

## **Future Cessation Guidance – 2021 ISDA Interest Rate Derivatives Definitions and 2006 ISDA Definitions**

### **IBA announcement of future permanent cessation of USD LIBOR ICE Swap Rate®**

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 herein. 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.

#### **1. Introduction**

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 November 14, 2022 by the ICE Benchmark Administration (“IBA”) relating to the future cessation of all tenors of the USD LIBOR ICE Swap Rate (the “**IBA Cessation Announcement**”).

##### **1.1. USD LIBOR ICE Swap Rate Cessation Announcement**

On November 14, 2022, IBA announced that, following feedback from market participants on its public [consultation](#) published in August 2022, calculation and publication of each tenor of the USD LIBOR ICE Swap Rate (which will be the USD LIBOR ICE Swap Rate with an underlying rate of 3-month USD LIBOR®) will cease immediately after publication on June 30, 2023. The announcement can be found [here](#) and the feedback statement on the August 2022 consultation [here](#).

The IBA Cessation Announcement is not an announcement regarding any ICE Swap Rate settings other than the USD LIBOR ICE Swap Rate.

##### **1.2. USD SOFR Spread-Adjusted ICE Swap Rate**

Previously, on October 1, 2021, IBA started publishing a [USD SOFR Spread-Adjusted ICE Swap Rate](#) in ‘beta’ form, as the first level fallback rate contained in the relevant ISDA documentation<sup>1</sup> which would apply:

- (a) in respect of a USD LIBOR ICE Swap Rate Floating Rate Option and for the purposes of a Fixing Day<sup>2</sup>, if the day that is two New York City and London Business/Banking Days<sup>3</sup> following

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<sup>1</sup> Note that not all versions of the 2006 Definitions and the 2021 Definitions will apply this fallback.

<sup>2</sup> “Fixing Day” is used in the 2021 Definitions. The equivalent term in the 2006 Definitions is the “USD LIBOR ICE Swap Rate Fixing Day”.

<sup>3</sup> “Business Days” is used in the 2021 Definitions. “Banking Days” is used in the 2006 Definitions (as amended by Supplement 88).

the Fixing Day falls on or after the day that is two London Business/Banking Days following the first day on which 3-month USD LIBOR would ordinarily have been provided but is either Non-Representative or no longer provided; and

- (b) in respect of the USD LIBOR ICE Swap Rate as the Settlement Rate and for the purposes of any day on which the Settlement Rate is required, if that day falls on or after the first day on which 3-month USD LIBOR would ordinarily have been provided but is either Non-Representative or no longer provided.

On March 10, 2023, IBA **announced** plans to launch the USD SOFR Spread-Adjusted ICE Swap Rate for use as a benchmark in financial contracts and instruments. On April 13, 2023, IBA **confirmed** that it expects to provide the USD SOFR Spread-Adjusted ICE Swap Rate for use as a benchmark from and including June 30, 2023. IBA has expressly prohibited its use in financial instruments and contracts before this date.

### 1.3. **ISDA Documents providing for updated fallbacks to the USD LIBOR ICE Swap Rate**

This guidance is of particular relevance in the context of the **Supplement 88 to the 2006 ISDA Definitions, published on November 10, 2021**, which updates provisions in the 2006 ISDA Definitions that refer or relate to the USD LIBOR ICE Swap Rate (“**Supplement 88**”) and Version 3.0 of the 2021 ISDA Interest Rate Derivatives Definitions (the “**2021 Definitions**”) (as well as subsequent versions of the 2021 Definitions). Supplement 88 and Version 3.0 of the 2021 Definitions were published following a **consultation by ISDA** on the implementation of fallbacks for the GBP LIBOR ICE Swap Rate and the USD LIBOR ICE Swap Rate and ISDA’s **announcement** of the results of that consultation.

In addition to Supplement 88 and Version 3.0 of the 2021 Definitions, ISDA has also published:

- (1) a **form of combined amendment agreement** to enable parties to amend one or more existing Confirmations for legacy transactions incorporating the 2006 ISDA Definitions or Version 1.0 or 2.0 of the 2021 Definitions which reference the USD LIBOR ICE Swap Rate to introduce equivalent fallbacks for the USD LIBOR ICE Swap Rate to those set out in Supplement 88 and Version 3.0 of the 2021 Definitions (the “**USD LIBOR ICE Swap Rate Fallback Provisions**”). This amendment agreement also enables parties to amend existing Confirmations to introduce fallbacks for the GBP LIBOR ICE Swap Rate and the JPY LIBOR Tokyo Swap Rate (the “**Combined Swap Rates Amendment Agreement**”).
- (2) a **standalone form of amendment agreement** to enable parties to amend one or more existing Confirmations for legacy transactions incorporating the 2006 ISDA Definitions or Version 1.0 or 2.0 of the 2021 Definitions that reference the USD LIBOR ICE Swap Rate to incorporate the USD LIBOR ICE Swap Rate Fallback Provisions (the “**USD ISR Standalone Amendment Agreement**”);<sup>4</sup> and
- (3) a **standalone form of amendment agreement** to enable parties to amend one or more existing Confirmations for legacy transactions incorporating the 2000 ISDA Definitions, the 2006 ISDA Definitions or Version 1.0 or 2.0 the 2021 Definitions that reference the USD LIBOR ICE Swap Rate or Confirmations containing generic references to the USD LIBOR ICE Swap Rate to incorporate the USD LIBOR ICE Swap Rate Fallback Provisions (the “**USD ISR June 2022**”).

<sup>4</sup> The scope of the amendments in respect of transactions referencing the USD LIBOR ICE Swap Rate is the same in both the USD ISR Standalone Amendment Agreement and the Combined Swap Rates Amendment Agreement. The difference between those two amendment agreements is that the Combined Swap Rates Amendment Agreement also amends transactions referencing the GBP LIBOR ICE Swap Rate and the JPY Tokyo Swap Rate to incorporate updated fallbacks for those swap rates.

**Amendment Agreement**”, and together with the Combined Swap Rates Amendment Agreement and the USD ISR Standalone Amendment Agreement, the “**USD ISR Amendment Agreements**”).<sup>5</sup>

In June 2022, ISDA published the June 2022 Benchmarks Module to the ISDA 2021 Fallbacks Protocol (the “**June 2022 Benchmarks Module**”) to enable parties to incorporate the USD LIBOR ICE Swap Rate Fallback Provisions into (1) legacy transactions referencing the USD LIBOR ICE Swap Rate and incorporating (or referring to) the 2000 Definitions, the 2006 Definitions or Version 1.0 or 2.0 of the 2021 Definitions and (2) legacy transactions containing generic references to the USD LIBOR ICE Swap Rate.

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<sup>5</sup> In addition to the amendments made by the USD ISR Standalone Amendment Agreement, the USD ISR June 2022 Amendment Agreement also amends transactions referencing the USD LIBOR ICE Swap Rate that are documented pursuant to the 2000 ISDA Definitions and generic references to the USD LIBOR ICE Swap Rate in other Confirmations not incorporating any of the 2000 ISDA Definitions, 2006 Definitions or 2021 Definitions. The USD ISR June 2022 Amendment Agreement is closely aligned with the amendments made by the June 2022 Benchmarks Module however the default position under the USD ISR June 2022 Amendment Agreement is that the transaction must be subject to an ISDA Master Agreement to be covered by that amendment agreement, whereas the June 2022 Benchmarks Module will also capture transactions under any Additional Master Agreement that is listed in the Annex to the ISDA 2021 Fallbacks Protocol. There is, however, the option for the parties to the USD ISR June 2022 Amendment Agreement to capture transactions under other master agreements by amending the definition of Relevant Master Agreement to refer to other master agreements.

## Guidance

### 2. Scope of this Guidance

The purpose of this Guidance is:

- (1) **2021 ISDA Interest Rate Derivatives Definitions**: to describe how the terms of the 2021 ISDA Interest Rate Derivatives Definitions, for swap transactions and swaptions that incorporate one of Versions 1.0 to 8.0 of the 2021 Definitions, apply to the IBA Cessation Announcement;
- (2) **2006 ISDA Definitions**: to describe how the terms of the 2006 ISDA Definitions (the “**2006 Definitions**”), both for swap transactions and swaptions entered into before the publication of Supplement 88 on November 10, 2021 and following publication of Supplement 88 on November 10, 2021, apply to the IBA Cessation Announcement;
- (3) **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 IBA Cessation Announcement; and
- (4) **June 2022 Benchmarks Module**: to describe how the terms of the June 2022 Benchmarks Module apply to the IBA Cessation Announcement.

Terms used but not defined in this Guidance have the meanings given to them in the 2021 Definitions, the 2006 Definitions, including in Supplement number 70 to the 2006 ISDA Definitions (the “**IBOR Fallbacks Supplement**”), the ISDA Benchmarks Supplement, or the June 2022 Benchmarks Module, as applicable.

### 3. The IBA Cessation Announcement

In August 2022, IBA issued a **consultation** in respect of, amongst other things, possible cessation of the USD LIBOR ICE Swap Rate.

Having considered the feedback received, in the IBA Cessation Announcement IBA stated:

*“Based on the feedback received, IBA is announcing today that it will cease the publication of all USD LIBOR ICE Swap Rate runs (i.e. USD LIBOR Rates 1100, USD LIBOR Spreads 1100 and USD LIBOR 1500) for all tenors immediately after publication on June 30, 2023.*

*Users of USD LIBOR ICE Swap Rate benchmark should take account of its upcoming cessation and ensure their contractual and other arrangements linked to the benchmark contain appropriate fallback or other arrangements to address the cessation.*

*Other than the above announcement regarding the cessation of the USD LIBOR ICE Swap Rate, none of the consultation, the feedback statement, or this press release is, or should be taken to be or include, an announcement that IBA will cease or continue the publication of any other ICE Swap Rate settings, after June 30, 2023 or any other date.”*

#### 4. 2021 Definitions

##### 4.1. **USD LIBOR ICE Swap Rate Floating Rate Options and USD LIBOR ICE Swap Rate as the Settlement Rate**

Each version of the 2021 Definitions Floating Rate Matrix contains the following Floating Rate Options: “USD-LIBOR ICE Swap Rate-11:00” and “USD-LIBOR ICE Swap Rate-15:00” (the “**2021 USD LIBOR ISR Floating Rate Options**”).

The USD LIBOR ICE Swap Rate may also be the Settlement Rate for a USD swaption or swap transactions referencing one of the USD LIBOR Floating Rate Options, on (1) Automatic Exercise/Fallback Exercise of the swaption, (2) cash settlement of the swaption, or (3) cash settlement of a swap transaction referencing USD LIBOR that is cash settled on an Optional Early Termination/Mandatory Early Termination (if the Cash Settlement Method is Collateralized Cash Price<sup>6</sup>).

The relevant permanent cessation triggers for the 2021 USD LIBOR ISR Floating Rate Options and the USD LIBOR ICE Swap Rate as the Settlement Rate are:

- (i) Versions 1.0 and 2.0: “Index Cessation Event” in respect of the USD LIBOR ICE Swap Rate as the Applicable Benchmark; and
- (ii) Versions 3.0 to 8.0: both an “Index Cessation Event” in respect of the USD LIBOR ICE Swap Rate as the Applicable Benchmark and “USD LIBOR Index Cessation Event” in respect of the 3-month tenor of USD LIBOR as the Applicable Benchmark.

A USD LIBOR Index Cessation Event occurred (for the purposes of Versions 3.0 to 8.0 of the 2021 Definitions) as a result of the announcement made on March 5, 2021 by the Financial Conduct Authority that USD LIBOR for the 3-month tenor would be non-representative or would cease immediately after June 30, 2023 (the “**FCA Statement**”).

An Index Cessation Event has now occurred in respect of the USD LIBOR ICE Swap Rate for the purposes of Versions 1.0 to 8.0 as a result of the IBA Cessation Announcement.

In both cases, the related Index Cessation Effective Date is the first day following June 30, 2023 on which 3-month USD LIBOR/USD LIBOR ICE Swap Rate would ordinarily have been provided but is no longer provided or, in the case of USD LIBOR, is Non-Representative (the Index Cessation Effective Date for each of the USD LIBOR ICE Swap Rate and USD LIBOR will consequently be the same day)<sup>7</sup>.

##### 4.2. **Fallbacks pursuant to Versions 3.0 to 8.0 of the 2021 Definitions**

###### 4.2.1. Permanent Cessation Triggers

Pursuant to Versions 3.0 to 8.0 of the 2021 Definitions, two Permanent Cessation Triggers have occurred in respect of the 2021 USD LIBOR ISR Floating Rate Options as both an Index

<sup>6</sup> Collateralized Cash Price uses the Settlement Rate to determine the Cash Settlement Amount. There is a further Cash Settlement Method in the 2021 Definitions – Par Yield Curve – Unadjusted – that also uses the Settlement Rate to determine the Cash Settlement Amount. However, that Cash Settlement Method is only applied to GBP LIBOR transactions in the 2021 ISDA Settlement Matrix and it is assumed that this Cash Settlement Method does not apply to any USD LIBOR transactions documented under the 2021 Definitions.

<sup>7</sup> This date is expected to be Monday, July 3, 2023, unless Monday, July 3, 2023 is an unscheduled holiday. Note that the relevant benchmark for the purposes of a USD LIBOR Index Cessation Event pursuant to Versions 3.0 to 8.0 is USD LIBOR, not the USD LIBOR ICE Swap Rate, although the expected dates of cessation (or non-representativeness in the case of USD LIBOR) are the same for both of these benchmarks.

Cessation Event in respect of the USD LIBOR ICE Swap Rate (Permanent Cessation Trigger 1) has occurred and a USD LIBOR Index Cessation Event in respect of USD LIBOR (Permanent Cessation Trigger 2) has occurred. However, the hierarchy provision in the Floating Rate Matrix provides that where both Permanent Cessation Triggers have occurred, Permanent Cessation Fallback (2) shall apply. Permanent Cessation Fallback (2) is the “Permanent Cessation Fallbacks for USD LIBOR ICE Swap Rate” (as explained below).

#### 4.2.2. Permanent Cessation Fallbacks for the 2021 USD LIBOR ISR Floating Rate Options (v3.0-8.0)

The “Permanent Cessation Fallbacks for USD LIBOR ICE Swap Rate” will apply to the 2021 USD LIBOR ISR Floating Rate Options<sup>8</sup>. These fallbacks include a published fallback rate calculated by reference to the adjusted USD SOFR swap rate<sup>9</sup> (the “**Published USD ISR Fallback Rate**”) that is specified to apply if the day that is two New York City and London Business Days following the Fixing Day falls on or after the day that is two London Business Days following the USD LIBOR Applicable Index Cessation Effective Date.

**This fallback to the Published USD ISR Fallback Rate is therefore currently expected to apply to a Fixing Day falling on and after June 30, 2023.**<sup>10</sup>

IBA has been publishing a **USD SOFR Spread-Adjusted ICE Swap Rate** since October 1, 2021. This rate is currently only being published in ‘beta’ form and IBA has specifically prohibited its use in financial instruments and contracts. IBA has, however, **confirmed** that the USD SOFR Spread-Adjusted ICE Swap Rate will be available for use as a benchmark in financial contracts and instruments from June 30, 2023.

<sup>8</sup> These fallbacks are set out in a section titled “Permanent Cessation Fallbacks for USD LIBOR ICE Swap Rate” of the 2021 Definitions. The section number is 9.87.1, 9.83.1, 9.75.1, 9.70.1, 9.70.1, 9.57.1 in Versions 8.0, 7.0, 6.0, 5.0, 4.0 and 3.0, respectively.

<sup>9</sup> The fallbacks for the “USD-LIBOR ICE Swap Rate-11:00” and “USD-LIBOR ICE Swap Rate-15:00” Floating Rate Options are substantially the same. However, the latter Floating Rate Option includes an additional fallback to the adjusted SOFR-based rate provided at 11:00 on the relevant rate fixing day, if the adjusted SOFR-based rate due to be published at 15:00 is not provided on that day.

<sup>10</sup> If the Fixing Day is June 30, 2023 or later, the fallback will apply notwithstanding that June 30, 2023 is a scheduled publication day for the USD LIBOR ICE Swap Rate. The USD LIBOR ICE Swap Rate published on June 30, 2023 would be intended to measure the mid-price for USD LIBOR interest rate swaps (“**USD LIBOR IRS**”) traded on June 30, 2023. ISDA understands that the market convention for USD LIBOR IRS is for the Effective Date to be two New York City and London Business Days following the Trade Date. This means that a USD LIBOR IRS traded on June 30, 2023 would, assuming July 3, 2023 and July 5, 2023 are both New York City and London Business Days, have an Effective Date of July 5, 2023 (because July 1 and July 2 are a weekend and July 4 is a public holiday in New York City, namely Independence Day). Under the 2021 Definitions the initial Calculation Period will commence on and include the Effective Date. ISDA also understands that it is market convention for a Reset Date to be the first day of the relevant Calculation Period in a standard USD LIBOR IRS. Consequently, a standard USD LIBOR IRS with an Effective Date of July 5, 2023, would also have a Reset Date of July 5, 2023. The USD LIBOR Floating Rate Option in the 2021 Definitions (“USD-LIBOR”) provides that the Fixing Day for USD LIBOR is two London Business Days preceding the Reset Date. This means that the Fixing Day for a USD LIBOR IRS with a July 5, 2023 Reset Date would be July 3, 2023. As July 3, 2023 is expected to be the Index Cessation Effective Date for 3-month USD LIBOR (i.e. the first day on which 3-month USD LIBOR would ordinarily have been provided and is either Non-Representative or no longer provided), the fallback to Fallback Rate (SOFR) would apply to a USD LIBOR IRS with a Reset Date of July 5, 2023. Given that Fallback Rate (SOFR) would apply to any such USD LIBOR IRS traded on June 30, 2023, ISDA understands that the SOFR Spread-Adjusted ICE Swap Rate should be used from June 30, 2023. As explained by the **ARRC**, the fallback formula (on which the SOFR Spread-Adjusted ICE Swap Rate is based) “would accurately represent the at-the-money rates of standard interest rate swaps which are tied to [USD LIBOR] and which incorporate the fallback provisions introduced in the ISDA 2020 IBOR Fallbacks Protocol” (which are the same substantive fallback provisions included in the 2021 Definitions for USD LIBOR). It is for this reason that the 2021 Definitions provide that the fallback for the 2021 USD LIBOR ISR Floating Rate Options applies “if the day that is two New York City and London Business Days following the Fixing Day falls on or after the day that is two London Business Days following the USD LIBOR Applicable Index Cessation Effective Date” (see footnote 8 above for the relevant sections of the 2021 Definitions where this is specified).

If no Published USD ISR Fallback Rate is available, the Calculation Agent will be responsible for calculating that adjusted SOFR swap rate, based on the formula set out in the 2021 Definitions (which formula is substantively identical to the formula IBA uses to calculate the USD SOFR Spread-Adjusted ICE Swap Rate)<sup>11</sup>.

#### 4.2.3. Permanent Cessation Fallbacks for the Settlement Rate (v3.0-8.0)

When the USD LIBOR ICE Swap Rate is the Settlement Rate, the same fallback to the Published USD ISR Fallback Rate as described in paragraph 4.2.2 (*Permanent Cessation Fallbacks for the USD LIBOR ISR Floating Rate Options (v3.0-8.0)*) above for the 2021 USD LIBOR ISR Floating Rate Options applies, pursuant to Section 17.3.6 (*Permanent Cessation Fallback Provisions in respect of the Settlement Rate for LIBOR Swap Rate Transactions*) of Versions 3.0 to 8.0 of the 2021 Definitions, except that the fallbacks apply to the Settlement Rate from the Applicable LIBOR Index Cessation Effective Date (i.e. the first date on which 3-month USD LIBOR would ordinarily have been provided and is either Non-Representative or no longer provided<sup>12</sup>).

**This fallback to the Published USD ISR Fallback Rate is therefore currently expected to apply to the Settlement Rate for an Expiration Date/Exercise Date/Cash Settlement Valuation Date falling on and after July 3, 2023.**

#### 4.3. Fallbacks pursuant to Version 2.0 of the 2021 Definitions<sup>13</sup>

##### 4.3.1. Permanent Cessation Fallbacks for the 2021 USD LIBOR ISR Floating Rate Options (v2.0)

The fallback which applies to the 2021 USD LIBOR ISR Floating Rate Options following the Index Cessation Effective Date<sup>14</sup> in respect of the USD LIBOR ICE Swap Rate is “Temporary Non-Publication Fallback – Reference Banks”. This involves a poll of five leading dealers in the New York City interbank market, followed by Calculation Agent determination if an insufficient number of quotations is provided.

##### 4.3.2. Permanent Cessation Fallbacks for the Settlement Rate (v2.0)

The fallback for when the USD LIBOR ICE Swap Rate is the Settlement Rate, set out in Section 17.3.1(ii) (*Fallback following Permanent Cessation Trigger or Administrator/Benchmark Event in respect of the Settlement Rate*) of Version 2.0, is also “Reference Banks” which similarly involves a dealer poll with a further fallback to Calculation Agent determination if an insufficient number of quotations is provided.

<sup>11</sup> The formula is set out in a section titled “Permanent Cessation Fallbacks for USD LIBOR ICE Swap Rate” of the 2021 Definitions. The section number is 9.87.1, 9.83.1, 9.75.1, 9.70.1, 9.70.1, 9.57.1 in Versions 8.0, 7.0, 6.0, 5.0, 4.0 and 3.0, respectively.

<sup>12</sup> This date is expected to be Monday, July 3, 2023, unless Monday, July 3, 2023 is an unscheduled holiday.

<sup>13</sup> This analysis applies to documents incorporating Version 2.0 of the 2021 Definitions which have not been amended (whether by the USD ISR Amendment Agreements, the June 2022 Benchmarks Module or otherwise).

<sup>14</sup> This will be the first day immediately following Friday, June 30, 2023, on which the USD LIBOR ICE Swap Rate would ordinarily have been provided but is no longer provided, which is expected to be Monday, July 3, 2023, unless Monday, July 3, 2023 is an unscheduled holiday.

#### 4.4. **Fallbacks pursuant to Version 1.0 of the 2021 Definitions**<sup>15</sup>

##### 4.4.1. Permanent Cessation Fallbacks for the 2021 USD LIBOR ISR Floating Rate Options (v1.0)

The fallback for the 2021 USD LIBOR ISR Floating Rate Options following the Index Cessation Effective Date<sup>16</sup> in respect of the USD LIBOR ICE Swap Rate is the Generic Fallback Provisions.

##### 4.4.2. Permanent Cessation Fallbacks for the Settlement Rate (v1.0)

In the case of the USD LIBOR ICE Swap Rate as Settlement Rate, the fallback is also to the Generic Fallback Provisions. However, the Generic Fallback Provisions are modified by Section 17.3.2 (*Generic Fallback Provisions in respect of the Settlement Rate*) of Version 1.0 of the 2021 Definitions.

Refer to the [ISDA Summary of the Generic Fallback Provisions](#) for a summary of the Generic Fallback Provisions including a summary of those provisions as modified for the purposes of the Settlement Rate.

## 5. **2006 Definitions**

### 5.1. ***Fallbacks pursuant to 2006 Definitions pre-Supplement 88***

For transactions with a Trade Date prior to November 10, 2021 (the publication date of Supplement 88) which have not been amended (whether by the USD ISR Amendment Agreements, the June 2022 Benchmarks Module or otherwise) to include the USD LIBOR ICE Swap Rate Fallback Provisions, once the USD LIBOR ICE Swap Rate is no longer provided, the fallbacks will be as follows.

#### 5.1.1. Permanent Cessation Fallbacks for the 2006 USD LIBOR ISR Rate Options (pre-Supplement 88)

“USD-ISDA-Swap Rate” / “USD-ISDA-Swap Rate-3:00” / “USD-ISDAFIX3-Swap Rate” / “USD-ISDAFIX3-Swap Rate-3:00” (the “**2006 USD LIBOR ISR Rate Options**”)<sup>17</sup> will be determined using the “USD-CMS-Reference Banks” Rate Option i.e. the determination will be made by reference to a dealer poll<sup>18</sup>.

**The final fixing day on which the USD LIBOR ICE Swap Rate will be used is currently expected to be June 30, 2023 (assuming publication of the USD LIBOR ICE Swap Rate on that day) with the fallback described above applying from and including July 3, 2023.**

<sup>15</sup> This analysis applies to documents incorporating Version 1.0 of the 2021 Definitions which have not been amended (whether by the USD ISR Amendment Agreements, the June 2022 Benchmarks Module or otherwise).

<sup>16</sup> This will be the first day immediately following Friday, June 30, 2023, on which the USD LIBOR ICE Swap Rate would ordinarily have been provided but is no longer provided, which is expected to be Monday, July 3, 2023, unless Monday, July 3, 2023 is an unscheduled holiday.

<sup>17</sup> These Rate Options are set out in Section 7.1(ab) (*U.S. Dollar*) of the 2006 Definitions.

<sup>18</sup> The relevant rate will be determined “on the basis of the mid-market semi-annual swap rate quotations provided by the Reference Banks at approximately 11:00 a.m., New York City time, on the day that is two U.S. Government Securities Business Days preceding that Reset Date, and, for this purpose, the semi-annual swap rate means the mean of the bid and offered rates for the semi-annual fixed leg, calculated on a 30/360 day count basis, of a fixed-for-floating U.S. Dollar interest rate swap transaction with a term equal to the Designated Maturity commencing on that Reset Date and in a Representative Amount with an acknowledged dealer of good credit in the swap market, where the floating leg, calculated on an Actual/360 day count basis, is equivalent to USD-LIBOR-BBA with a Designated Maturity of three months”, as per Section 7.1(ab)(x) (*USD-CMS-Reference Banks*) of the 2006 Definitions.



#### 5.1.2. Permanent Cessation Fallbacks for the Settlement Rate (pre-Supplement 88)

If the Settlement Rate is the USD LIBOR ICE Swap Rate, the Settlement Rate<sup>19</sup> will be determined using a Cash Settlement Reference Bank dealer poll or, if fewer than three quotations are provided by Cash Settlement Reference Banks, by the Seller (if Section 13.9 applies) or the Calculation Agent (if Section 18.2(f) applies).

**The final Expiration Date/Exercise Date/Cash Settlement Valuation Date on which the USD LIBOR ICE Swap Rate will be used as the Settlement Rate is currently expected to be June 30, 2023 (assuming publication of the USD LIBOR ICE Swap Rate on that day) with the fallback described above applying from and including July 3, 2023.**

#### 5.2. ***Fallbacks Pursuant to Post-Supplement 88 or pre-Supplement 88 transactions which have been amended to incorporate the USD LIBOR ICE Swap Rate Fallback Provisions***

For transactions with a Trade Date on or after November 10, 2021 (the publication date of Supplement 88) and for transactions with a Trade Date prior to November 10, 2021 but which have been amended to include the terms of Supplement 88 (whether by the USD ISR Amendment Agreements, the June 2022 Benchmarks Module or otherwise), the following fallbacks in Supplement 88 will apply.

##### 5.2.1. Permanent Cessation Fallbacks for the 2006 USD LIBOR ISR Rate Options (Supplement 88)

In respect of the updated 2006 USD LIBOR ISR Rate Options and for the purposes of a USD LIBOR ICE Swap Rate Fixing Day, if the day that is two New York City and London Banking Days following the USD LIBOR ICE Swap Rate Fixing Day falls on or after the day that is two London Banking Days following the USD LIBOR Applicable Index Cessation Effective Date<sup>20</sup> with respect to the Applicable USD Tenor, the Published USD ISR Fallback Rate will apply (see below).

**This fallback to the Published USD ISR Fallback Rate is therefore currently expected to apply to a Fixing Day falling on and after June 30, 2023.**<sup>21</sup>

##### 5.2.2. Permanent Cessation Fallbacks for the Settlement Rate (Supplement 88)

In respect of the USD LIBOR ICE Swap Rate as the Settlement Rate (under Section 13.9 or 18.2(f) of the 2006 Definitions, as applicable) and for the purposes of any day on which the Settlement Rate is required, if that day falls on or after the Applicable LIBOR Index Cessation Effective Date<sup>22</sup> with respect to the Applicable Tenor (i.e. the first date on which 3-month USD LIBOR would

<sup>19</sup> Sections 13.9 (*Settlement Rate on Automatic Exercise or Fallback Exercise*) and 18.2(f) (*Settlement Rate*) of the 2006 Definitions reference the USD LIBOR ICE Swap Rate for purposes of (i) determining whether the Buyer of a USD swaption is “in-the-money” for the purposes of Automatic Exercise or Fallback Exercise and (ii) calculating the settlement amount for cash settled USD swaptions (and certain swap transactions to which Optional Early Termination or Mandatory Early Termination apply).

<sup>20</sup> Importantly, the relevant benchmark is USD LIBOR, not the USD LIBOR ICE Swap Rate, although the expected dates of cessation (or non-representativeness in the case of USD LIBOR) are the same for both of these benchmarks.

<sup>21</sup> See footnote 10 above for more information regarding why the fallbacks apply from this date. References to the “2021 Definitions” and “Business Days” in footnote 10 should be read as references to the “2006 Definitions” and “Banking Days” respectively. See Sections 7.1(ab)(vi) (“USD-ISDA-Swap Rate”) and 7.1(ab)(vii) (“USD-ISDA-Swap Rate-3:00”) of the 2006 Definitions, as supplemented by Supplement 88, for the operative provisions.

<sup>22</sup> Importantly, the relevant benchmark is USD LIBOR, not the USD LIBOR ICE Swap Rate, although the expected dates of cessation (or non-representativeness in the case of USD LIBOR) are the same for both of these benchmarks.

ordinarily have been provided and is either Non-Representative or no longer provided<sup>23</sup>), the Published USD ISR Fallback Rate will apply (see below).

**This fallback to the Published USD ISR Fallback Rate is therefore currently expected to apply for the purposes of the Settlement Rate for an Expiration Date/Exercise Date/Cash Settlement Valuation Date falling on and after July 3, 2023.**

#### 5.2.3. Published USD ISR Fallback Rate

Supplement 88 updates the 2006 USD LIBOR ISR Rate Options, Section 13.9 (*Settlement Rate on Automatic Exercise or Fallback Exercise*) and Section 18.2(f) (*Settlement Rate*) to include fallbacks which would apply from the date specified in subparagraphs (i) or (ii) above, as applicable. These fallbacks include a published fallback rate calculated by reference to the adjusted USD SOFR swap rate<sup>24</sup> (the Published USD ISR Fallback Rate). IBA has been publishing a **USD SOFR Spread-Adjusted ICE Swap Rate** since October 1, 2021. This rate is currently only being published in ‘beta’ form and IBA has specifically prohibited its use in financial instruments and contracts. IBA has, however, **confirmed** that the USD SOFR Spread-Adjusted ICE Swap Rate will be available for use as a benchmark in financial contracts and instruments from June 30, 2023.

If the Published USD ISR Fallback Rate is not available, the Calculation Agent will be responsible for calculating that adjusted SOFR swap rate, based on the formula set out in Supplement 88 (which formula is substantively identical to the formula IBA uses to calculate the USD SOFR Spread-Adjusted ICE Swap Rate)<sup>25</sup>.

#### 5.2.4. Impact of the IBA Cessation Announcement

For the purposes of Supplement 88, a ‘USD LIBOR Index Cessation Event’ has already occurred on March 5, 2021 by virtue of the FCA Statement and the related USD LIBOR Index Cessation Effective Date is expected to be Monday, July 3, 2023.<sup>26</sup>

In contrast to Versions 3.0 to 8.0 of the 2021 Definitions, which has both a permanent cessation trigger linked to the cessation of the USD LIBOR ICE Swap Rate and a permanent cessation trigger linked to cessation of the relevant tenor of USD LIBOR, Supplement 88 does not include a separate permanent cessation trigger by reference to permanent cessation of the USD LIBOR ICE Swap Rate itself. Consequently, the IBA Cessation Announcement does not trigger the application of any provisions under Supplement 88 and does not affect the occurrence of the USD LIBOR Index Cessation Event, nor the consequences thereof, as described above.

If USD LIBOR ICE Swap Rate were to be unavailable at any time prior to the date specified in subparagraphs 5.2.1 (*Permanent Cessation Fallbacks for the 2006 USD LIBOR ISR Rate Options (Supplement 88)*) or 5.2.2 (*Permanent Cessation Fallbacks for the Settlement Rate (Supplement 88)*), as applicable, a fallback to Reference Banks/Cash Settlement Reference Banks would apply, as per the position described in paragraph 5.1 (*Fallbacks pursuant to the 2006 Definitions pre-*

<sup>23</sup> This date is expected to be Monday, July 3, 2023, unless Monday, July 3, 2023 is an unscheduled holiday.

<sup>24</sup> The fallbacks for the “USD-ISDA-Swap Rate” and “USD-ISDA-Swap Rate-3:00” Rate Options are substantially the same. The latter Rate Option includes an additional fallback to the adjusted SOFR-based rate provided at 11:00 on the relevant rate fixing day, if the adjusted SOFR-based rate due to be provided at 15:00 is not provided on that day.

<sup>25</sup> The formula is set out in the definition of “Calculated USD ISR Fallback Rate” in Section 1(e) of Supplement 88.

<sup>26</sup> The USD LIBOR Index Cessation Effective Date will be the first day immediately following Friday, June 30, 2023, on which three month USD LIBOR would ordinarily have been provided but is either Non-Representative or no longer provided, which is expected to be Monday, July 3, 2023, unless Monday, July 3, 2023 is an unscheduled holiday.

*Supplement 88*) above and, in respect of the Settlement Rate, if fewer than three quotations are provided by Cash Settlement Reference Banks, the rate will be determined by the Seller (if Section 13.9 applies) or the Calculation Agent (if Section 18.2(f) or the updated 2006 USD LIBOR ISR Rate Options apply).

## 6. **Application of the ISDA Benchmarks Supplement to the IBA Cessation Announcement**

For the purposes of applying the ISDA Benchmarks Supplement, if the USD LIBOR ICE Swap Rate is a Settlement Rate and/or the index referred to in the Floating Rate Option (such that it is a “Relevant Benchmark”), the IBA Cessation Announcement will constitute an “Index Cessation Event” under the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement and the provisions of the ISDA Benchmarks Supplement will therefore apply to transactions that incorporate the 2006 Definitions and the ISDA Benchmarks Supplement (in the case of the latter either directly or via the ISDA 2018 Benchmarks Supplement Protocol). This means that from the occurrence of the Index Cessation Event each party must act in good faith and use commercially reasonable efforts to seek to apply each applicable “Alternative Continuation Fallback” as set out in the ISDA Benchmarks Supplement. These Alternative Continuation Fallbacks are substantially the same as those set out in the Generic Fallback Provisions in the 2021 Definitions. Please refer to the [ISDA Summary of the Generic Fallback Provisions](#) for further information on these Alternative Continuation Fallbacks.

However, if the terms of Supplement 88 apply, as the updated 2006 USD LIBOR ISR Rate Options as well as the updated Settlement Rate provisions relating to the USD LIBOR ICE Swap Rate set out in Supplement 88 include a reference to a concept defined or otherwise described as an “index cessation event”, a “Priority Fallback” as defined in Section 1.1 (*Specific provisions for certain Relevant Benchmarks*) of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement will apply. Therefore, the new fallbacks in Supplement 88 will apply in priority to the provisions of Section 1.2 (*Consequences of a Benchmark Trigger Event*) of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement. The provisions of Section 1.2 (*Consequences of a Benchmark Trigger Event*) of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement will consequently only apply (i) to the extent that the “Priority Fallback” (i.e., the fallback in Supplement 88) fails to provide a means of determining the index level (although this is not expected), at which point each party must seek to apply one or more “Alternative Continuation Fallbacks” prior to the “Cut-off Date” or (ii) if a contract does not incorporate the terms of Supplement 88 and therefore a “Priority Fallback” does not apply.

## 7. **June 2022 Benchmarks Module<sup>27</sup>**

The June 2022 Benchmarks Module enables parties to incorporate the USD LIBOR ICE Swap Rate Fallback Provisions into (1) legacy transactions referencing the USD LIBOR ICE Swap Rate and incorporating (or referring to) the 2000 Definitions, the 2006 Definitions or Version 1.0 or 2.0 of the 2021 Definitions and (2) legacy transactions containing generic references to the USD LIBOR ICE Swap Rate.

Protocol Covered Documents referencing the USD LIBOR ICE Swap Rate will be amended by the June 2022 Benchmarks Module as described below.

<sup>27</sup> The June 2022 Benchmarks Module and the associated FAQs can be found [here](#) and [here](#), respectively. The June 2022 Benchmarks Module is a Benchmark Module to the 2021 Fallbacks Protocol. The 2021 Fallbacks Protocol and the associated FAQs can be found [here](#) and [here](#), respectively.

If a Protocol Covered Document either (i) incorporates Version 1.0 or 2.0 of the 2021 Definitions and references the USD LIBOR ICE Swap Rate, or (ii) references the USD LIBOR ICE Swap Rate “as defined” or having the meaning given in Version 1.0 or 2.0 of the 2021 Definitions, the June 2022 Benchmarks Module amends that Protocol Covered Document by including the USD LIBOR ICE Swap Rate Fallback Provisions from Version 3.0 of the 2021 Definitions.

If a Protocol Covered Document either (i) incorporates the 2006 or 2000 Definitions and references the USD LIBOR ICE Swap Rate, or (ii) references the USD LIBOR ICE Swap Rate “as defined” or having the meaning given in the 2006 or 2000 Definitions, the June 2022 Benchmarks Module amends the Protocol Covered Document by including the USD LIBOR ICE Swap Rate Fallback Provisions from Supplement 88.

If a Protocol Covered Document otherwise references the USD LIBOR ICE Swap Rate, howsoever defined, the June 2022 Benchmarks Module amends that Protocol Covered Document by including the substance of the USD LIBOR ICE Swap Rate Fallback Provisions from Version 3.0 of the 2021 Definitions.

Please refer to the corresponding sections above for a summary of the USD LIBOR ICE Swap Rate Fallback Provisions introduced in Version 3.0 of the 2021 Definitions and in Supplement 88.

#### **8. *Application of the IBOR Fallbacks Supplement and IBOR Fallbacks Protocol to the IBA Cessation Announcement***

The IBOR Fallbacks Supplement amends and restates certain IBOR Rate Options and related terms. None of the 2006 USD LIBOR ISR Rate Options are covered by the IBOR Fallbacks Supplement.

An Index Cessation Event under both the IBOR Fallbacks Supplement and the IBOR Fallbacks Protocol only applies to an Applicable Rate. The definition of “Applicable Rate”, as set out in Section 7.3(k) (*Applicable Rate*) of the 2006 Definitions, introduced by the IBOR Fallbacks Supplement, includes USD LIBOR for the purposes of “USD-LIBOR-BBA” and “USD-LIBOR-BBA-Bloomberg” but not any of the 2006 USD LIBOR ISR Rate Options, which are different benchmarks based on swap transactions that reference USD LIBOR, as well as other inputs. Consequently, the IBA Cessation Announcement does not constitute an Index Cessation Event under the IBOR Fallbacks Supplement or the IBOR Fallbacks Protocol.

**Annex: Table of outcomes<sup>28</sup>**

<b>USD LIBOR ISR Swap (swap referencing a USD LIBOR ICE Swap Rate Floating Rate Option)</b>		
<b>2006 Definitions – pre-Supplement 88<sup>29</sup></b>	<i>Fixing Day is <u>on or before</u> <b>June 30, 2023</b></i>	<i>Fixing Day is <u>on or after</u> <b>July 3, 2023</b></i>
	USD LIBOR ICE Swap Rate <sup>30</sup>	USD-CMS-Reference Banks (i.e. dealer poll)
<b>2006 Definitions – post-Supplement 88<sup>31</sup></b> <i>(including pre-Supplement 88 Transactions covered by the June 2022 Benchmarks Module)</i>	<i>Fixing Day is <u>on or before</u> <b>June 29, 2023</b></i>	<i>Fixing Day is <u>on or after</u> <b>June 30, 2023</b></i>
	USD LIBOR ICE Swap Rate	USD SOFR Spread-Adjusted ICE Swap Rate
<b>2021 Definitions v1.0<sup>32</sup></b>	<i>Fixing Day is <u>on or before</u> <b>June 30, 2023</b></i>	<i>Fixing Day is <u>on or after</u> <b>July 3, 2023</b></i>
	USD LIBOR ICE Swap Rate	Generic Fallback Provisions
<b>2021 Definitions v2.0<sup>33</sup></b>	<i>Fixing Day is <u>on or before</u> <b>June 30, 2023</b></i>	<i>Fixing Day is <u>on or after</u> <b>July 3, 2023</b></i>
	USD LIBOR ICE Swap Rate	Reference Banks with a further fallback to Calculation Agent determination
<b>2021 Definitions v3.0 – 8.0<sup>34</sup></b> <i>(including v1.0 and 2.0 Transactions covered by the June 2022 Benchmarks Module)</i>	<i>Fixing Day is <u>on or before</u> <b>June 29, 2023</b></i>	<i>Fixing Day is <u>on or after</u> <b>June 30, 2023</b></i>
	USD LIBOR ICE Swap Rate	USD SOFR Spread-Adjusted ICE Swap Rate

<sup>28</sup> This table of outcomes assumes that the USD LIBOR Index Cessation Effective Date of Monday July 5, 2023 does not change. It also assumes that Tuesday July 4, 2023 is a bank holiday in the U.S. and is consequently not a New York City Business Day/Banking Day.

<sup>29</sup> See paragraph 5.1.1 (*Permanent Cessation Fallbacks for the 2006 USD LIBOR ISR Rate Options (pre-Supplement 88)*).

<sup>30</sup> Assuming publication is made as usual on that day.

<sup>31</sup> See paragraph 5.2.1 (*Permanent Cessation Fallbacks for the 2006 USD LIBOR ISR Rate Options (Supplement 88)*).

<sup>32</sup> See paragraph 4.4.1 (*Permanent Cessation Fallbacks for the 2021 USD LIBOR ISR Floating Rate Options (v1.0)*).

<sup>33</sup> See paragraph 4.3.1 (*Permanent Cessation Fallbacks for the 2021 USD LIBOR ISR Floating Rate Options (v2.0)*).

<sup>34</sup> See paragraph 4.2.2 (*Permanent Cessation Fallbacks for the 2021 USD LIBOR ISR Floating Rate Options (v3.0-8.0)*). Version 8.0 of the 2021 Definitions is the most recent version as at the date of publication of this guidance. However, later versions are expected to contain the same fallback provisions for the USD LIBOR ICE Swap Rate as versions 3.0 to 8.0.

USD LIBOR Swaption or USD LIBOR Swap with OET/MET <sup>35</sup>		
	<i>Expiration Date/ Exercise Date/ Cash Settlement Valuation Date is <u>on or before</u> <b>June 30, 2023</b></i>	<i>Expiration Date/ Exercise Date/ Cash Settlement Valuation Date is <u>on or after</u> <b>July 3, 2023</b></i>
<b>2006 Definitions – Pre-Supplement 88<sup>36</sup></b>	USD LIBOR ICE Swap Rate	Reference Banks with a further fallback to Calculation Agent determination/Seller determination
<b>2006 Definitions – Post-Supplement 88<sup>37</sup></b> <i>(including pre-Supplement 88 Transactions that are covered by the June 2022 Benchmarks Module)</i>	USD LIBOR ICE Swap Rate	USD SOFR Spread-Adjusted ICE Swap Rate
<b>2021 Definitions v1.0<sup>38</sup></b>	USD LIBOR ICE Swap Rate	Generic Fallback Provisions
<b>2021 Definitions v2.0<sup>39</sup></b>	USD LIBOR ICE Swap Rate	Reference Banks with a further fallback to Calculation Agent determination.
<b>2021 Definitions v3.0 – 8.0<sup>40</sup></b> <i>(including v1.0 and 2.0 Transactions covered by the June 2022 Benchmarks Module)</i>	USD LIBOR ICE Swap Rate	USD SOFR Spread-Adjusted ICE Swap Rate

<sup>35</sup> Applying a Cash Settlement Method that uses the USD LIBOR ICE Swap Rate as the Settlement Rate.

<sup>36</sup> See paragraph 5.1.2 (*Permanent Cessation Fallbacks for the Settlement Rate (pre-Supplement 88)*).

<sup>37</sup> See paragraph 5.2.2 (*Permanent Cessation Fallbacks for the Settlement Rate (Supplement 88)*).

<sup>38</sup> See paragraph 4.4.2 (*Permanent Cessation Fallbacks for the Settlement Rate (v1.0)*).

<sup>39</sup> See paragraph 4.3.2 (*Permanent Cessation Fallbacks for the Settlement Rate (v2.0)*).

<sup>40</sup> See paragraph 4.2.3 (*Permanent Cessation Fallbacks for the Settlement Rate (v3.0-8.0)*). Version 8.0 of the 2021 Definitions is the most recent version as at the date of publication of this guidance. However, later versions are expected to contain the same fallback provisions for the USD LIBOR ICE Swap Rate as versions 3.0 to 8.0.