Don’t get left in the dark when LIBOR is switched off

Bracing for a Post-LIBOR Reality: Legal & Operational Considerations Webinar

June 24, 2020
Accenture wants to emphasize its ongoing commitment to full compliance with all applicable antitrust and competition laws.

This program has been designed and reviewed to provide conformity with antitrust standards. Accenture will work conscientiously to avoid discussions which may have unintended appearances or implications, and Accenture legal counsel has provided and will continue to provide guidance with regard to these matters. It is important for you to realize, however, that the competitive significance of a particular conduct or communication probably is/may be most evident to you, who are directly involved in the industry.

If you have any concern that a subject of discussion or an activity may not be appropriate, please speak up immediately and we will cease that discussion or activity until we can be advised by legal counsel. We at Accenture look forward to working with each of you at this and future meetings to provide full compliance with all applicable antitrust and competition laws.
LINEUP OF SPEAKERS

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Polling Question #1

What role do you play in your firm’s LIBOR Program?

- LIBOR Program Lead: 15.9%
- Investment Front Office: 6.8%
- Investment Operations: 4.5%
- Compliance & Legal: 59.1%
- Risk Management: 13.6%
- Data & Technology: 0.0%
WHAT IS YOUR **EXPOSURE TO LIBOR?**

**PRODUCTS**
- Derivatives (SWAPs / Futures)
- Structured Products
- Loans
- Securitizations
- Floating Rate Notes

**OPERATIONAL IMPACTS**
- New Benchmarks
- Client Transition
- Contract Remediation
- Reporting
- Vendor Readiness
- Tech and Data
- Risk & Other Models

If you have exposure, have you sized the impact?
CONSIDERATIONS FOR CASH INSTRUMENTS

Financial Conduct Authority (FCA)
Alternative Reference Rates Committee (ARRC)
Secured Overnight Funding Rate (SOFR)

BENCHMARK TRANSITION EVENTS

Cessation Of LIBOR
Pre-cessation Trigger
Term SOFR

Compounded/Simple SOFR

Rate selected by Relevant Government Body

International Swaps and Derivatives Association (ISDA) Fallback Rate

Transaction Specific Fallback Rate
BENCHMARK
REPLACEMENT ADJUSTMENT WATERFALL

ARRC Selected Adjustment

ISDA Selected Adjustment

Transaction Selected Adjustment
THE PROBLEM AND THE
NEW YORK STATE LAW “SOLUTION”

<table>
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<tr>
<th>Problem</th>
<th>“Solution”</th>
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<tr>
<td>Last Available LIBOR</td>
<td>Benchmark Replacement Rate</td>
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<tr>
<td>Average of Quotes Provided by Bank Poll</td>
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<tr>
<td>No Fallback Provisions</td>
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<tr>
<td>Third Party Determination</td>
<td>Litigation safe harbor</td>
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<tr>
<td>Lender Cost of Funds/ Prime Rate, etc.</td>
<td>No override</td>
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LEGACY INSTRUMENTS: LITIGATION RISKS

U. S. Constitution Contract Clause:
“No State shall...pass any... Law impairing the Obligation of Contracts....”
- U. S. Constitution, Article I, Section 10

• Impracticality
• Breach of Contract
• Unexpected-Circumstances
• Implied Covenant of Good Faith and Fair Dealing
• Force Majeure

“...when you looked at the underlying contracts that used LIBOR, they didn’t provide very well for LIBOR simply disappearing.... This is a DEFCON 1 litigation event if I’ve ever seen one.”
- Michael Held, Executive Vice President and General Counsel at the Federal Reserve Bank of New York

Source:
https://www.newyorkfed.org/newsevents/speeches/2019/hel190226

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Derivatives account for the majority of USD LIBOR exposure

Most interest rate derivatives use some form of LIBOR as their reference rate

Incorporation of 2006 ISDA Definitions dictates current fallbacks

In case of permanent discontinuance of LIBOR, looking to “Reference Banks” would be unworkable

* Based on our analysis
INDUSTRY INITIATIVES – TRANSITION TO SOFR

2018 / 2019 Market Consultations

Selection of BISL as “Adjustment Services Vendor”

Amendment of 2006 ISDA Definitions

Protocol for “Legacy” Derivatives
SOFR ADJUSTMENTS FOR OTC DERIVATIVES

TERM ADJUSTMENT METHODOLOGY
COMPOUNDED SETTING IN ARREARS
Average SOFR rate over the relevant calculation period, compounded daily

SPREAD ADJUSTMENT METHODOLOGY
5-YEAR MEDIAN LOOKBACK
Median of the credit spread between LIBOR and term-adjusted SOFR over the 5-year period prior to the fallback trigger
OPERATIONALIZING LIBOR REMEDIATION

Start with the right plan

Have the right staffing mix

Integrate the right technology
Polling Question #2

Has your firm done an inventory of its LiBOR-based financings and other contracts to identify the fallback provisions?

- Yes: 68.8%
- No: 31.3%
Polling Question #3

What steps have you taken to prepare your transition? (Select all that apply)

- Impact Assessment and LIBOR Pr... 92.6%
- Transition Strategy 70.4%
- Detailed Business Changes 51.9%
- Transition Execution 40.7%
- Infrastructure Changes to Oper... 48.1%
PRACTICAL REMEDIATION GUIDE
FOR LIBOR IMPACTED CONTRACTS

1. DISCOVERY
2. DIGITIZATION
3. DATA EXTRACTION
4. CONTRACT REMEDIATION FACTORY
5. ANALYTICS
6. PROJECT MANAGEMENT
Firms who delay client outreach resource planning and execution, face an extrapolated demand curve (late end of the delivery) in addition to the product/risk/timing complexities increasing the overall delivery risk to the firm.

**Scenario A**
Ramp up in 2021

Firms who delay client outreach resource planning and execution, face an extrapolated demand curve (late end of the delivery) in addition to the product/risk/timing complexities increasing the overall delivery risk to the firm.

**Scenario B**
Ramp up in 2020
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<td>01</td>
<td>Pivot to execution</td>
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<td>02</td>
<td>Lock in key talent</td>
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<td>03</td>
<td>Clinch transition vendors</td>
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<td>04</td>
<td>Stabilize tactical solutions</td>
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<td>05</td>
<td>Develop industrial strength solutions</td>
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Q&A
Will LIBOR really no longer be available after December 31, 2021?
On the one hand, the Financial Conduct Authority in the UK has insisted that it’s schedule is unchanged, that it will no longer require panel banks to provide LIBOR quotes after December 31, 2021. However, I don’t know of any restriction on panel banks providing such quotes and the ICE Benchmark Authority may continue to publish them. I think that this is unlikely but this all remains to be seen.

What issues relating to the LIBOR transition is the derivatives industry still considering or grappling with?
Among other things, the derivatives industry is still grappling with exactly how to treat pre-cessation triggers. The results of its first market consultation on the point were inconclusive, but the responses to its second market consultation indicate a willingness to include pre-cessation triggers, although it remains to be seen exactly how this will be implemented in the ISDA definition amendments.
Will there be a delay in SOFR implementation due to COVID-19?
The question of a possible delay to the date by which the FCA no longer requires panel banks to provide LIBOR quotes was raised even before the challenges resulting from COVID-19. The FCA said at the time and has repeated recently that there is no change to the December 31, 2021 date (“The central assumption that firms cannot rely on LIBOR being published after the end of 2021 has not changed and should remain the target date for all firms to meet. FCA 03.25.20) However, there recently have been changes to some of the interim transition steps required by the Bank of England and others, which may be a harbinger of other delays to come. Also, the longer that financial institutions and others are preoccupied by COVID-19, especially if there are second waves and related economic and other disruptions, the greater will be, in my opinion, the pressure to delay.

For Orrick, have you been seeing LIBOR fallback language being incorporated as all lender consents or majority lender consents? What is your opinion (generally speaking)?
It is hard to generalize regarding the appropriate approach. All lender consents in a widely distributed facility may mean that it would be very difficult to get agreement on transition terms. On the other hand, majority lender consents could be disenfranchising for certain of the lenders. Hard to generalize. We would be happy to engage in the discussion with regard to particular circumstances.

Across lenders, do you see a preference for compounded SOFR or simple SOFR?
While there had been lots of talk about the merits of compounded average SOFR, simple average SOFR may be gaining traction due to its ease of application.
If you are participating by web conference, or if you are watching a recorded version of this program, please enter the following code on your attendance sheet:

RGYA0620
Thank You

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  -Transition-and-Contract-Remediation
Bracing for a Post-LIBOR Reality: Legal and Operational Considerations

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