

# LIBOR Update: IBA Announcement Expected

**February 8, 2021**

This bulletin provides a timely update on two emerging issues related to LIBOR transition – namely, requirements that administrative agents (including private credit lenders acting in that role on their facilities) may be required under the terms of their credit agreements to provide notices of and, potentially, make amendments with respect to, a forthcoming announcement from the administrator of LIBOR, ICE Benchmark Administration (“IBA”).

Background:

On November 30, 2020, IBA announced that it would “consult” with its regulator (the Financial Conduct Authority (“FCA”)) on its intention to cease publication of the one week and two month USD LIBOR after December 31, 2021, but continue the publication of the overnight and one, three, six and 12 month USD LIBOR until June 30, 2023 (rather than ceasing publication for those tenors in 2021, as had been indicated previously).

Although the loan market appears to have interpreted this November announcement as, effectively, an extension of the USD LIBOR transition date, IBA’s announcement was actually narrowly tailored to note the commencement of this consultation period. The consultation period ended on January 25, 2021.

IBA is expected to make an announcement regarding the outcome of its consultation in the coming days. Although there is speculation as to how the announcement will be phrased, we understand that some market participants, regulators and industry bodies believe it is possible that IBA is considering making an unequivocal statement that it will cease publication of the above-referenced USD LIBOR tenors after June 2023, rather than, for example, making a less committal statement that it expects or foresees the cessation of LIBOR at such time.

Takeaway # 1: Administrative Agent Notice Obligations

If IBA makes such an unequivocal announcement, administrative agents under certain credit agreements may have an obligation to notify the parties that such an announcement has been made.

For example, an unequivocal announcement from IBA, interpreted under the LIBOR fallback language suggested by the Alternative Reference Rates Committee (the “ARRC”), variants of which are in many private credit facilities, might qualify as a “Benchmark Transition Event” under such a facility. A “Benchmark Transition Event” would require the administrative agent to notify the borrower and the lenders of the occurrence of such event. An example of the relevant language is provided at the end of this bulletin.

Note that a similar notice requirement may be included in credit agreements that have a different variant of “amendment” or “agree-to-agree” language. On the other hand, some credit agreements may not include the notice requirement at all.

Depending on the precise wording of the IBA announcement, administrative agents (and private credit lenders acting in that role) might consider preparing a generic notice to send to all parties under all of their facilities. Market participants and industry bodies are working on a form of such a notice, which we are reviewing.

## Takeaway # 2: Amendments to Credit Agreements

The potential for a definitive IBA announcement raises a separate, but related, issue. The LIBOR fallback language included in some credit agreements may require not just a requirement that the administrative agent provide notice to parties of such an announcement, but rather a requirement that, following such an announcement, the parties shall (or may) proceed or endeavor to amend the agreement to include a successor rate. In some cases, an agreement might provide that such an amendment occur within a certain timeframe (i.e. “promptly” or “reasonably promptly”). An example is provided at the end of this bulletin.

Private credit lenders, especially those acting as administrative agent on any credit facility, should consider whether any agreements in their portfolio include such amendment requirements and assess whether the IBA announcement would act as a trigger. We in the Private Credit Group are, of course, ready to work with clients to assess relevant language and, to the extent necessary, craft amendments.

As always, we will continue to track LIBOR replacement issues generally and will specifically provide pertinent updates following the IBA announcement.

Sample language:

1. ARRC LIBOR fallback language (**emphasis** added):

"'Benchmark Transition Event' means the occurrence of ... a public statement ... by or on behalf of the administrator of LIBOR announcing that such administrator has ceased **or will cease** to provide LIBOR, permanently or indefinitely...

The Administrative Agent will promptly notify the Borrower and the Lenders of ... any occurrence of a Benchmark Transition Event ... and [the date on which LIBOR will cease to be published pursuant to such statement (i.e. June 30, 2023)]..."

2. Language that may require an amendment (**emphasis** added):

"If at any time the Administrative Agent determines ... that the supervisor for the administrator of LIBOR ... has made a public statement identifying a specific date after which LIBOR shall no longer be used for determining interest rates for loans in Dollars, then the Administrative Agent and the Borrower **shall endeavor to establish an alternate rate of interest to LIBOR ... and shall enter into an amendment to this Agreement** to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable to all Obligations equally..."

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