JPY LIBOR settings and all seven GBP LIBOR settings, being the first date immediately after December 31, 2021 on which these LIBOR settings will no longer be provided or become Non-Representative; and
- (2) the first London Banking Day on or after July 1, 2023<sup>2</sup> for all seven USD LIBOR settings, being the first date immediately after June 30, 2023 on which either no longer or shorter tenors will be provided, or no longer or shorter tenors will be provided which are not Non-Representative.

As a longer tenor and a shorter tenor of USD LIBOR (which are not Non-Representative) will continue to be provided after December 31, 2021 (the date after which the 1-week and 2-month USD LIBOR tenors cease to be provided), the rate for the 1-week and 2-month USD LIBOR tenors will be determined by interpolating between the next longer tenor and next shorter tenor. An Index Cessation Effective Date in respect of the 1-week and 2-month USD LIBOR tenors will occur on the first London Banking Day on or after July 1, 2023 as linear interpolation would no longer be possible from that date.

Events may arise in the future which, although not contemplated by the FCA LIBOR Announcement, may affect the timing and application of the relevant fallback rates for each LIBOR setting. These include if a subsequent Index Cessation Event occurs with respect to all LIBOR settings. For example, if the FCA were to make a later announcement that certain LIBOR settings will cease to be provided or become Non-Representative from a different date, the Index Cessation Effective Date for those LIBOR settings would change accordingly.

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<sup>1</sup> It is expected that the first London Banking Day on or after Saturday January 1, 2022 will be Tuesday January 4, 2022, unless Tuesday January 4, 2022 is an unscheduled holiday.

<sup>2</sup> It is expected that the first London Banking Day on or after Saturday July 1, 2023 will be Monday July 3, 2023, unless Monday July 3, 2023 is an unscheduled holiday.

USD LIBOR is a component in the calculation of SOR and THBFIX. As the (i) overnight and 12-month USD LIBOR settings will permanently cease to be provided immediately after June 30, 2023 and (ii) 1-month, 3-month and 6-month USD LIBOR settings will become Non-Representative immediately after June 30, 2023, the calculation of SOR and THBFIX, and therefore the calculation of any Rate Options which reference these rates, will be impacted. Fallback Rate (SOR) or Fallback Rate (THBFIX), as applicable, will apply instead of SOR or THBFIX with effect from the first date on which SOR or THBFIX is required for any determination occurring on or after the first London Banking Day on or after July 1, 2023 (which will be the Index Cessation Effective Date in respect of USD LIBOR for the purposes of SOR or THBFIX).

### ***Application of the Bloomberg Spread Adjustment to the FCA LIBOR Announcement***

Bloomberg Index Services Limited (“**BISL**”) publishes ‘indicative’ spreads for each LIBOR setting in advance of a fallback actually applying by reference to published LIBOR values and for informational purposes.

The spread for a specific LIBOR setting will be fixed or ‘set’ by BISL on the “Spread Adjustment Fixing Date” (as defined in the Bloomberg IBOR Fallback Rate Adjustments Rule Book), which is the earlier to occur of (i) an Index Cessation Event and (ii) a public statement or publication of information constituting, in effect, an Index Cessation Event with respect to a specific tenor of a relevant IBOR (in circumstances where linear interpolation using shorter and longer tenors, in respect of which a public statement has not been made, is not possible).

### ***Application of the Bloomberg IBOR Fallback Rate Adjustments Rule Book to the FCA LIBOR Announcement***

BISL has **confirmed** that under the Bloomberg IBOR Fallback Rate Adjustments Rule Book, the FCA LIBOR Announcement will constitute a “Spread Adjustment Fixing Date”. Accordingly, the “Spread Adjustment Fixing Date” for all LIBOR settings is March 5, 2021.

### ***Application of the ISDA Benchmarks Supplement to the FCA LIBOR Announcement***

For the purposes of applying the ISDA Benchmarks Supplement, at the time of the Index Cessation Event the LIBOR Floating Rate Options, as referenced in transactions incorporating the terms of the IBOR Fallbacks Supplement (whether directly or pursuant to the terms of the IBOR Fallbacks Protocol), include a reference to a concept defined or otherwise described as an “index cessation event”<sup>3</sup>. This means that a “Priority Fallback” as defined in Section 1.1 (*Specific provisions for certain Relevant Benchmarks*) of the ISDA Benchmarks Supplement will apply to the relevant transactions. As provided above, the application of the “Priority Fallbacks” will result in a level for the relevant index.

The provisions of Section 1.2 (*Consequences of a Benchmark Trigger Event*) of the ISDA Benchmarks Supplement will apply only to the extent the “Priority Fallback” fails to provide a means of determining the index level, at which point each party must seek to apply one or more “Alternative Continuation Fallbacks” prior to the “Cut-off Date”.

### ***The IBA Press Release and the IBA Statement***

The IBA Press Release and the IBA Statement are each subject to the FCA’s exercise of its proposed new powers to require IBA to continue publishing any LIBOR settings using a changed methodology (also known as a ‘synthetic’ basis) and do not affect the analysis above regarding the impact of the

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<sup>3</sup> The analysis may differ for transactions incorporating the terms of the ISDA Benchmarks Supplement but not the IBOR Fallbacks Supplement (whether directly or pursuant to the terms of the IBOR Fallbacks Protocol).

earlier FCA LIBOR Announcement, which constituted an Index Cessation Event with respect to all thirty-five LIBOR settings currently published by the IBA.

## Summary Table

The relevant dates and information described in this guidance are summarised below in tabular format.

LIBOR Setting	Last date of publication/ representativeness	Index Cessation Effective Date	Spread Adjustment Fixing Date	Interpolation	Potential for Non- Representative, Synthetic Publication
<b>CHF LIBOR</b>					
All CHF LIBOR settings	December 31, 2021	The first London Banking Day on or after January 1, 2022	March 5, 2021	N/A	N/A
<b>EUR LIBOR</b>					
All EUR LIBOR settings	December 31, 2021	The first London Banking Day on or after January 1, 2022 <sup>4</sup>	March 5, 2021	N/A	N/A
<b>GBP LIBOR</b>					
Overnight, 1-week, 2-month and 12-month GBP LIBOR settings	December 31, 2021	The first London Banking Day on or after January 1, 2022	March 5, 2021	N/A	N/A

<sup>4</sup> The fallback to Fallback Rate (EuroSTR) will apply for Reset Dates occurring two or more TARGET Settlement Days after the Index Cessation Effective Date. Assuming the first London Banking Day on or after Saturday January 1, 2022 is Tuesday January 4, 2022, then the fallback to Fallback Rate (EuroSTR) will apply to Reset Dates occurring on or after Thursday January 6, 2022. The rate for a Reset Date of Wednesday January 5, 2022 would ordinarily be the EUR LIBOR rate published two TARGET Settlement Days preceding the Reset Date (i.e. on Monday January 3, 2022, as January 3, 2022 is a TARGET Settlement Day). However, given that January 3, 2022 is not expected to be a London business day and EUR LIBOR is only published on London business days, EUR LIBOR would never have been published on January 3, 2022 (regardless of the permanent discontinuation of EUR LIBOR). Therefore, in respect of a Reset Date of January 5, 2022, whilst there may be arguments to the contrary, the approach contemplated in the temporary cessation provisions would apply.



<b>LIBOR Setting</b>	<b>Last date of publication/ representativeness</b>	<b>Index Cessation Effective Date</b>	<b>Spread Adjustment Fixing Date</b>	<b>Interpolation</b>	<b>Potential for Non- Representative, Synthetic Publication</b>
1-month, 3-month and 6-month GBP LIBOR settings	December 31, 2021	The first London Banking Day on or after January 1, 2022	March 5, 2021	N/A	January 1, 2022 onward
<b>JPY LIBOR</b>					
Spot next, 1-week, 2-month and 12-month JPY LIBOR settings	December 31, 2021	The first London Banking Day on or after January 1, 2022	March 5, 2021	N/A	N/A
1-month, 3-month and 6-month JPY LIBOR settings	December 31, 2021	The first London Banking Day on or after January 1, 2022	March 5, 2021	N/A	January 1, 2022 through December 31, 2022
<b>USD LIBOR</b>					
Overnight and 12-month USD LIBOR settings	June 30, 2023	The first London Banking Day on or after July 1, 2023	March 5, 2021	N/A	N/A
1-week and 2-month USD LIBOR settings	December 31, 2021	The first London Banking Day on or after July 1, 2023	March 5, 2021	The first London Banking Day on or after January 1, 2022 through June 30, 2023	N/A

<b>LIBOR Setting</b>	<b>Last date of publication/ representativeness</b>	<b>Index Cessation Effective Date</b>	<b>Spread Adjustment Fixing Date</b>	<b>Interpolation</b>	<b>Potential for Non- Representative, Synthetic Publication</b>
1-month, 3-month and 6-month USD LIBOR settings	June 30, 2023	The first London Banking Day on or after July 1, 2023	March 5, 2021	N/A	July 1, 2023 onward