

Alternative Reference Rates Committee (ARRC)

Minutes for the September 9 Meeting

The ARRC Chair welcomed everyone and thanked them for their continued active participation during these unprecedented times and encouraged everyone to continue their engagement and interaction during the virtual meetings. An update on the timeline for ISDA's IBOR Fallbacks Protocol was provided and ARRC members were asked to encourage market participants to adhere to the Protocol before it takes effect, and for those dealers and market participants with significant derivatives exposures to do so during the two-week escrow period ahead of the official launch date in order to promote adoption on as timely a basis as possible. The ARRC Chair then informed members that two tabletop discussions were being scheduled, one for nonfinancial corporates and another for buy-side operational experts. To wrap up administrative items, Brunswick provided an update on their work and highlighted the resources available in [SOFR Starter Kit](#), a set of factsheets to inform the public about the transition away from U.S. dollar LIBOR to SOFR.

The co-Chairs of the Regulatory working group provided an update on recent work completed by the working group including an overview of the recent [CFTC announcement](#) which provides additional relief to swap dealers related to the industry-wide initiative to transition from LIBOR-referenced swaps.

Members of the Legal working group provided a comparison of the proposed EU and UK legislation to the NY State Legislation (Attachment 1). An update on the status of the proposed New York legislation followed along with a discussion of potential next steps for outreach.

The Co-Chairs of the Market Structure and Paced Transition working group provided an update on the addendum to their recommendation which provides additional guidance for the switch by LCH and CME from EFFR to SOFR for discounting and price alignment, which is planned for October. The addendum was subsequently [published](#).

The ARRC Chair then asked members who have recused themselves from the Spread Adjustment RFP work to drop off the line. The group then discussed the Spread Adjustment RFP, which had been [published](#) on September 2, 2020.

Following that discussion, the ARRC chair asked members who have recused themselves from the Term Rate RFP work to drop off. A discussion followed around the RFP criteria and the scope of use of a potential term rate. The term rate RFP was subsequently [published](#).

The next ARRC meeting is scheduled to be held October 21st via Webex.

Attendance at the September 9, 2020 Meeting*

ARRC Members

American Bankers Association	Hu Benton
Association for Financial Professionals	Thomas Hunt
AXA	Julien Zusslin
Bank of America	Greg Todd*
Bank of America	Sonali Theisen
Bank of America	Alex van Voorhees
BlackRock	Jack Hattem
Citigroup	Dina Faenson
Citigroup	Jeannine Hyman
Comerica	Dave Shipka
CME Group	Agha Mirza
CRE Finance Council	Raj Aidasani
CRE Finance Council	Sairah Burki
CRE Finance Council	Lisa Pendergrast
Deutsche Bank	Adam Eames
Deutsche Bank	Nader Jarun
Fannie Mae	Bob Ives
Fannie Mae	Wells Engledow
Federal Home Loan Bank	Kyle Lynch
Federal Home Loan Bank	Phil Scott
Federal Home Loan Bank of New York	Rei Shinozuka*
Ford	Jason Behnke
Freddie Mac	Ameez Nanjee
Freddie Mac	Michelle Thomas
GE Capital	Fred Robustelli
GE Capital	Michael Taets
GoldmanSachs	Gigi Chavez de Arnavat*
GoldmanSachs	Brian Friedman
GoldmanSachs	Guillaume Helie
GoldmanSachs	Jason Granet
Government Finance Officers Association	Emily Brock
HSBC	Shirley Hapangama
Huntington Bank	Beth Russell
Independent Community Bankers of America	Chris Cole
Independent Community Bankers of America	James Kendrick
Intercontinental Exchange	Harvey Flax
International Swaps and Derivatives Association	Ann Battle
JP Morgan Chase & Co.	Andrew Gray
JP Morgan Chase & Co.	Alice Wang
JP Morgan Chase & Co.	Emilio Jimenez*
JP Morgan Chase & Co.	Perry Elbadrawi
JP Morgan Chase & Co.	Katherine Morgan*
KKR	Tal Reback
LCH	Phil Whitehurst

Loan Syndications and Trading Association	Meredith Coffey
Loan Syndications and Trading Association	Tess Virmani
MetLife	Alex Strickler
MetLife	Joe Demetrick
Morgan Stanley	Maria Douvas
Morgan Stanley	Maria-Ines Rajj
Morgan Stanley	Michelle Goldstein
Morgan Stanley	Matt Ochs
Morgan Stanley	Paige Mandy*
Morgan Stanley	Perry Elbadrawi*
Morgan Stanley	Tom Wipf
National Association of Corporate Treasurers	Tom Deas
PIMCO	Scott Goodman
PIMCO	Courtney Garcia
PNC	Alex Spiro
PNC	Andrew Wilson
Prudential Financial	Chris McAlister
Prudential Financial	Gary Horbacz
Securities Industry and Financial Markets Association	Chris Killian
Securities Industry and Financial Markets Association	Nancy Lancia
Securities Industry and Financial Markets Association	Rob Toomey
Structured Finance Association	Jen Earyes
Structured Finance Association	Kristi Leo
TD Bank	Greg Moore
TD Bank	Priya Misra
Wells Fargo	Alexis Pederson
Wells Fargo	Brian Grabenstein
Wells Fargo	Readie Callahan
World Bank Group	Don Sinclair*

Ex-Officio ARRC Members

Commodity Futures Trading Commission	Sayee Srinivasan
Consumer Financial Protection Bureau	Abishek Agarwal
Federal Deposit Insurance Corporation	Irina Leonova
Federal Housing Finance Agency	Dan Coates
Federal Reserve Bank of New York	Betsy Bourassa
Federal Reserve Bank of New York	Justin Epstein
Federal Reserve Bank of New York	Jamie Pfeifer
Federal Reserve Bank of New York	Cam Fuller
Federal Reserve Bank of New York	Nate Wuerffel
Federal Reserve Bank of New York	Raymond Check
Federal Reserve Bank of New York	Scott Nagel
Federal Reserve Bank of New York	Megan Zirinsky
Federal Reserve Bank of New York	William Riordan
Federal Reserve Board of Governors	David Bowman
Federal Reserve Board of Governors	Evan Winerman

Federal Reserve Board of Governors	Jeffrey Huther
Federal Reserve Board of Governors	Darren Gersh
National Association of Insurance Commissioners	Eric Kolchinsky
New York State Department of Financial Services	Steven Kluger*
Office of Financial Research	Robert "Jay" Kahn
Office of Financial Research	Sriram Rajan
Office of Financial Research	Ron Alquist
Office of the Comptroller of the Currency	Kevin Walsh
Office of the Comptroller of the Currency	Ang Middleton
U.S. Department of Housing and Urban Development	Jose Fernandez
U.S. Department of Housing and Urban Development	Maria Chelo DeVenecia
U.S. Securities and Exchange Commission	David Metzman
U.S. Securities and Exchange Commission	Jason Leung
U.S. Securities and Exchange Commission	Michelle Danis
U.S. Securities and Exchange Commission	Tamara Brightwell
U.S. Treasury	Peter Phelan
U.S. Treasury	Chloe Cabot

Observers

Bank of Canada	Sheryl King
BNP Paribas	Simon Winn
Brunswick	Pauline Blondiaux
Brunswick	Casey Gunkel
Brunswick	Elizabeth Lilly
Brunswick	Jeanmarie McFadden
Brunswick	Will Rasmussen
Cadwalader	Michael Sholem
Cadwalader	Lary Stromfeld
Deloitte	Alexey Surkov
Ernst & Young	John Boyle
Morgan Lewis	Jon Roellke
Oliver Wyman	Adam Schneider

*This meeting was held via WebEx; asterisk indicates participation by dial-in.

LIBOR transition and legacy contracts: a comparison of NY, UK and EU legislative proposals

September 9, 2020

Proposed New York State Legislation

- The ARRC's proposal for NY State legislation would apply to contracts governed by New York law
- The legislation would be triggered by one of the following public statements:
 - A statement by IBA, the FCA or another official with authority over ICE that ICE has ceased or will cease to publish LIBOR
 - A statement by the FCA that LIBOR is no longer representative
- For legacy contracts containing **only LIBOR-based fallbacks** or **no fallbacks at all**, the legislation would **direct instead** the use of the replacement benchmark + spread recommended by the ARRC
- For legacy contracts that enable a party to use discretion in selecting a fallback rate:
 - the legislation would create a **safe harbor** for that party if it chooses the ARRC recommended benchmark + spread
- The legislation would override any contractual requirement to conduct a poll to determine LIBOR
- Parties to contracts governed by the legislation would be prohibited from treating a LIBOR cessation event or the selection of the ARRC replacement benchmark + spread as a breach, force majeure event, or other excuse of performance
- The legislation would have **no effect** on contracts that specify non-LIBOR-based fallbacks (e.g., the prime rate), contracts where a party with discretion elects to use a replacement other than the ARRC recommended benchmark + spread, or in cases where all parties to the contract elect to opt out

Proposed UK Amendments to the UK Benchmarks Regulation

- On June 23, 2020, the UK government announced plans to amend the 'onshored' Benchmark Regulations regarding critical benchmarks, including LIBOR, that will be applicable to UK supervised entities post-Brexit
- The approach does not follow the NY or EU statutory replacement model**
- This new UK Financial Services Bill will empower the UK Financial Conduct Authority (FCA):
 - To require LIBOR's administrator (IBA) to alter its methodology in calculating LIBOR, where there has been a statement that LIBOR is **no longer representative**, and
 - Permit the continued use of LIBOR for a narrow category of 'tough legacy' contracts.
- Consultation about the FCA's new powers is expected later in the year. This may focus on:
 - the prohibition of LIBOR use for new transactions;
 - the scope of the prohibition the scope of 'tough legacy' contracts
 - interaction with NY and EU legislative proposals for statutory replacement rates;
 - the amended methodology for this 'synthetic' LIBOR, e.g. the relevant RFR + ISDA spread adjustment; and
 - the length of time in which the FCA will permit use of 'synthetic' LIBOR
- The result is that a LIBOR rate may still be available for at least some LIBOR currencies and tenors, even after end-2021
- The FCA regards the proposal as a reserve option for tough legacy; it is still requiring UK market participants to continue with an active and prompt transition to alternative rates for most products
- The FCA have stated that publication of 'synthetic' LIBOR will not restore LIBOR's representativeness for BMR purposes

"The Government therefore intends to legislate to amend and strengthen that existing regulatory framework, rather than directly to impose legal changes on LIBOR-referencing contracts that are governed by UK law"

UK Treasury Written Statement, June 23, 2020

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Proposed Amendments to the EU Benchmarks Regulation

- On July 24, 2020, the European Commission (EC) published a draft legislation to amend the BMR in respect of (i) the exemption of certain third country foreign exchange benchmarks and (ii) the designation of replacement benchmarks for certain critical benchmarks in cessation (such as LIBOR)
- The proposal empowers the EC to designate a **statutory replacement benchmark** where:
 - a benchmark will cease to be published; and
 - the cessation may result in significant disruption in the functioning of financial markets in the EU.
- The statutory replacement rate will become effective upon the occurrence of one of a number of trigger events, including:
 - a statement of non-representativeness from the regulator with responsibility for the benchmark administrator; or
 - a statement of cessation, or planned cessation of the benchmark, by the benchmark administrator.
- A replacement benchmark designated by the EC shall, **by operation of law**, replace all references to the benchmark that has ceased to be published in BMR in-scope contracts, instruments and measurements
- In scope contracts are those which **involve an EU supervised entity as counterparty** and where there is no 'suitable' fall-back provision
- The EC will recommend to EU Member States that they adopt the statutory replacement in national statutes for use in contracts between non-financial counterparties
- In choosing the statutory replacement rate(s), the EC will take into account recommendations made by risk free rate working groups for each LIBOR currency (e.g. ARRC for USD LIBOR contracts, RFRWG for GBP LIBOR)

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NY/UK/EU Proposal Comparison Table

	NY	UK	EU
Form of legislation	NY state legislation	Amendment to 'Onshored' UK BMR	Amendment to existing BMR
Mechanism	Contract references to LIBOR replaced by statutory benchmark+spread	FCA power to mandate a change to the methodology of LIBOR to create a 'synthetic' LIBOR	Contract references to LIBOR replaced by statutory benchmark+spread
Key Triggers	<ul style="list-style-type: none"> Non-representativeness finding Statements by regulator or IBA that LIBOR has ceased or will cease 	Same	Same
Scope of impacted contracts	<ul style="list-style-type: none"> NY law governed contracts USD LIBOR linked financial products and contracts no fallback or only LIBOR-based fallback (including polling) Opt-in by parties with contractual right to select a fallback rate 	<ul style="list-style-type: none"> Direct impact on 'tough legacy' contracts (definition to be confirmed) 	<ul style="list-style-type: none"> LIBOR financial contracts, instruments and fund performance measures Entered into by EU supervised counterparty No fallback or no 'suitable' fallback
Impacted IBORs	USD LIBOR only	Potentially all LIBOR currencies and tenors	Potentially all LIBOR currencies and tenors
Replacement rate + spread	To be determined by the ARRC	To be determined by FCA	To be determined by the EC (possible alignment with ARRC and other RFR working group rates)

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NY/UK/EU Proposal Comparison Table (continued)

	NY	UK	EU
Mandatory application	New York law-governed contracts containing no fallbacks or only LIBOR-based fallbacks (including polling), unless contract parties have opted out of the legislation	<ul style="list-style-type: none"> No mandatory usage, but may impact any 'tough legacy' contract that is not amended UK BMR restricts use in new contracts of non-compliant (e.g. non-representative LIBOR) benchmarks by UK supervised entities Potential impact on contracts of other entities that reference the 'screen rate' 	Applies to all legacy LIBOR contracts entered into by EU supervised entities, irrespective of the governing law of the contract
Timing	Subject to NY State legislative process	Financial Services Act with amending legislation to be passed by Q4 2020	Amended EU BMR to be published in EU Official Journal by December 2020

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